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

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GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 21

Government Accountability Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: This document amends Government Accountability Office (GAO) Bid Protest Regulations, which have been promulgated in accordance with the Competition in Contracting Act of 1984. These amendments are being made to implement changes to the definition of an ''interested party'' for the GAO Bid Protest forum set forth in sec. 326 of the National Defense Authorization Act for Fiscal Year 2008, and to make certain administrative changes.

DATES: *Effective Date:* June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Michael R. Golden (Managing Associate General Counsel), Ralph O. White (Assistant General Counsel), or Jonathan L. Kang (Senior Attorney), 202–512–3315.

SUPPLEMENTARY INFORMATION:

Effective Dates

GAO's statutory jurisdiction to hear bid protests filed by interested parties was recently amended by section 568 of the Department of Homeland Security Appropriations Act, 2008 (enacted as Division E of the Consolidated Appropriations Act, 2008, Pub. L. 110–161, 121 Stat. 1844, on December 26, 2007), and by sections 326 and 843 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, 122 Stat. 3, 62, 236.

Section 568 of the Department of Homeland Security Appropriations Act, 2008, made the Transportation Security Administration (TSA) subject to the Federal Acquisition Regulation. Therefore, as of the June 23, 2008, effective date, GAO will begin to hear protests of TSA procurements covered by TSA solicitations issued on or after the effective date.

Section 326 of the National Defense Authorization Act for Fiscal Year 2008 expanded the protest rights of Federal employees in a competition conducted under Office of Management and Budget (OMB) Circular A–76 or noncompetitive decision to convert a function performed by Federal employees to private sector performance. Section 326 specifies that GAO has jurisdiction to hear protests concerning studies initiated after January 1, 2004, for actions taken after the date of enactment, which was January 28, 2008.

Section 843 of the National Defense Authorization Act for Fiscal Year 2008 amended GAO's statutory jurisdiction under 10 U.S.C. 2304c(e) and 41 U.S.C. 253j(e) to authorize GAO to hear protests of the issuance or proposed issuance of certain task and delivery orders under certain indefinite-delivery/indefinite-quantity contracts. Section 843 specifies that GAO has jurisdiction to hear protests concerning the issuance or proposed issuance of task and delivery orders 120 days after enactment, which is May 27, 2008.

Background

On March 21, 2008, GAO published a proposed rule (73 FR 15098) to amend its Bid Protest Regulations. The supplementary information included with the proposed rule explained that the proposed revisions to GAO's Bid Protest Regulations were promulgated in accordance with the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. 3551–3556, in response to statutory changes in GAO's bid protest jurisdiction contained in section 568 of the Department of Homeland Security Appropriations Act, 2008, and sections 326 and 843 of the National Defense Authorization Act for Fiscal Year 2008.

The proposed rule also explained that after careful consideration, GAO had concluded that no changes in GAO's Bid Protest Regulations were necessary in order to effectuate the provisions of section 568 of the Department of Homeland Security Appropriations Act, 2008, or section 843 of the National Defense Authorization Act for Fiscal Year 2008. The proposed rule therefore set forth the proposed revisions to GAO's Bid Protest Regulations to implement section 326 of the National Defense Authorization Act for Fiscal Year 2008 and to make certain administrative changes.

GAO invited interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. These comments were required to be submitted on or before April 21, 2008.

Summary of Comments

GAO received written comments from two Federal agencies, two Federal employee labor unions, the American Bar Association, and two individuals. In adopting this final rule, GAO has carefully considered all comments received.

With respect to the changes in GAO's rules to implement the recently enacted statutes, one of the agencies, the American Bar Association, and both Federal employee labor unions explicitly agreed that the proposed regulations correctly implemented the statutory language. On the other hand, both of the employee unions suggested additional changes to GAO's rules to fully implement what they contend is the intent of the statutory changes. With respect to the changes in GAO's rules made for administrative purposes, the American Bar Association endorsed the proposed changes. A summary of the more significant specific comments concerning GAO's proposed rule, and GAO's responses to these comments, are set forth below.

Interested Party

The recent changes to the statutory definition of an ''interested party'' anticipate that Federal employees may be represented by either of two entities: (1) The official who submitted the agency tender in a public-private competition; or (2) any one person or individual who, for the purpose of representing the employees of a Federal agency in a protest, has been designated their agent by a majority of the employees who are engaged in performing such activity.

One individual commentator noted that the proposed revision to the definition of an ''interested party'' uses the term ''individual'' rather than the term ''person'' to describe the representative other than the agency

tender official (ATO) who can file a protest on behalf of affected employees, and raised concerns about the term ''individual.'' Congress initially changed the statutory definition of ''interested party'' in section 739(c) of the Financial Services and General Government Appropriations Act, 2008 (enacted as Division D of the Consolidated Appropriation Act, 2008), using the term ''person'' to describe the representative of the majority of affected Federal employees. One month later, in the National Defense Authorization Act for Fiscal Year 2008, Congress again amended the same provision, this time using the term ''individual.'' GAO has used the language of the later-enacted statute for its rules. For GAO, the use of the term ''individual'' as opposed to ''person'' is not intended to signal any substantive difference between the terms.

One of the agency commentators expressed concern that the interested party definition could allow affected employees to protest the selection of a ''most efficient organization'' (MEO) under a public-private competition conducted pursuant to OMB Circular A–76. GAO's proposed interested party definition, which closely tracks the statutory enactment, does not address (just as the statute does not address) whether affected employees are authorized to protest the selection of an MEO. In the event GAO is presented with this issue, GAO will consider it at that time.

While the two Federal employee unions expressly recognize that GAO's proposed rules were faithfully implementing the statutory amendments to the definition of an interested party, both expressed concern regarding several areas where they contend more guidance should be provided. These concerns, in the aggregate, were that the definition of an interested party should be supplemented to: (1) Provide guidance regarding the designation of an employee representative (this concern was also raised by one of the individual commentators), (2) address whether a government employee must lose or be at risk of losing his or her job in order to have standing to protest, and (3) authorize a protest without regard to the number of employees involved. Additionally, one Federal employee union argued that affected employees should be eligible to receive access to information covered by a protective order.

With respect to the designation of an employee representative, GAO plans to resolve these issues on a case-by-case basis. However, GAO's practice is to generally accept a party's representation that it is an interested party, unless facts are brought to GAO's attention that challenge the representation.

With respect to whether a government employee must lose his or her job in order to have standing to protest, GAO has addressed this issue in a recent decision in which GAO concluded that Federal employees' jobs ''must be at stake in order for their designated agent to qualify as an interested party to challenge an agency's conversion of a function to performance by the private sector.'' *Mark Whetstone—Designated Employee Agent,* B–311284, May 9, 2008, 2008 CPD ¶__ at 5–6. Because GAO has addressed this issue in a published decision, GAO does not believe that a change to the proposed rule is needed.

With respect to whether a protest is authorized without regard to the number of affected employees, GAO has addressed this issue in a recent decision as well. As GAO explained in *Lisa Hartman—Designated Employee Agent,* B–311247, May 6, 2008, 2008 CPD ¶__, there is no requirement under OMB Circular A–76 for an agency to use the procurement process to conduct a ''streamlined competition,'' when a commercial activity is performed by 65 or fewer full-time equivalent (FTE) employees. Moreover, there is no statutory requirement to conduct a public-private competition, using the procurement process, if fewer than 10 FTEs are involved. *Id.*; *see also* National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, Sec. 327, 122 Stat. 3, 63. Because GAO has addressed this issue in a decision, GAO does not believe that a change to the proposed rule is needed.

Finally, with respect to whether affected employees should be eligible to receive access to information covered by a protective order, GAO notes that this issue was raised by several commentators in connection with the revision of GAO's rules in 2005. 70 FR 19679, 19680, Apr. 14, 2005. As explained then, GAO thought it was premature to provide definitive guidance regarding providing access to protected information by the ATO, the employee representative, and/or their attorneys. Since that time, GAO has not had an opportunity to address this matter further in protest decisions.

Nonetheless, GAO thinks that several points of guidance offered then are still applicable. GAO believes that where counsel for the ATO or for the employee representative is not a government employee, that attorney will be required to apply for admission under existing standards established for admission to a protective order. As for the ATO and the employee representative, those individuals would presumably not be provided access to protected information under the protective order, just as non-attorneys in other protests cannot obtain such access. In cases where counsel for the ATO, or for the employee representative, is a government employee, GAO will proceed on a case-by-case basis, with appropriate weight given to the agency's views and, in particular, to the access that the agency has given the attorney to proprietary or source selection sensitive documents before the protest was filed. As the practice develops, and experience is gained by all sides, GAO intends to develop uniform procedures that can be incorporated into the bid protest process and, if warranted, into GAO's Bid Protest Regulations.

Contracting Agency

In the proposed rules, GAO explained it was deleting the definition of ''contracting agency'' at paragraph (d) of 4 CFR 21.0, and replacing the term ''contracting agency'' with ''agency'' throughout 4 CFR 21. One of the individual commentators brought to GAO's attention that the proposed rule failed to implement this change at paragraph (c) of 4 CFR 21.3. GAO is correcting this omission in the final rule.

Additional Statements

In the proposed rules, GAO explains that, consistent with current practice, GAO proposed to revise paragraph (j) of 4 CFR 21.3 to clarify that parties must seek GAO's prior approval before submitting additional statements, and that GAO reserves the right to disregard statements that are submitted without prior approval. One of the individual commentators suggested that GAO amend the proposed rule to state that GAO will automatically reject additional filings that are submitted without prior approval. Although the amendment of the rule reflects the need for parties to seek prior approval before submission of additional statements, GAO does not believe that it would be appropriate, in every case, to automatically reject additional statements submitted without prior approval. As a result, GAO is not changing the proposed rule in this respect.

The same commentator also requested that GAO amend the proposed rule to state that when a party is allowed to submit an additional statement, the other parties shall have a minimum of 24 hours to respond, where practicable. As a general rule, consistent with GAO's statutory obligation to issue decisions

within 100 calendar days, GAO allows parties to respond to additional statements. GAO is not prepared, however, to amend the rules to reduce its flexibility in this area.

One of the Federal employee union commentators requested that GAO amend this proposed rule to allow parties who request permission to submit additional statements to submit the statement along with the request. GAO does not believe that this proposed change is warranted, as it would effectively defeat the stated purpose of the rule of requiring parties to first obtain permission to submit additional statements.

Reimbursement of Costs

One of the individual commentators requested that GAO amend its rule at 4 CFR 21.8 to state that GAO will recommend reimbursement of costs and attorneys' fees only in ''appropriate circumstances,'' so as to provide GAO with the discretion to avoid recommending that an agency reimburse the costs and fees of agency employees or counsel. The commentator recognizes that this concern would not exist in situations where affected employees retain outside representation. GAO does not think that changes to this rule are needed to conclude that awarding costs to government employee protesters may not be appropriate, because the rule already states that GAO ''may'' recommend reimbursement of protest costs, including attorneys' fees.

The same commentator also suggested that GAO clarify paragraph (e) of 4 CFR 21.8 to expressly state that GAO will not recommend reimbursement of protest costs where an agency takes prompt corrective action, i.e., the agency takes corrective action before the agency report is produced. GAO thinks this issue has been adequately addressed in prior decisions. E.g., *Alaska Structures, Inc.-Costs,* B–298156.2, July 17, 2006, 2006 CPD ¶ 109 at 4. GAO recognizes that the commentator is accurately stating the general rule applicable to recommendations for the reimbursement of protest costs. On the other hand, GAO does not rule out the possibility that unique and rarely encountered circumstances could warrant the recommendation of the reimbursement of costs when an agency takes corrective action prior to the due date for the agency report and would like to retain its discretion in this regard. *See Louisiana Clearwater, Inc.—Reconsideration & Costs,* B–283081.4, B–283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 6.

Statutory Stays

In the notice of proposed rulemaking, GAO stated that it would revise 4 CFR 21.6 and 21.14 to clarify that GAO has no role in administering the statutory requirements to withhold contract award or suspend contract performance. One of the Federal employee unions expressed concern with GAO's proposed clarification because of what the commentator perceived as GAO's ability to direct agencies to suspend contract performance. The commentator argued that this ability could provide a valuable mechanism to enforce the rights of affected employees.

GAO proposed this change to more accurately reflect its role in questions involving the statutory stay provisions of CICA. GAO views this clarification as appropriate for all of the protests over which GAO has jurisdiction: this clarification has no greater or lesser application to protests involving public-private competitions. As a result, GAO plans to implement the proposed changes to 4 CFR 21.6 and 4 CFR 21.14 as explained in the notice of proposed rulemaking.

TSA Jurisdiction

In the notice of proposed rulemaking, GAO noted that as of June 23, 2008, procurements conducted by the TSA will be subject to the Federal Acquisition Regulation (FAR), such that GAO will gain jurisdiction over TSA procurements. The Department of Homeland Security (DHS) has issued a final rule stating that TSA ''acquisitions initiated after June 22, 2008'' will be subject to the FAR. 73 FR 30317, May 27, 2008. In addition, TSA has requested that GAO clarify that its jurisdiction will apply to procurements covered by solicitations issued on or after June 23. In light of the revised DHS regulations pertaining to the applicability of the FAR to TSA procurements, and in the interest of an orderly transition by TSA to FAR-based procurements, GAO will hear protests of TSA procurements covered by TSA solicitations issued on or after June 23.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Appeals, Bid protest regulations, Government contracts.

■ For the reasons set out in the preamble, Title 4, Chapter I, Subchapter B, Part 21 of the Code of Federal Regulations is amended as follows:

PART 21—BID PROTEST REGULATIONS

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

Authority: 31 U.S.C. 3551–3556.

■ 2. Remove the words ''a contracting agency'' and ''the contracting agency'' wherever they appear and add in their place the words ''an agency'' or ''the agency,'' respectively.

■ 3. Amend § 21.0, by revising paragraphs (a)(2), (b)(2), and (c); removing paragraph (d); and redesignating paragraph (e) as paragraph (d), redesignating paragraph (f) as paragraph (e), redesignating paragraph (g) as paragraph (f) and revising it, and redesignating paragraph (h) as paragraph (g).

The revisions read as follows:

§ 21.0 Definitions.

(a) (1) * * *

(2) In a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A–76, *interested party* also means

(A) The official responsible for submitting the Federal agency tender, and

(B) Any one individual, designated as an agent by a majority of the employees performing that activity or function, who represents the affected employees.

(b)(1) * * *

(2) If an interested party files a protest in connection with a public-private competition conducted under OMB Circular A–76 regarding an activity or function of a Federal agency, the official responsible for submitting the Federal agency tender, or the agent representing the Federal employees as described in paragraph (a)(2)(B) of this section, or both, may also be *intervenors.*

(c) *Federal agency* or *agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

* * * * *

(f) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., Eastern Time, on that day. Protests and other documents may be filed by hand delivery, mail, commercial carrier, facsimile transmission (202–512–9749), or e-mail (*protests@gao.gov*). Please check GAO's Web site (*http://www.gao.gov/legal/bidprotest.html*) for current filing information. Hand

delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at GAO.

* * * * *

■ 4. Amend § 21.1 by revising paragraph (g) to read as follows:

§ 21.1 Filing a protest.

* * * * *

(g) Unless precluded by law, GAO will not withhold material submitted by a protester from any party outside the government after issuing a decision on the protest, in accordance with GAO's rules at 4 CFR part 81. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file a redacted copy of the protest which omits the information with GAO and the agency within 1 day after the filing of its protest with GAO.

* * * * *

■ 5. Amend § 21.3 by revising paragraphs (c), (d), and (j) to read as follows:

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

* * * * *

(c) The agency shall file a report on the protest with GAO within 30 days after the telephone notice of the protest from GAO. The report provided to the parties need not contain documents which the agency has previously furnished or otherwise made available to the parties in response to the protest. At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall respond to the request for documents in writing. The agency's response shall, at a minimum, identify whether the requested documents exist, which of the requested documents or portions thereof the agency intends to produce, which of the requested documents or portions thereof the agency intends to withhold, and the basis for not producing any of the requested documents or portions thereof. Any objection to the scope of the agency's proposed disclosure or nondisclosure of documents must be filed with GAO and the other parties within 2 days of receipt of this list.

(d) The report shall include the contracting officer's statement of the relevant facts, including a best estimate of the contract value, a memorandum of law, and a list and a copy of all relevant documents, or portions of documents, not previously produced, including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications; the abstract of bids or offers; and any other relevant documents. In appropriate cases, a party may request that another party produce relevant documents, or portions of documents, that are not in the agency's possession.

* * * * *

(j) GAO may request or permit the submission of additional statements by the parties and by other parties participating in the protest as may be necessary for the fair resolution of the protest. The agency and other parties must receive GAO's approval before submitting any additional statements. GAO reserves the right to disregard material submitted without prior approval.

■ 6. Amend § 21.4 by revising paragraphs (b) and (d) to read as follows:

§ 21.4 Protective orders.

* * * * *

(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report that would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.

* * * * *

(d) Any violation of the terms of a protective order may result in the imposition of such sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies, restricting the individual's practice before GAO, prohibition from participation in the remainder of the protest, or dismissal of the protest.

■ 7. Amend § 21.5 by revising paragraph (b)(1) to read as follows:

§ 21.5 Protest issues not for consideration.

* * * * *

(b) *Small Business Administration issues.* (1) Small business size standards and North American Industry Classification System (NAICS) standards. Challenges of established size standards or the size status of particular firms, and challenges of the selected NAICS code may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

* * * * *

■ 8. Revise § 21.6 to read as follows:

§ 21.6 Withholding of award and suspension of contract performance.

Where a protest is filed with GAO, the agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553(c) and (d); GAO does not administer the requirements to stay award or suspend contract performance under CICA at 31 U.S.C. 3553(c) and (d).

■ 9. Amend § 21.12 by revising paragraph (a) to read as follows:

§ 21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, and the agency involved; a copy also shall be made available to the public. A copy of a decision containing protected information shall be provided only to the agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

* * * * *

■ 10. Amend § 21.14 by revising paragraph (c) to read as follows:

§ 21.14 Request for reconsideration.

* * * * *

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. To obtain reconsideration, the requesting party must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision; GAO will not consider a request for reconsideration based on repetition of arguments previously raised.

Gary L. Kepplinger,

General Counsel, United States Government Accountability Office.

[FR Doc. E8–12790 Filed 6–6–08; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2007–0084]

RIN 0579–AC57

Consolidation of the Fruit Fly Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to consolidate our domestic regulations regarding exotic fruit flies. Currently, these regulations are contained in six separate subparts, each of which covers a different species of fruit fly, and each of these subparts has parallel sections that are substantially the same as the corresponding sections in the other subparts. Therefore, we are combining these six subparts into a single subpart. We are also modifying the regulations by adding a mechanism through which quarantined areas can be removed from regulation expeditiously. These actions eliminate duplication and enhance the flexibility of our regulatory program.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 2007, we published in the **Federal Register** (72 FR 53171–53181, Docket No. APHIS–2007–0084) a proposal [1] to consolidate our domestic regulations regarding exotic fruit flies. These regulations have been maintained in six separate subparts, each of which covers a different species of fruit fly, and each of these subparts has parallel sections that are substantially the same as the corresponding sections in the other subparts, so we proposed to combine those six subparts into a single subpart. We also proposed to modify the regulations by adding a mechanism through which quarantined areas can be removed from regulation expeditiously. These actions eliminate duplication and enhance the flexibility of our regulatory program. Finally, we proposed to make irradiation available as a phytosanitary treatment for additional species of fruit flies.

We solicited comments concerning out proposal for 60 days ending November 19, 2007. We received two comments by that date. They were from a State agricultural agency and a private citizen. The comments supported the rule. One commenter did, however, suggest a few minor changes. They are discussed below.

The commenter, noting that we had proposed to revise the definition of *core area* to describe an area within a circle surrounding each site where fruit flies have been detected using a ½ mile radius with the detection site as a center point, stated his agency had found that using a square-mile section around the find is more conducive to actual trap placement than a radius.

As we stated in the proposed rule, our update to the definition of *core area* was intended to reflect the availability of GPS technology because we have determined that the use of GPS technology allows us to more accurately measure the distance from a positive detection site. Our change to the definition will not affect the ability of State or local agencies to carry out existing surveillance efforts or eradication treatment methods; it simply redefines the way we will identify the core area surrounding a detection site. In other words, this revision does not preclude State agencies from employing squared-off grids as a guide to place traps.

The commenter also suggested we revise references to ''all other fruit flies'' or ''other species of insects in the family Tephritidae'' since there are more than 4,000 species of Tephritids and not all of them are pests.

In the definition for *fruit fly (fruit flies)* found in the regulations, we specifically include ''or other species of insects found in the family Tephritidae'' in the definition because this reference provides us with the flexibility we need to regulate new fruit fly pests as the need arises; it does not mean that we consider all other species of insects found in the family Tephritidae to be pests. Similarly, while we do refer to ''all fruit fly species of the Family Tephritidae'' in § 305.2, ''Approved treatments,'' this does not mean that we consider all fruit flies species of the Family Tephritidae to be pests, only that the treatment has been shown to be effective against those species and has been approved for use.

Finally, the commenter suggested we combine the three soil treatments mentioned in § 301.32–10, paragraph (a), because they appear to be the same. We agree that these three treatments can be combined into one and we have revised § 301.32–10(a) in the final rule accordingly.

Quarantined Areas (§ 301.32–3)

In this final rule, we have updated § 301.32–3, ''Quarantined areas,'' to incorporate a different approach to listing quarantined areas and notifying the public of changes to those areas. In the proposed rule, we described a mechanism by which we would quarantine an area by providing written notification to the affected entities in that area, and then follow up by amending the regulations to add a description of the quarantined area. When sufficient time passed without additional fruit fly detections and it was time to lift the quarantine, the affected entities would be notified and we would amend the regulations to remove the description of the quarantined area.

Following the publication of the proposed rule, we amended [2] our regulations in 7 CFR part 301 by adding a new ''Subpart-Potato Cyst Nematode'' (§§ 301.86 through 301.86–9). In that new subpart, we employed a different approach to notifying the public about changes to quarantined areas. Rather than engaging in a process like that described in the previous paragraph, the new subpart describes the conditions under which fields will be added or removed from quarantine and uses the Internet and **Federal Register** notices inform the public of changes to the quarantined areas. When, for example, a field or area meets the criteria spelled out in the regulations for designation as a quarantined area, we publish a description of the quarantined area on a designated page on our Web site. The description of the quarantined area includes the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area is also made available at any local office of the Agency's Plant Protection and Quarantine (PPQ) program. After a change is made to a quarantined area, we publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

We believe that using this Internet- and notice-based approach will allow us to update and maintain the descriptions of quarantined areas under the consolidated fruit fly regulations with a

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS=2007-0084.*

[2] See 72 FR 51975–51099. Docket No. APHIS–2006–0143, published September 12, 2007, and effective on November 1, 2007.

greater degree of timeliness and efficiency than would be possible under the older approach. Our criteria for designating and releasing quarantined areas will remain the same as was described in the proposed rule; the difference will be in where the list of quarantined areas is maintained and how changes to the list will be communicated. Because we will not be publishing descriptions of quarantined areas in the regulations, we will be able to update them more quickly if a fruit fly population subject to the regulations is detected, thus allowing us to take prompt action to prevent the spread of the fruit fly population and provide necessary information to affected parties in a timely manner. Accordingly, the quarantined areas that appeared in the proposed regulations, as well as quarantined areas that have been added since the publication of the proposed rule, will no longer appear in the regulations, but can be found at the PPQ Web site, as mentioned above. We believe our description of the criteria by which quarantined areas will be designated and how the quarantined area will be determined will provide adequate notice regarding the criteria by which we will make changes to the quarantined area.

Finally, in an interim rule published and effective on December 7, 2007 (72 FR 69137–69139, Docket No. APHIS–2007–0133), we added blueberries (*Vaccinium* spp.) as a regulated article for Mediterranean fruit fly. We have updated § 301.32–2(a) in this final rule to reflect that addition.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are combining the regulations regarding exotic fruit flies. These regulations, located in 7 CFR part 301, have been divided into separate subparts, each covering a different species of fruit fly and each containing parallel sections that are substantially similar to the corresponding sections in other subparts. This rule combines these sections into one subpart that will cover all fruit fly species. We are also modifying the regulations by adding a mechanism through which quarantined areas can be removed from regulation expeditiously and by expanding the availability of irradiation as a phytosanitary treatment.

The consolidation of the 66 sections to 11 sections under the new ''Subpart—Fruit Flies'' allows us to eliminate the duplicative regulatory text. This change is an administrative one without any direct economic effect on any entity.

The second change offers irradiation as one more treatment option for articles regulated because of Oriental, Melon, West Indian, or Sapote fruit flies. There are no areas currently quarantined because of any of these fruit fly species. If there were, the irradiation treatment option may benefit affected entities by providing them with an alternative means of treating regulated articles. We do not know how costs of irradiation treatment may compare to the costs of other treatments, but at least, entities now have a broader choice of options.

The third change affects the interstate movement of regulated articles directly by allowing producers of those commodities in an area that has been under quarantine to more quickly resume moving articles without first having to obtain a certificate or limited permit. Entities that may benefit from this change include fresh fruit producers, nurserymen and tree growers, and transportation entities such as long distance general freight trucking with storage, scheduled freight air transportation companies, and/or short line railroad transportation companies.

There are no significant alternatives to these actions; however, we do not anticipate that the economic effects of these actions will be significant. Any impacts on small entities would be attributable to the availability and the cost of irradiation as a treatment against all regulated fruit flies and to our ability to relieve quarantine-related restrictions on the interstate movement of regulated articles more quickly. The overall economic effects of these changes are expected to be positive, if minimal. We cannot estimate how many entities will be affected or what percentage of these entities will be small entities; those numbers depend entirely on the number and size of entities that might be present in a quarantined area at the time these provisions become effective or at any time thereafter. While the number of entities affected may eventually prove to be a large number of entities, most of which are likely to be small entities, the economic effects on those entities, while positive, would not be significant.

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.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In part 301, a new ''Subpart—Fruit Flies'' (§§ 301.32 through 301.32–10) is added to read as follows:

Subpart—Fruit Flies

Sec.

301.32 Restrictions on interstate movement of regulated articles.
301.32–1 Definitions.
301.32–2 Regulated articles.
301.32–3 Quarantined areas.

301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.32–5 Issuance and cancellation of certificates and limited permits.
301.32–6 Compliance agreements and cancellation.
301.32–7 Assembly and inspection of regulated articles.
301.32–8 Attachment and disposition of certificates and limited permits.
301.32–9 Costs and charges.
301.32–10 Treatments.

Subpart—Fruit Flies

§ 301.32 Restrictions on interstate movement of regulated articles.

(a) No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

(b) Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

§ 301.32–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of fruit flies and may be moved interstate to any destination.

Commercially produced. Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The area within a circle surrounding each site where fruit flies have been detected using a ½-mile radius with the detection site as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each species of fruit fly.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.32–4(c).

Dripline. The line around the canopy of a plant.

Fruit fly (fruit flies). The melon fruit fly, Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, peach fruit fly, sapote fruit fly, or West Indian fruit fly, or other species of insects found in the family Tephritidae, collectively.

Infestation. The presence of fruit flies or the existence of circumstances that makes it reasonable to believe that fruit flies are present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.32–5(b) only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), in any stage of development.

Melon fruit fly. The insect known as the melon fruit fly, *Bactrocera cucurbitae* (Coquillett), in any stage of development.

Mexican fruit fly. The insect known as Mexican fruit fly, *Anastrepha ludens* (Loew), in any stage of development.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

Oriental fruit fly. The insect known as Oriental fruit fly, *Bactrocera dorsalis* (Hendel), in any stage of development.

Peach fruit fly. The insect known as peach fruit fly, *Anastrepha zonata* (Saunders), in any stage of development.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Quarantined area. Any State, or any portion of a State, designated as a quarantined area in accordance with § 301.32–3.

Regulated article. Any article listed in § 301.32–2 or otherwise designated as a regulated article in accordance with § 301.32–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina*, in any stage of development.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

West Indian fruit fly. The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

§ 301.32–2 Regulated articles.

(a) In the following table, the berry, fruit, nut, or vegetable listed in each row in the left column is a regulated article for each of the fruit fly species listed in that row in the right column, unless the article is canned, dried, or frozen below −17.8 °C (0 °F):

[1] Permit and other requirements for the interstate movement of any of the fruit flies regulated under this subpart are contained in part 330 of this chapter.

Botanical name	Common name(s)	Fruit fly
Abelmoschus esculentus = Hibiscus esculentus	Okra	Melon, Peach.
Acca sellowiana = Feijoa sellowiana	Pineapple guava	Mediterranean, Oriental, Peach.
Actinidia chinensis	Kiwi	Mediterranean.
Aegle marmelos	Indian bael	Peach.
Anacardium occidentale	Cashew	Oriental.
Annona cherimola	Cherimoya	Mexican, Oriental, Peach.
Annona glabra	Pond-apple	Sapote.
Annona muricata	Soursop	Melon, Oriental, Peach.
Annona reticulata	Custard apple, Annona	Melon, Mexican, Oriental, Peach.
Annona squamosa	Custard apple	Peach.
Artocarpus altilis	Breadfruit	Oriental.
Artocarpus heterophyllus	Jackfruit	Oriental.
Averrhoa carambola	Carambola, Country gooseberry	Oriental, West Indian.
Benincasa hispida	Melon, Chinese	Melon.
Brassica juncea	Mustard, leaf	Melon.
Brassica oleracea var. *botrytis*	Cauliflower	Melon.
Brosimum alicastrum	Ramón	West Indian.
Byrsonima crassifolia	Nance	Sapote.
Calophyllum inophyllum	Alexandrian-laurel, Laurel	Oriental.
Cananga odorata	Ylang-Ylang	Oriental.
Capsicum annum	Pepper, chili	Mediterranean, Melon, Oriental.
Capsicum frutescens	Pepper, tabasco	Mediterranean, Melon.
Capsicum frutescens abbreviatum	Oriental bush red pepper	Oriental.
Capsicum frutescens var. *grossum*	Pepper, sweet	Oriental.
Carica papaya	Papaya	Mediterranean, Melon, Oriental, Peach.
Carissa grandiflora	Natal plum	Oriental.
Carissa macrocarpa	Natal plum	Mediterranean.
Casimiroa edulis	Sapote, white	Mediterranean.
Casimiroa greggii = Sargentia greggii	Sargentia, yellow chapote	Mexican.
Casimiroa spp	Sapote	Mexican.
Cereus coerulescens	Cactus	Oriental.
Chrysophyllum cainito	Star apple	Oriental, Sapote.
Chrysophyllum oliviforme	Caimitillo	Oriental.
Citrofortunella japonica	Orange, calamondin	Peach.
Citrullus colocynthis	Colocynth	Melon.
Citrullus lanatus = Citrullus vulgaris	Watermelon	Melon, Peach.
Citrullus spp	Melon	Melon.
Citrus aurantiifolia	Lime	Mediterranean, Mexican,[1] Oriental, Peach.
Citrus aurantium	Orange, sour	Mediterranean, Mexican, Oriental, Peach.
Citrus jambhiri	Lemon, Rough	Mediterranean.
Citrus latifolia	Lime, Persian	Oriental.
Citrus limon	Lemon	Mediterranean,[2] Mexican,[3] Oriental, Peach.
Citrus limon x *reticulata*	Lemon, Meyer	Mediterranean.
Citrus madurensis = x*Citrofortunella mitis*	Orange, Panama	Sapote.
Citrus maxima = Citrus grandis	Pummelo or Shaddock	Mediterranean, Mexican, Oriental, Peach.
Citrus medica	Citrus citron	Mediterranean, Mexican, Peach.
Citrus paradisi	Grapefruit	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus reticulata	Mandarin orange, tangerine	Mediterranean, Mexican, Oriental, Peach.
Citrus reticulata var. *Unshu*	Orange, Unshu	Mediterranean, Oriental.
Citrus reticulata x *C. sinensis = Citrus nobilis*	Orange, king	Mediterranean, Melon, Oriental, Peach.
Citrus reticulata x *Fortunella*	Orange, calamondin	Mediterranean, Mexican, Oriental.
Citrus sinensis	Orange, sweet	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus spp	Citrus	Sapote.
Clausena lansium	Wampi	Oriental.
Coccinia spp	Gourds	Melon, Peach.
Coccoloba uvifera	Seagrape	Oriental.
Coffea arabica	Coffee, Arabian	Oriental.
Cresentia spp	Gourds	Melon, Peach.
Cucumis melo and *Cucumis melo* var. *Cantalupensis.*	Cantaloupe	Melon, Peach.
Cucumis melo var. *conomon*	Melon, oriental pickling	Melon.
Cucumis pubescens and *Cucumis trigonus*	Cucurbit	Melon.
Cucumis sativus	Cucumber	Melon, Oriental, Peach.
Cucumis utilissimus	Melon, long	Peach.
Cucurbita maxima	Squash	Melon.
Cucurbita moschata	Pumpkin, Canada	Melon.
Cucurbita pepo	Pumpkin	Melon.
Cydonia oblonga	Quince	Mexican, Mediterranean, Oriental, Peach, Sapote.
Cyphomandra betaceae	Tomato, tree	Melon.
Diospyros digyna	Black sapote	Sapote.
Diospyros discolor	Velvet apple	Oriental.

Botanical name	Common name(s)	Fruit fly
Diospyros khaki	Japanese persimmon	Mediterranean, Oriental.
Diospyros spp	Sapote	Sapote, West Indian.
Dovyalis hebecarpa	Kitembilla	Oriental, Sapote, West Indian.
Dracena draco	Dragon tree	Oriental.
Elaeocarpus angustifolius	Blue marbletree; New Guinea quandong	Peach.
Elaeocarpus grandiflorus	Lily of the valley tree	Peach.
Elaeocarpus madopetalus	Ma-kok-nam	Peach.
Eriobotrya japonica	Loquat	Mediterranean, Oriental, Peach, West Indian.
Eugenia brasiliensis = *E. dombeyi*	Brazil-cherry, grumichama	Mediterranean, Oriental, Peach.
Eugenia malaccensis	Malay apple	Oriental.
Eugenia uniflora	Surinam cherry	Mediterranean, Oriental, Peach.
Euphoria longan	Longan	Oriental.
Ficus benghalensis	Fig, Banyan	Peach.
Ficus carica	Fig	Mediterranean, Melon, Oriental, Peach.
Ficus macrophylla	Fig, Moreton Bay	Peach.
Ficus retusa	Fig, glossy leaf	Peach.
Ficus rubiginosa	Fig, Port Jackson	Peach.
Ficus spp	Fig	Peach.
Fortunella japonica	Chinese Orange, Kumquat	Mediterranean, Oriental, Peach.
Garcinia celebica	Gourka	Oriental.
Garcinia mangostana	Mangosteen	Oriental.
Grewia asiatica	Phalsa	Peach.
Jubaea chilensis = *Jubaea spectabilis*	Syrup palm	Oriental.
Juglans hindsii	Walnut	Oriental.
Juglans regia	Walnut, English	Oriental.
Juglans spp	Walnut with husk	Mediterranean.
Lablab purpureus subsp. *purpureus* = *Dolichos lablab.*	Bean, hyacinth	Melon.
Lagenaria spp	Gourds	Melon, Peach.
Luffa acutangula	Gourd, ribbed or ridged, luffa	Peach.
Luffa aegyptiaca	Gourd, smooth luffa, sponge	Peach.
Luffa spp	Gourds	Melon, Peach.
Luffa vulgaris	Gourd	Peach.
Lychee chinensis	Lychee nut	Oriental.
Lycopersicon esculentum	Tomato	Mediterranean, Melon,[4] Oriental,[4] Peach[4].
Madhuca indica = *Bassia latifolia*	Mahua, mowra-buttertree	Peach.
Malpighia glabra	Cherry, Barbados	Oriental, West Indian.
Malpighia punicifolia	West Indian cherry	Oriental.
Malus sylvestris	Apple	Mediterranean, Melon, Mexican, Oriental, Sapote, Peach.
Mammea americana	Mammy apple	Mexican, Oriental, Peach, Sapote.
Mangifera foetida	Mango, Bachang	Peach.
Mangifera indica	Mango	All.
Mangifera odorata	Kuine	Peach.
Manilkara hexandra	Sapodilla, balata	Peach.
Manilkara jaimiqui subsp. *emarginata*	Sapodilla, wild	Peach.
Manilkara zapota	Sapodilla, chiku	Oriental, Peach, Sapote, West Indian.
Mimusops elengi	Spanish cherry	Mediterranean, Oriental.
Momordica balsamina	Balsam apple, hawthorn	Peach.
Momordica charantia	Balsam pear, bitter melon	Peach.
Momordica cochinchinensis	Balsam apple, gac	Peach.
Momordica spp	Gourds	Melon, Peach.
Morus nigra	Mulberry	Oriental.
Murraya exotica	Mock orange	Mediterranean, Oriental.
Musa x *paradisiaca* = *Musa paradisiaca* subsp. *sapientum.*	Banana	Oriental.
Musa acuminata = *Musa nana*	Banana, dwarf	Oriental.
Ochrosia elliptica	Orange, bourbon	Peach.
Olea europea	Olive	Mediterranean.
Opuntia ficus-indica = *Opuntia megacantha*	Prickly pear	Oriental.
Opuntia spp	Opuntia cactus	Mediterranean.
Passiflora edulis	Passionflower, passionfruit, yellow lilikoi	Melon, Oriental, West Indian.
Passiflora laurifolia	Lemon, water	Melon.
Passiflora ligularis	Granadilla, sweet	Oriental.
Passiflora quadrangularis	Granadilla, giant	West Indian.
Passiflora tripartita var. *mollissima*	Passionflower, softleaf	Oriental.
Persea americana	Avocado	Mediterranean, Melon, Mexican, Oriental, Peach, Sapote.
Phaseolus lunatus = *Phaseolus limensis*	Bean, lima	Melon.
Phaseolus vulgaris	Bean, mung	Melon.
Phoenix dactylifera	Date palm	Mediterranean, Melon, Oriental, Peach.
Planchonia careya = *Careya arborea*	Patana oak, kumbhi	Peach.
Pouteria caimito	Abiu	Sapote.
Pouteria campechiana	Eggfruit tree	Oriental, Sapote.

Botanical name	Common name(s)	Fruit fly
Pouteria obovata	Lucmo	Sapote.
Pouteria viridis	Sapote, green	Sapote.
Prunus americana	Plum, American	Mediterranean, Mexican, Oriental, Peach.
Prunus armeniaca	Apricot	Mediterranean, Mexican, Oriental, Peach.
Prunus avium	Sweet cherry	Mediterranean, Peach.
Prunus cerasus	Sour cherry	Mediterranean, Peach.
Prunus domestica	Plum, European	Mediterranean, Mexican, Oriental, Peach.
Prunus dulcis = P. amygdalus	Almond with husk	Mediterranean, Peach [5].
Prunus ilicifolia	Cherry, Catalina	Oriental, Peach.
Prunus lusitanica	Cherry, Portuguese	Oriental, Peach.
Prunus persica	Peach	All.
Prunus persica var. *nectarine*	Nectarine	Mediterranean, Mexican, Oriental, Peach.
Prunus salicina	Japanese plum	Mediterranean, Mexican, Peach, West Indian.
Prunus salicina x *Prunus cerasifera*	Methley plum	Peach.
Psidium cattleianum	Strawberry guava, Cattley guava	Mediterranean, Melon, Oriental.
Psidium cattleianum var. *cattleianum f. lucidum*	Yellow strawberry guava	Peach.
Psidium cattleianum var. *littorale*	Red strawberry guava	Oriental, West Indian, Peach.
Psidium guajava	Guava	All.
Punica granatum	Pomegranate	Mediterranean, Mexican, Oriental, Peach.
Pyrus communis	Pear	All.
Pyrus pashia	Kaeuth	Peach.
Pyrus pyrifolia	Pear, sand	Peach.
Rhodomyrtus tomentosa	Myrtle, downy rose	Oriental.
Sandoricum koetjape	Santol	Oriental.
Santalum album	Sandalwood, white	Oriental.
Santalum paniculatum	Sandalwood	Oriental.
Sapotaceae	Sapota, Sapodilla	Mexican.
Sechium edule	Chayote	Melon.
Sesbania grandiflora	Scarlet wisteria tree	Melon.
Sicyes sp	Cucumber, bur	Melon.
Solanum aculeatissimum	Nightshade	Peach.
Solanum mauritianum = S. auriculatum	Tobacco, wild	Peach.
Solanum melongena	Eggplant	Mediterranean,[6] Melon, Peach.
Solanum muricatum	Pepino	Oriental, Peach.
Solanum pseudocapsicum	Jerusalem cherry	Oriental, Peach.
Solanum seaforthianum	Nightshade, Brazilian	Peach.
Solanum verbascifolium	Nightshade, Mullein	Peach.
Spondias dulcis = Spondias cytherea	Otaheite apple, Jew plum	Oriental, West Indian.
Spondias mombin	Hog-plum	Sapote, West Indian.
Spondias purpurea	Red mombin	Sapote, West Indian.
Spondias spp	Spanish plum, purple mombin or Ciruela	Mexican.
Spondias tuberose	Imbu	Oriental.
Syzygium aquem	Water apple, watery roseapple	Peach.
Syzygium cumini	Java plum, jambolana	Peach.
Syzygium jambos = Eugenia jambos	Rose apple	Mediterranean, Mexican, Oriental, Peach, West Indian.
Syzygium malaccense = Eugenia malaccensis	Mountain apple, Malay apple	Mediterranean, Peach, West Indian.
Syzygium samarangense	Java apple	Peach.
Terminalia bellirica	Myrobalan, belleric	Peach.
Terminalia catappa	Tropical almond	Oriental, Peach.
Terminalia chebula	Myrobalan, black or chebulic	Mediterranean, Oriental, Peach.
Thevetia peruviana	Yellow oleander	Mediterranean, Oriental.
Trichosanthis spp	Gourds	Melon, Peach.
Vaccinium spp	Blueberry	Mediterranean.
Vigna unguiculata	Cowpea	Melon.
Vitis spp	Grapes	Mediterranean, Oriental.
Vitis trifolia	Grape	Melon.
Wikstroemia phillyreifolia	Akia	Oriental.
Ziziphus mauritiana	Chinese date, jujube	Peach.

[1] Sour limes are not regulated articles for Mexican fruit fly.
[2] Smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly.
[3] Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon) are not regulated articles for Mexican fruit fly.
[4] Only pink and red ripe tomatoes are regulated articles for melon, Oriental, and peach fruit flies.
[5] Harvested almonds with dried husks are not regulated articles for peach fruit fly.
[6] Commercially produced eggplants are not regulated articles for Mediterranean fruit fly.

(b) Plants of the following species in the family Curcurbitaceae are regulated articles for the melon fruit fly only:

Cantaloupe (*Cucumis melo*)

Chayote (*Sechium edule*)

Colocynth (*Citrullus colocynthis*)

Cucumber (*Cucumis sativus*)

Cucumber, bur (*Sicyes* spp.)

Cucurbit (*Cucumis pubescens* and *C. trigonus*)

Cucurbit, wild (*Cucumis trigonus*)

Gherkin, West India (*Cucumis angaria*)

Gourds (*Coccinia, Cresentia, Lagenaria, Luffa, Momordica,* and *Trichosanthis* spp.)

Gourd, angled luffa (*Luffa acutangula*)

Gourd, balsam apple (*Momordica balsaminia*)
Gourd, ivy (*Coccinia grandis*)
Gourd, kakari (*Momordica dioica*)
Gourd, serpent cucumber (*Trichosanthis anguina*)
Gourd, snake (*Trichosanthis cucumeroides*)
Gourd, sponge (*Luffa aegyptiaca*)
Gourd, white flowered (*Lagenaria siceraria*)
Melon, Chinese (*Benincasa hispida*)
Melon, long (*Cucumis utilissimus*)
Pumpkin (*Cucurbita pepo*)
Pumpkin, Canada (*Cucurbita moschata*)
Squash (*Cucurbita maxima*)
Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

(c) Soil within the dripline of the plants listed in paragraph (b) of this section or plants that are producing or have produced any article listed in paragraph (a) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a), (b), or (c) of this section that an inspector determines presents a risk of spreading fruit flies, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.32–3 Quarantined areas.

(a) *Designation of quarantined areas.* In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each State, or each portion of a State, in which a fruit fly population subject to the regulations in this subpart has been found by an inspector, or in which the Administrator has reason to believe that a fruit fly population is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which a fruit fly population has been found. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, *http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml.* The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

(b) *Designation of an area less than an entire State as a quarantined area.* Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the fruit fly.

(c) *Criteria for designation of a State, or a portion of a State, as a quarantined area.* A State, or a portion of a State, will be designated as a quarantined area when a fruit fly population has been found in that area by an inspector, when the Administrator has reason to believe that the fruit fly is present in that area, or when the Administrator considers it necessary to quarantine that area because of its inseparability for quarantine enforcement purposes from localities in which the fruit fly has been found.

(d) *Removal of a State, or a portion of a State, from quarantine.* A State, or a portion of a State, will be removed from quarantine when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area.

§ 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.32–5 and 301.32–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of fruit flies; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.32–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector [3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.32–10; or

(ii) Based on inspection of the premises of origin, the premises are free from fruit flies; or

(iii) Based on inspection of the regulated article, the regulated article is free of fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by fruit flies; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of fruit flies; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector [4] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Services of an inspector may be requested by contacting local PPQ offices, which are listed in telephone directories.

[4] See footnote 3.

destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of fruit flies because life stages of the fruit flies will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of fruit flies; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.32–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement. [5]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with any of the conditions of this subpart or with any of the provisions of the compliance agreement. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.32–7 Assembly and inspection of regulated articles.

(a) Any person, other than a person authorized to issue certificates or limited permits under § 301.32–5(c), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector [6] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

[5] Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Emergency and Domestic Programs, 4700 River Road Unit 134, Riverdale, MD 20737–1236, and from local PPQ offices, which are listed in telephone directories.

[6] See footnote 3 to § 301.32–5(a).

§ 301.32–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill: Provided, however, that if the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.32–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.32–10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy fruit flies are authorized for use on regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced regulated articles listed § 301.32(a) or (b).* The following soil treatments may be used: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of 0.5 inch. Both immersion and pour-on treatment procedures are also acceptable.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in part 305 of this chapter. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to

allow for development of fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for the specific fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

Subpart—Mexican Fruit Fly Quarantine and Regulations [Removed]

■ 3. Subpart—Mexican Fruit Fly Quarantine and Regulations, consisting of §§ 301.64 through 301.64–10, is removed.

Subpart—Mediterranean Fruit Fly [Removed]

■ 4. Subpart—Mediterranean Fruit Fly, consisting of §§ 301.78 through 301.78–10, is removed.

Subpart—Oriental Fruit Fly [Removed]

■ 5. Subpart—Oriental Fruit Fly, consisting of §§ 301.93 through 301.93–10, is removed.

Subpart—Melon Fruit Fly [Removed]

■ 6. Subpart—Melon Fruit Fly, consisting of §§ 301.97 through 301.97–10, is removed.

Subpart—West Indian Fruit Fly [Removed]

■ 7. Subpart—West Indian Fruit Fly, consisting of §§ 301.98 through 301.98–10, is removed.

Subpart—Sapote Fruit Fly [Removed]

■ 8. Subpart—Sapote Fruit Fly, consisting of §§ 301.99 through 301.99–10, is removed.

PART 305—PHYTOSANITARY TREATMENTS

■ 9. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 10. In § 305.2, the table in paragraph (h)(2)(ii) is amended by removing, in the entry for ''Areas in the United States under Federal quarantine for the listed pest'', the entries for ''Any fruit listed in § 301.64–2(a) of this chapter'' and ''Any article listed in § 301.78–2(a) of this chapter'' and adding a new entry in their place to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

Location	Commodity	Pest	Treatment schedule
Areas in the United States under Federal quarantine for the listed pest.	.....	.....	IR.
*	*	*	*
	Any fruit or article listed in § 301.32–2(a) of this chapter.	All fruit fly species of the Family Tephritidae.	
*	*	*	*

* * * * *

§ 305.32 [Amended]

■ 11. Section 305.32 is amended as follows:

■ a. In the section heading, by removing the words ''Mexican fruit fly'' and adding the words ''fruit flies'' in their place.

■ b. In the introductory text, by removing the word ''fruit'' and adding the words ''berry, fruit, nut, or vegetable'' in its place, and by removing the citation ''§ 301.64–2(a)'' and adding the citation ''§ 301.32–2(a)'' in its place.

■ c. In paragraph (a)(1), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place, and by removing the words ''the fruit'' and adding the words ''the regulated articles'' in their place.

■ d. In paragraph (a)(2), by removing the words ''fruit, except that fruit'' and adding the words ''regulated articles, except that articles'' in their place.

■ e. In paragraph (a)(3), by removing the citation ''§ 301.64–6'' and adding the citation ''§ 301.32–6'' in its place.

■ f. In paragraph (d), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place.

■ g. In paragraph (e)(2), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place.

■ h. In paragraph (i), by removing the words ''Mexican fruit fly'' and adding the words ''fruit flies'' in their place, and by adding the words ''and vegetables'' after the word ''fruits''.

■ i. In the OMB control number citation at the end of the section, by removing the control number ''0579–0215'' and adding the control number ''0579–0088'' in its place.

§ 305.33 [Removed and reserved]

■ 12. Section 305.33 is removed and reserved.

§ 305.34 [Amended]

■ 13. Section 305.34 is amended by redesignating footnotes 15 through 19 as footnotes 10 through 14, respectively.

Done in Washington, DC, this 3rd day of June 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–12858 Filed 6–6–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

8 CFR Part 217

[USCBP–2008–0003; CBP Dec. No. 08–18]

RIN 1651–AA72

Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program

AGENCY: Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations to implement the Electronic System for Travel Authorization (ESTA) requirements under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, for aliens who wish to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. This rule establishes ESTA and delineates the data fields DHS has determined will be collected by the system.

As required under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary of Homeland Security will announce implementation of a mandatory ESTA system by publication of a notice in the **Federal Register** no less than 60 days before the date on which ESTA becomes mandatory for all VWP travelers. Once ESTA is mandatory, all VWP travelers must either obtain travel authorization in advance of travel under ESTA or obtain a visa prior to traveling to the United States.

Currently, aliens from VWP countries must provide certain biographical information to U.S. Customs and Border Protection (CBP) Officers at air and sea ports of entry on a paper form Nonimmigrant Alien Arrival/Departure (Form I–94W). Under this interim final rule, VWP travelers will provide the same information to CBP electronically before departing for the United States. Once ESTA is mandatory and all carriers are capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status, DHS will eliminate the I–94W requirement. By automating the I–94W process and establishing a system to provide VWP traveler data in advance of travel, CBP will be able to determine the eligibility of citizens and eligible nationals from VWP countries to travel to the United States and whether such travel poses a law enforcement or security risk, before such individuals begin travel to the United States. ESTA will provide for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.

DATES: This interim final rule is effective on August 8, 2008. Comments must be received on or before August 8, 2008. ESTA will be implemented as a mandatory program 60 days after publication of a notice in the **Federal Register**. DHS anticipates that the Secretary of Homeland Security will issue that notice in November 2008, for implementation of the mandatory ESTA requirements on or before January 12, 2009.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2008–0003.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, United States Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Beverly Good, Office of Field Operations, *CBP.ESTA@dhs.gov* or (202)–344–3710.

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I. Public Comments

Interested persons are invited to submit written comments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental, or federalism effects of this rule. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries if certain requirements are met. Those requirements include, without limitation, (i) meeting the statutory rate of nonimmigrant visa refusal for citizens and nationals of the country, (ii) a government certification that it has a program to issue machine readable, tamper-resistant passports that comply with International Civil Aviation

Organization (ICAO) standards, (iii) a U.S. government determination that the country's designation would not negatively affect U.S. law enforcement and security interests, and (iv) government agreement to report, or make available to the U.S. government information about the theft or loss of passports. The INA also sets forth requirements for continued eligibility and, where appropriate, emergency termination of program countries.

Citizens and eligible nationals of VWP countries may apply for admission to the United States at a U.S. port of entry as nonimmigrant aliens for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. The list of countries which currently are eligible to participate in VWP is set forth in section 217.2(a) of Title 8 of the Code of Federal Regulations (CFR).

To travel to the United States under VWP, an alien currently must (1) present an electronic passport or a machine readable passport issued by a designated VWP participant country to the air or vessel carrier before departure; [1] (2) possess a round trip ticket; and (3) upon arrival at a U.S. port of entry, submit to a CBP Officer a signed and completed I–94W Nonimmigrant Alien Arrival/Departure Form (I–94W). Additionally, the alien must comply with the inspection process at the U.S. port of entry and must not have violated the requirements of a prior VWP admission to the United States. *See* Section 217(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a). *See also* 8 CFR part 217.

Under VWP, nonimmigrant alien visitors currently are required to complete and sign an I–94W form prior to arriving at a U.S. port of entry and present it to the CBP Officer at the U.S. port of entry where they undergo admissibility screening. In signing the I–94W form, the traveler waives any right to review or appeal of a CBP Officer's determination as to his admissibility, or to contest, except on the basis of an application for asylum, any action in removal. The form instructs the alien to apply for a visa at the appropriate U.S. embassy or consulate if he or she responds in the affirmative to questions on the reverse side of the I–94W. For example, a traveler may be refused admission to the United States under VWP based upon an affirmative response on the I–94W regarding prior criminal activity, deportation, or visa revocation. Upon arrival at the U.S. port of entry, if the CBP Officer determines that the traveler seeking admission under VWP is ineligible to enter the United States, or is inadmissible based on the information submitted via the I–94W form, or information ascertained during an admissibility interview, then the person must then be returned to the country from which they departed at the carrier's expense. Pursuant to section 217 of the Immigration and Nationality Act (INA, 8 U.S.C. 1187), a VWP alien traveling to the United States by air or sea must arrive in the United States on a carrier that has signed an agreement with DHS guaranteeing to transport inadmissible or deportable VWP travelers out of the United States at no expense to the United States. This may create significant delays for the VWP traveler who may not have been on notice that he or she is not admissible to the United States until he or she has arrived at a U.S. port of entry.

B. Enhancing VWP Screening

While VWP encourages travel with participating countries, aspects of the program may be exploited by individuals seeking to circumvent immigration or other laws of the United States. Currently, VWP travelers are not subject to the same degree of screening as those travelers who must first obtain a visa before arriving in the United States. Since September 11, 2001, the visa issuance process has taken on greater significance as an antiterrorism tool.[2] Non-VWP travelers must obtain a visa from a U.S. embassy or consulate and undergo an interview by consular officials overseas who conduct a rigorous screening process in deciding whether to approve or deny a visa. At the U.S. consulate, the application is reviewed, fingerprints are collected, and the applicant's name is checked against various government watchlists. The consular officer reviews name check results and determines if additional security checks are required. The consular officer then interviews the visa applicant and reviews his or her supporting documents. During the visa application process, consular officers have ample time to interview applicants and examine the authenticity of their passports, and may also speak the visa applicant's native language. Every visa applicant undergoes extensive security checks before a visa can be issued, including name-based checks against the Department of State's (State Department's) Consular Lookout and Support System (CLASS). When a consular officer determines that an applicant is a positive match to a CLASS record, or if the applicant meets other established criteria, the case is referred for an interagency security review. If denied a visa, the individual cannot lawfully board a plane or vessel destined for the United States.

In contrast to travelers who require a visa and are screened by State Department consular officers through the visa issuance process, VWP travelers are not screened in person until they arrive at a U.S. port of entry.[3] Only after arrival at a U.S. port of entry are VWP travelers subject to an admissibility interview in which CBP Officers observe the applicant, examine his or her passport, collect the applicant's fingerprints as part of the U.S. Visitor and Immigrant Status Indicator Technology (US–VISIT) program,[4] and check his or her name against automated databases and watchlists (which contain information regarding the admissibility of aliens, including known terrorists, criminals, and immigration law violators). Thus, only after a VWP traveler has arrived at a U.S. port of entry is a CBP Officer able to determine whether the traveler is admissible to the United States, or

[1] For current VWP member countries only, passports issued before October 26, 2006, need not contain the electronic chip that includes the biographic and biometric information of the passport holder provided the passports comply with International Civil Aviation Organization machine readable standards.

[2] The Government Accountability Office (GAO) has issued a series of reports on how the visa issuance process serves as an antiterrorism tool, including: GAO, Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing, GAO–05–859 (Washington, DC: Sept. 13, 2005); Border Security: Actions Needed to Strengthen Management of Department of Homeland Security's Visa Security Program, GAO–05–801 (Washington, DC: July 29, 2005); and, Border Security: Visa Process Should be Strengthened as an Antiterrorism Tool, GAO–03–132NI (Washington, DC: Oct. 21, 2002).

[3] Under the Advance Passenger Information System (APIS) regulations, commercial aircraft carriers bound for the United States from a foreign port must transmit passenger and crew manifest information to CBP no later than 30 minutes prior to departure to allow CBP to vet such information against government databases, including the terrorist watchlist, prior to departure of the aircraft. Vessel carriers departing for the United States from a foreign port must transmit a passenger and crew manifest no later than 60 minutes prior to departure. *See* 19 CFR 122.49a.

[4] The US–VISIT program is a government-wide program to collect, maintain, and share information on foreign nationals and better control and monitor the entry, visa status, and exit of visitors. Under the program, foreign visitors are required to submit to fingerprint scans of their right and left index finger and have a digital photograph taken upon arrival at U.S. ports of entry. (DHS recently has initiated a transition to collect scans of all ten fingers from travelers enrolling in the US–VISIT program.) Foreign nationals entering the United States through VWP are required to enroll in the US–VISIT program upon arrival at U.S. ports of entry.

ineligible for admission, based on the information submitted via the form I–94W and information ascertained during an admissibility interview. Annually, several thousand VWP travelers arrive in the United States and are deemed inadmissible for VWP entry at the port of entry, causing significant expense, delay, and inconvenience for those aliens, other travelers, the airlines, and the U.S. government.

DHS has taken a number of steps to mitigate VWP security vulnerabilities in recent years, including instituting a biometric collection requirement for VWP travelers at U.S. ports of entry through US–VISIT. *See* 8 CFR part 235. The procedural and timing changes implemented under this interim final rule, as described below, represent crucial additional improvements to VWP security.

C. Implementing the Recommendations of the 9/11 Commission Act of 2007

On August 3, 2007, the President signed into law the Implementing the Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110–53. Section 711 of the 9/11 Act requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a fully automated electronic travel authorization system which will collect such biographical and other information as the Secretary determines necessary to evaluate, in advance of travel, the eligibility of the alien to travel to the United States, and whether such travel poses a law enforcement or security risk. ESTA is intended to fulfill the statutory requirements as described in Section 711 of the 9/11 Act. Section 711 of the 9/11 Act also provides the Secretary with discretion to expand VWP to additional countries by waiving the nonimmigrant visa refusal rate requirements in section 217 of the INA for countries that do not satisfy the required threshold. *See* Public Law 110–53, Section 711(c). To waive those requirements, the Secretary must certify to Congress that ESTA is ''fully operational,'' and that an air exit system (a separate requirement from ESTA) is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through U.S. airports.[5] Additionally, according to the statute, the Secretary's waiver authority may be temporarily suspended if the Secretary does not notify Congress that a biometric air exit system is in place by June 30, 2009.

D. Electronic System for Travel Authorization

To satisfy the requirements of section 711 of the 9/11 Act, this interim final rule establishes ESTA to allow VWP travelers to obtain authorization to travel to the United States by air or sea prior to embarking on such travel. Under ESTA, CBP also will be able to screen travelers seeking to enter the United States under VWP prior to their arrival in the United States. Aliens intending to travel under the VWP will be able to obtain travel authorization in advance of travel to the United States. DHS notes that an authorization to travel to the United States under ESTA is not a determination that the alien ultimately is admissible to the United States. That determination is made by a CBP Officer only after an applicant for admission is inspected by the CBP officer at a U.S. port of entry. In addition, ESTA is not a visa or a process that acts in lieu of any visa issuance determination made by the Department of State. Travel authorization under ESTA allows a VWP participant to travel to the United States, and does not confer admissibility to the United States. ESTA, therefore, allows DHS to identify potential grounds of ineligibility for admission before the VWP traveler embarks on a carrier destined for the United States.

ESTA will reduce the number of travelers who are determined to be inadmissible to the United States during inspection at a port of entry, thereby saving, among other things, the cost of return travel to the carrier, inspection time, and delays and inconvenience for the traveler. ESTA also will enable the U.S. government to better allocate existing resources towards screening passengers at U.S. ports of entry, thereby facilitating legitimate travel. ESTA increases the amount of information available to DHS regarding VWP travelers before such travelers arrive at U.S. ports of entry; and, by recommending that travelers submit such information a minimum of 72 hours in advance of departure, provides DHS with additional time to screen VWP travelers destined for the United States, thus enhancing security.

1. Obtaining Travel Authorization

This interim final rule establishes data fields by which VWP travelers may electronically submit to CBP, in advance of travel to the United States, biographic and other information specified by the Secretary. The information specified by the Secretary is necessary to determine the eligibility of the alien to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. This is the same information currently required on the form I–94W, which VWP travelers must present to a CBP officer at a port of entry. This interim final rule does not impose any new data collection requirements on air or vessel carriers. For example, this rule does not require air carriers to transmit any ESTA data elements on behalf of travelers to CBP, nor does it require carriers to submit any additional data.

In determining a traveler's eligibility for ESTA authorization, CBP will assess each application to determine whether the alien is eligible to travel to the United States and whether there exists any law enforcement or security risk in permitting such travel under VWP. The information submitted by the alien in his/her travel authorization application will be checked by CBP against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists. Additionally, if an alien does not provide the information required or provides false information in his travel authorization application or if any evidence exists indicating that an alien is ineligible to travel to the United States under VWP or that permitting such travel poses a law enforcement or security risk, CBP may deny the alien's application for a travel authorization. Consistent with section 711 of the 9/11 Act, the Secretary, acting through CBP, retains discretion to revoke a travel authorization determination at any time and for any reason. 8 U.S.C. 1187(h)(3)(C)(i). If an alien's travel authorization application is denied, the alien may still seek to obtain a visa to travel to the United States from the appropriate U.S. embassy or consulate.

2. Implementation Notice

Under section 711 of the 9/11 Act, the Secretary also must publish a notice in the **Federal Register**, no less than 60 days before ESTA requirements are implemented. The Secretary will publish a notice in the **Federal Register** 60 days before ESTA is implemented as a mandatory requirement. DHS anticipates that the Secretary of Homeland Security will issue that notice in November 2008, for implementation of the mandatory ESTA requirements on or before January 12, 2009.

3. Timeline for Submitting Travel Authorization Data

Once ESTA is implemented as a mandatory program, 60 days following

[5] The Secretary will provide separate certification to Congress and neither this interim final rule nor its effective and compliance dates serve as that certification.

publication of a notice in the **Federal Register**, each nonimmigrant alien wishing to travel to the United States under the VWP must have a travel authorization prior to embarking on a carrier. DHS, however, recommends that VWP travelers obtain travel authorizations at the time of reservation or purchase of the ticket, or at least 72 hours before departure to the United States, in order to facilitate timely departures. This timeline will allow accommodation of last minute and emergency travelers.

4. Required Travel Authorization Data Elements

ESTA will collect the same information currently required on the Form I–94W that is presented to a CBP officer at a port of entry. *See* 8 U.S.C. 1187(h)(3). This is the information that the Secretary has deemed necessary to evaluate whether an alien is eligible to travel to the United States under VWP and whether such travel poses a law enforcement or security risk. This information is already collected through the I–94W form, which is presented to CBP when the alien arrives in the United States. On the I–94W form, aliens must provide biographical data such as name, birth date, and passport information, as well as travel information such as flight information and the address of the traveler in the United States. Travelers must also answer eligibility questions regarding, for example: communicable diseases, arrests and convictions for certain crimes, and past history of visa revocation or deportation. The information provided in the I–94W form is sufficient for CBP to initially determine if the applicant is eligible to travel under VWP before the alien commences travel to the United States. Therefore, DHS has decided to utilize the I–94W data elements by requiring them to be submitted in advance of travel under ESTA.

In conjunction with CBP's final rule ''Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels,'' which was published in the **Federal Register** on August 23, 2007 (and became effective on February 19, 2008), DHS has been coordinating with commercial aircraft and commercial vessel carriers on the development and implementation of messaging capabilities for passenger data transmissions that will enable DHS to provide the carriers with messages pertaining to a passenger's boarding status. A prospective VWP traveler's ESTA status is a component of a passenger's boarding status that has been introduced into the plans for implementing messaging capabilities between DHS and the carriers.

The development and implementation of the ESTA program will eventually allow DHS to eliminate the requirement that VWP travelers complete an I–94W prior to being admitted to the United States. As DHS moves towards elimination of the I–94W requirement, a VWP traveler with valid ESTA authorization will not be required to complete the paper Form I–94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status. Once all carriers are capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status, DHS will eliminate the I–94W requirement.

5. Scope of ESTA

Consistent with the 9–11 Act, an approved travel authorization only allows an alien to board a conveyance for travel to a U.S. port of entry and does not restrict, limit, or otherwise affect the authority of CBP to determine an alien's admissibility to the United States during inspection at a port of entry.

6. Duration

a. General Rule

Each travel authorization will be valid for a period of no more than two years. An alien may travel to the United States repeatedly within the validity period of the travel authorization using the same travel authorization. Travelers whose ESTA applications are approved, but whose passports will expire in less than two years, will receive travel authorization that is valid only until the expiration date on the passport.

b. Exception

Pursuant to 8 U.S.C. 1182(a)(7)(B)(i)(I) and implementing regulations at 8 CFR 214.1(a)(3)(i), the passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay. Certain foreign governments have entered into agreements with the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. The general rule applies to aliens who are citizens of countries that have entered into such an agreement.

For aliens from countries that have not entered into such an agreement,[6] travel authorizations will be valid for a period of two years under ESTA. However, travel authorizations for aliens from countries that have not entered into such an agreement will not be approved beyond the six months prior to the expiration date of the alien's passport. Travelers from these countries whose passports will expire in six months or less will not receive an approved ESTA.

The Secretary, in his discretion, may issue a travel authorization for a different period of validity, not to exceed a period of three years.

7. Events Requiring New Travel Authorizations

A VWP traveler must obtain a new travel authorization under ESTA in advance of travel to the United States if any of the following occur:

(1) The alien is issued a new passport;

(2) The alien changes his or her name;

(3) The alien changes his or her gender;

(4) The alien changes his or her country of citizenship; or

(5) The circumstances underlying the alien's previous responses to any of the ESTA application questions requiring a ''yes'' or ''no'' response (eligibility questions) have changed.

8. Fee

As provided under section 711(h)(3)(B) of the 9/11 Act, the Secretary may charge aliens a fee to use ESTA. The fee is intended to cover the full costs of developing and administering the system. At this time, payment of a fee will not be required to obtain a travel authorization. If DHS determines at a later time, however, that collection of a fee is necessary for the efficient administration of ESTA, DHS will implement a fee through a separate rulemaking action or such other manner as is consistent with the Administrative Procedure Act and applicable statutory authorities.

9. Judicial Review

Section 711 of the 9/11 Act expressly provides that ''no court shall have jurisdiction to review an eligibility determination under the System.'' Accordingly, a determination by DHS to not provide a traveler a travel

[6] At this time, Brunei is the only VWP country that has not entered into such an agreement with the United States. The list of countries which have entered into such an agreement is available on the Department of State Web site at *http://foia.state.gov/masterdocs/09fam/0941104X1.pdf.*

authorization under ESTA will be final and, notwithstanding any other provision of the law, is not subject to judicial review. *See* 8 U.S.C. 217(h)(3)(C)(iv).

10. Privacy

DHS will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule and will be issuing a Privacy Act Impact Assessment that will fully outline processes that will ensure compliance with Privacy Act protections.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

1. Procedural Rule Exception

This interim final rule addresses requirements that are procedural in nature and does not alter the substantive rights of aliens from VWP countries seeking admission to the United States. This interim final rule, therefore, is exempt from notice and comment requirements under 5 U.S.C. 553(b)(A). This rule is procedural because it merely automates an existing reporting requirement for nonimmigrant aliens, as captured in the ''I–94W Nonimmigrant Alien Arrival/Departure Form'' pursuant to existing statutes and regulations. *See* 8 U.S.C. 1103, 1184 and 1187. *See also* 8 CFR 212.1, 299.1, 299.5 and Parts 2 and 217. By procedurally shifting the paper I–94W form to an electronic form and changing the timing of submission of such information to require travelers to submit the data to CBP in advance of travel, CBP will be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under VWP and whether such travel poses a law enforcement or security risk. This procedural change also benefits travelers as it allows CBP to identify potential grounds of ineligibility for admission before the traveler embarks on a carrier destined for the United States.

2. Good Cause Exception

This interim final rule is also exempt from APA rulemaking requirements under the ''good cause'' exception set forth at 5 U.S.C. 553(b)(3)(B). By requiring VWP travelers, who currently are not screened in person until they arrive at a U.S. port of entry, to submit I–94W screening information in advance of their departure for the United States, DHS is better positioned to screen VWP aliens before they board carriers or vessels en route to the United States. This rule, therefore, improves the security of the VWP by addressing vulnerabilities in the program identified by GAO and implementing security enhancements included in section 711 of the 9/11 Act.

Specifically, certain inadmissible travelers who need visas to enter the United States may attempt to acquire a passport from a VWP country to avoid the normal visa issuance procedures. Potential terrorists also may use VWP exemption from the visa screening process as a means to gain access to the United States or an aircraft en route to the United States to cause serious damage, injury, or death in the United States. Thus, implementation of this rule prior to notice and comment is necessary to protect the national security of the United States and to prevent potential terrorists from exploiting VWP.

Prolonging the implementation of these regulations could hamper the ability of DHS to address the security vulnerabilities in the VWP and to take effective action to keep persons found by DHS to pose a security threat from entering the country under the VWP. Accordingly, DHS has determined that delaying implementing of this interim final rule to consider public comment rule would be impracticable, unnecessary and contrary to the public interest.

3. Foreign Affairs Function Exception

This interim final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals, involves bilateral agreements that the United States has entered into with participating VWP countries, and directly involves relationships between the United States and its alien visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule. The Department, however, is interested in public comments on this interim final rule and ESTA and, therefore, is providing the public with the opportunity to comment without delaying implementation of this rule.

Additionally, the public will continue to be provided opportunity to comment on changes to the Arrival and Departure Record, Forms I–94 and I–94W. These forms are in the process of being updated under the Paperwork Reduction Act. A **Federal Register** notice entitled ''Proposed Collection; Comment Request; Arrival and Departure Record (Forms I–94 and I–94W),'' was published in the **Federal Register** on November 9, 2007 (72 FR 63622). The 60-day comment period expired on January 8, 2008, and CBP has analyzed and responded to those comments received. Pursuant to the requirements of the Paperwork Reduction Act of 1995, CBP advised the public in this notice of its intention to revise its existing collection of information by adding an e-mail address and phone number to the I–94 and the I–94W forms under OMB Control Number 1651–0111. CBP published this 30-day notice document on February 4, 2008, in the **Federal Register** (73 FR 6522) and the comment period expired on March 5, 2008. We note that, upon publication for OMB approval, interested persons had an additional opportunity to provide comments to OMB on CBP's request for the addition of e-mail address and phone number and other data elements to update the I–94W form. All comments received will become a matter of the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking for any proposed rule.'' Because this rule is being issued as an interim rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

Nonetheless, DHS has considered the impact of this rule on small entities and had determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

C. Unfunded Mandates Reform Act of 1995

This rule will not 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, 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.

D. Executive Order 12866

This interim final rule is considered to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, OMB has reviewed this regulation under that Executive Order.

The purpose of ESTA is to allow DHS and CBP to establish the eligibility of certain foreign travelers to travel to the United States under the VWP, and whether the alien's proposed travel to the United States poses a law enforcement or security risk. Upon review of such information, DHS will determine whether the alien is eligible to travel to the United States under the VWP. Once ESTA is implemented as a mandatory program, 60 days following publication of a notice in the **Federal Register**, citizens and eligible nationals of the 27 countries in the current VWP must comply with this rule. The primary parameters for this analysis are as follows—

- The period of analysis is 2008 to 2018.
- Because the order in which countries will potentially be brought into VWP, and thus into ESTA, is unknown, we make the simplifying assumption for this analysis only that all affected travelers will comply with this rule beginning in 2009.
- Air and sea carriers that transport these VWP travelers are not directly regulated under this rule; therefore, they are not responsible for completing ESTA applications on behalf of their passengers. However, carriers may choose to either modify their existing systems or potentially develop new systems to submit ESTA applications for their customers. For this analysis, we assume that carriers will incur system development costs in 2008 and will incur operation and maintenance costs every year thereafter. We note that CBP will transmit travelers' authorization status through CBP's existing Advance Passenger Information System (APIS), and therefore carriers may not have to make significant changes to their existing systems in response to this rule. Additionally, to minimize the potential impacts to air and sea carriers, CBP is developing a system that carriers will be able to use to submit applications on behalf of their passengers.
- Under this rule, an initial travel authorization is valid for two years. We anticipate that travelers and carriers will update information via CBP's APIS requirements rather than requiring updated ESTA information on each entry during the two-year period. However, for purposes of this analysis, we assume that a travel authorization update would be required for each trip to the United States so as not to underestimate the potential economic impacts of this rule.

Impacts to Air & Sea Carriers

We estimate that eight U.S.-based air carriers and eleven sea carriers will be affected by the rule. An additional 35 foreign-based air carriers and five sea carriers will be affected.

CBP intends to transmit each passenger's travel authorization status to the air carriers using CBP's Advance Passenger Information System (APIS).[7] When a passenger checks in for his/her flight, the passport is swiped and the APIS process begins. CBP will provide the passenger's travel authorization status to the carrier in the return APIS message. If a passenger has not applied for and received a travel authorization prior to check-in, the carrier will be able to submit the required information and obtain a travel authorization on behalf of the passenger. It is unknown how many passengers annually may request that their carrier apply for a travel authorization on their behalf or how much it will cost carriers to modify their existing systems to accommodate such requests. During the first years of implementation when passengers are not quite as familiar with the new process, the carriers could face a notable burden if most of their non-U.S. passengers require travel authorization applications to be carrier-transmitted.

Given these unknowns, we have developed a range of costs. For the low end of the range, we assume that carriers will modify their existing systems, interface with CBP's system, and will help few passengers apply for travel authorizations annually. For the high end of the range, we assume that carriers will develop a new system (similar to APIS Quick Query, AQQ) and will assist many passengers annually. We assume that for an air carrier modifying its existing systems the cost would be $500,000 in the first year and $125,000 (25 percent of start-up costs) in subsequent years (low cost). The subsequent-year estimate is intended to account not only for annual operation and maintenance of the system but also for the burden incurred by the carriers to assist passengers. For an air carrier developing a new system, the cost would be $2 million in the first year and $2 million (100 percent of start-up costs) in subsequent years (high cost). Sea carriers have not previously developed an AQQ-like system, as they have been able to submit advance passenger data through the U.S. Coast Guard's Notice of Arrival/Departure system (called ''eNOA/D''). For the low cost estimate, we assume that modifying systems would cost $1 million in the first year and $250,000 in subsequent years. For a sea carrier developing a new system, the cost would be $2 million in the first year and $2 million (100 percent of start-up costs) in subsequent years, as with air carriers.

Given this range, should carriers undertake this effort, costs for U.S.-based carriers at the low end of the range would be about $9 million in the first year and $2 million in subsequent years (undiscounted). Costs for U.S.-based carriers at the high end of the range will be about $36 million in the first year and subsequent years (undiscounted). See Exhibit 1.

EXHIBIT 1.—FIRST YEAR AND ANNUAL COSTS FOR CARRIERS TO ADDRESS ESTA REQUIREMENTS

[$Millions, 2008–2018, undiscounted]

	Low cost scenario					High cost scenario				
	U.S.		Foreign		Total	U.S.		Foreign		Total
	Air	Sea	Air	Sea		Air	Sea	Air	Sea	
Carriers	8	11	35	5	59	8	11	35	5	59
2008	$4.0	$5.5	$35.0	$5.0	$49.5	$16.0	$22.0	$70.0	$10.0	$118.0
2009	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2010	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0

[7] See U.S. Customs and Border Protection final rule. ''Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels,'' 72 FR 48320 (Aug. 23, 2007).

EXHIBIT 1.—FIRST YEAR AND ANNUAL COSTS FOR CARRIERS TO ADDRESS ESTA REQUIREMENTS—Continued

[$Millions, 2008–2018, undiscounted]

	Low cost scenario					High cost scenario				
	U.S.		Foreign		Total	U.S.		Foreign		Total
	Air	Sea	Air	Sea		Air	Sea	Air	Sea	
2011	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2012	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2013	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2014	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2015	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2016	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2017	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0
2018	1.0	1.4	8.8	1.3	12.5	16.0	22.0	70.0	10.0	118.0

As estimated, ESTA could cost the carriers about $137 million to $1.1 billion (present value) over the next 10 years depending on how the carriers decide to assist passengers, how many passengers the carriers need to assist, and the discount rate applied (3 or 7 percent). See Exhibit 2.

EXHIBIT 2.—PRESENT VALUE COSTS FOR CARRIERS TO ADDRESS ESTA REQUIREMENTS

[$Millions, 2008–2018]

	Low cost scenario				High cost scenario			
	U.S.		Foreign		U.S.		Foreign	
	Air	Sea	Air	Sea	Air	Sea	Air	Sea
3 percent discount rate								
10-year subtotal	$12.5	$17.2	$109.6	$15.7	$152.5	$209.7	$667.1	$95.3
10-year total	$29.7		$125.3		$362.2		$762.4	
10-year grand total	$155.0				$1,124.6			
Annualized subtotal	$1.3	$1.8	$11.5	$1.6	$16.0	$22.0	$70.0	$10.0
Annualized total	$3.1		$13.1		$38.0		$80.0	
Annualized grand total	$16.2				$118.0			
7 percent discount rate								
10-year subtotal	$11.0	$15.2	$96.5	$13.8	$128.4	$176.5	$561.7	$80.2
10-year total	$26.2		$110.3		$304.9		$641.9	
10-year grand total	$136.5				$946.8			
Annualized subtotal	$1.4	$1.9	$12.0	$1.7	$16.0	$22.0	$70.0	$10.0
Annualized total	$3.3		$13.7		$38.0		$80.0	
Annualized grand total	$17.0				$118.0			

Travel agents and other service providers may incur costs to assist their clients in obtaining travel authorizations. We do not know how many such service providers would be affected, but they would likely need to obtain a software module that allowed them to apply for travel authorizations during the booking process. Affected travel agents are most likely foreign businesses located in the affected countries.

Impacts to Travelers

ESTA will present new costs and burdens to travelers in VWP countries who were not previously required to submit any information to the U.S. Government in advance of travel to the United States. Travelers from Roadmap countries who become VWP will also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B1/B2), which is currently required for short-term pleasure or business to travel to the United States.

For the primary analysis, we explore the following categories of costs.

- Burden to obtain a travel authorization—the time that will be required to obtain a travel authorization and the value of that time (opportunity cost) to the traveler.
- Cost and burden to obtain a visa if a travel authorization is denied—based on the existing process for obtaining a visa, the cost to obtain that document in

the event that a travel authorization is denied and the traveler is referred to a U.S. Embassy.

For this analysis, we have developed four methods to predict ESTA-affected travelers to the United States over the next 10 years using information available from the Department of Commerce, Office of Travel and Tourism Industries (OTTI), documenting historic travel levels and future projections. Method 1 employs the travel-projection percentages provided by OTTI and extrapolates them to the end of our period of analysis (OTTI projects travel only through 2010; we calculate a simple, straight-line extrapolation to 2018). Method 2 (modified OTTI projections) presents a more pessimistic outlook on travel: all projected percentages from Method 1 are reduced by 2 percent throughout the period of analysis. Methods 3 and 4 present more optimistic projections than Methods 1 and 2, but incorporated periodic downturns, which are prevalent (though not necessarily predictable) in international travel. See Exhibit 3.

EXHIBIT 3.—TOTAL VISITORS TO THE UNITED STATES USING FOUR METHODOLOGIES, 2008–2018

[Millions]

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Method 1:											
VWP	17.4	18.0	18.7	19.4	20.0	20.7	21.3	21.9	22.4	23.0	23.5
Roadmap	1.2	1.2	1.3	1.3	1.4	1.4	1.5	1.5	1.5	1.6	1.6
Total	18.6	19.2	20.0	20.7	21.4	22.1	22.8	23.4	23.9	24.6	25.1
Method 2:											
VWP	17.0	17.4	17.7	17.9	18.2	18.4	18.6	18.7	18.8	18.9	18.9
Roadmap	1.1	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3
Total	18.1	18.6	18.9	19.1	19.4	19.7	19.9	20.0	20.1	20.2	20.2
Method 3:											
VWP	17.4	18.0	18.7	19.4	17.7	20.7	24.1	27.4	26.0	30.1	34.1
Roadmap	1.2	1.2	1.3	1.3	1.2	1.4	1.7	2.0	2.3	2.9	2.7
Total	18.6	19.2	20.0	20.7	18.9	22.1	25.8	29.4	28.3	33.0	36.8
Method 4:											
VWP	17.4	15.9	18.5	21.6	24.5	23.3	26.9	30.5	35.6	33.9	38.6
Roadmap	1.2	1.0	1.3	1.5	1.8	2.1	2.0	2.3	2.9	3.3	4.0
Total	18.6	16.9	19.8	23.1	26.3	25.4	28.9	32.8	38.5	37.2	42.6

Burden To Obtain Travel Authorization Through ESTA

To estimate the value of a non-U.S. citizen's time (opportunity cost), we have conducted a brief analysis that takes into account differing wage rates for countries that will be affected by the ESTA requirements. Based on this analysis, we found that countries in Western Europe, Oceania, and Japan generally have a higher value of time than the less developed countries of Eastern Europe and Asia. We also found that air travelers have a higher value of time than the general population. As we did previously for carriers, we develop a range of cost estimates for the value of an individual's time. For the low cost estimate, the hourly value of time ranges from $1.42 to $30.78 depending on the country. For the high cost estimate, the hourly value of time ranges from $3.00 to $65.19.

We estimate that it will take 15 minutes of time (0.25 hours) to apply for a travel authorization. Note that this is approximately 5 minutes more than the time currently estimated to complete the I–94W (10 minutes). We estimate additional burden for a travel authorization application because even though the data elements and admissibility questions are identical, the traveler must now register with ESTA, familiarize himself/herself with the system, gather and enter the data, and access an e-mail account to check the status of his/ her travel authorization application. For those applicants who are computer savvy and have little difficulty navigating an electronic system, this may be a high estimate. For those applicants who are not as comfortable using computers and interfacing with Web sites, this may be a low estimate. We believe the burden estimate of 15 minutes is a reasonable average.

Furthermore, if airlines, cruise lines, travel agents, and other service providers are entering the information on behalf of the passenger, it would almost certainly not take 15 minutes of time because these entities will have most of the information electronically as gathered during the booking process, and travel and ticket agents are certainly comfortable using computer applications. Because we do not know how many travelers will apply independently through the ESTA Web site versus through a third party, we assign a 15-minute burden to all travelers.

Based on these values and assumptions, we estimate that total opportunity costs in 2009 (the first year that all travelers comply with the ESTA requirements in this analysis) will range from $86 million (low) to $207 million (high) depending on the number of travelers projected and the value of time used. By the end of the period of analysis, costs range from $102 million to $444 million. These estimates are all undiscounted. The range between the estimates broadens as differences in the projection methods are more discernable at the end of the period of analysis. See Exhibit 4.

EXHIBIT 4.—TOTAL OPPORTUNITY COSTS FOR VISITORS TO THE UNITED STATES USING FOUR METHODOLOGIES, 2009 AND 2018

[In $millions]

	2009		2018	
	Low estimate	High estimate	Low estimate	High estimate
Method 1	$98	$207	$127	$269
Method 2	94	199	102	217
Method 3	98	207	184	389
Method 4	86	182	210	444

As estimated, ESTA could cost travelers $700 million to over $2.6 billion (present value) over the next 10 years depending on the projection method, the value of opportunity cost, and the discount rate applied (3 or 7 percent). Annualized costs are an estimated $86 million to $270 million. See Exhibit 5.

EXHIBIT 5.—TOTAL PRESENT VALUE AND ANNUALIZED OPPORTUNITY COSTS TO TRAVELERS, 2008–2018

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$0.957	$0.781	$2.026	$1.653	$100	$97	$213	$206
Method 2	0.844	0.693	1.788	1.468	89	86	188	183
Method 3	1.071	0.862	2.268	1.825	112	107	238	227
Method 4	1.216	0.972	2.574	2.058	128	121	270	257

Cost and Burden To Obtain a Visa if a Travel Authorization Is Denied

Using the value of time estimates calculated above, we estimate the costs if a travel authorization is denied and the traveler is referred to the nearest U.S. Consulate to apply for a nonimmigrant visa (B1/B2). Absent country-specific information, we assume that it will require 5 hours of time to obtain a visa including time to complete the application, travel time, waiting at the Embassy for the interview, and the interview itself. There are also other incidental costs to consider, such as bank and courier fees, photographs, transportation, and other miscellaneous expenses. We estimate that these out-of-pocket costs will be $187.

The number of travel authorizations that will be denied is unknown. For a country to have become part of the VWP originally, the visa refusal rate must have been no higher than 3 percent. Currently, the number of VWP travelers found inadmissible upon application for admission is low, only about 1 percent. ESTA, however, will likely affect a relatively small number of the current inadmissible individuals (see next section on benefits) because many individuals are denied entry for reasons that ESTA will not affect. For this analysis, we assume that 1 percent of ESTA applicants from current VWP travelers will subsequently need to apply for a visa. We do not account for visas that must be obtained in the event of an ESTA refusal for new VWP travelers because obtaining a visa is the baseline condition under which those travelers must currently operate in order to travel to the United States. We do, however, subtract out ESTA refusals in our benefits calculations (see next section) because these travelers do not accrue any benefit from ESTA.

We multiply 1 percent of the annual travelers for each country by the burden (5 hours), the out-of-pocket expenses, and the value of time, either high or low. Total present value visa costs over the period of analysis could total $374 million to $916 million over the period of analysis. Annualized costs are an estimated $47 million to $96 million. See Exhibit 6.

EXHIBIT 6.—TOTAL PRESENT VALUE AND ANNUALIZED VISA COSTS TO TRAVELERS, 2008–2018

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$0.517	$0.421	$0.724	$0.590	$54	$53	$76	$74
Method 2	0.456	0.374	0.639	0.525	48	47	67	65
Method 3	0.577	0.465	0.809	0.651	61	58	85	81
Method 4	0.654	0.523	0.916	0.733	69	65	96	91

Total Costs to Travelers

Based on the above calculations, we estimate that the total quantified costs to travelers will range from $1.1 billion to $3.5 billion depending on the number of travelers, the value of time, and the discount rate. Annualized costs are estimated to range from $133 million to $366 million. See Exhibit 7.

EXHIBIT 7.—TOTAL PRESENT VALUE AND ANNUALIZED COSTS TO TRAVELERS, 2008–2018

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$1.474	$1.202	$2.750	$2.244	$154	$150	$289	$280
Method 2	1.300	1.067	2.427	1.993	137	133	255	248
Method 3	1.648	1.327	3.077	2.476	173	165	323	308
Method 4	1.870	1.495	3.490	2.791	197	186	366	348

Conclusions

We have shown that costs to air and sea carriers to support the requirements of the ESTA program could cost $137 million to $1.1 billion over the next 10 years depending on the level of effort required to integrate their systems with ESTA, how many passengers they need to assist in applying for travel authorizations, and the discount rate applied to annual costs. Costs to foreign travelers could total $1.1 billion to $3.5 billion depending on traveler volume, their value of time, and the discount rate applied.

Benefits

Inadmissibility

By requiring passenger data in advance of travel, CBP may be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for the screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

ESTA will allow for advance screening of VWP travelers against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists. Based on data from CBP, we estimate that 0.04 percent of affected individuals will be prevented from traveling to the United States as a result of the ESTA requirements.

Currently, when ineligible travelers are brought to the United States, they are referred to secondary inspection where a CBP or other law enforcement officer questions them and processes them for return to their country of origin. CBP estimates that it requires 2 hours of time for questioning and processing at a cost of approximately $1,560 per individual. We estimate that removing an ineligible traveler costs carriers $1,500 per individual, which includes the air fare and any lodging and meal expenses incurred while the individual is awaiting transportation out of the United States.

Based on these estimates, we calculate that benefits to CBP would total $85 million to $151 million over the period of analysis depending on the traveler projection method and the discount rate applied. Benefits to carriers could total $82 million to $146 million. Annualized benefits range from $17 million to $29 million. See Exhibit 8.

EXHIBIT 8.—BENEFITS OF ANNUAL ADMISSIONS DENIED ATTRIBUTABLE TO ESTA, 2008–2018

[In $millions]

	Total admissions denied	3% discount rate				7% discount rate			
		Benefits to CBP	Benefits to carriers	Total benefits	Annualized benefits	Benefits to CBP	Benefits to carriers	Total benefits	Annualized benefits
Method 1	89,000	$118	$113	$231	$23	$96	$92	$188	$19
Method 2	78,000	104	100	204	21	85	82	167	17
Method 3	102,000	133	128	261	26	107	103	210	21
Method 4	117,000	151	146	297	29	121	116	237	23

Additionally, asking questions regarding eligibility for admission prior to travel to the United States may keep some VWP travelers from arriving at a United States port of entry only to then be deemed inadmissible. This rule would provide benefits to CBP and the carriers for those travelers who answer ''yes'' to any of the eligibility questions who are then deemed inadmissible and must be transported back to their country of origin. It is not known how many entries like this occur on an annual basis, and we are thus unable to quantify the benefits to CBP or the carriers of forgoing such occurrences.

Benefits of Not Having To Obtain Visas

The benefits of not having to obtain a B1/B2 visa, but rather obtaining a travel authorization are also quantifiable. These benefits will be realized only by travelers who are citizens of countries that enter the Visa Waiver Program in the future. We must first determine how many travelers are repeat versus first-time travelers in order not to double count benefits from not having to obtain a visa. We estimate the number of first-time visitors under each of the four methods of projecting travelers. Then

we estimate a percentage of repeat travelers who would also need to have visas because their old visa will expire during the next 10 years. All of the Roadmap visitors are eligible for 10-year B1/B2 visas, and we thus assume that 10 percent of repeat visitors would have to reapply for visas were it not for the rule. Finally, we subtract out those who are denied a travel authorization and must apply for a visa instead (see previous section on costs).

Benefits of forgoing visa are expected to range from about $619 million to $1.6 billion (present value) over 10 years depending on the travel level, the value of time used, and the discount rate applied. Annualized benefits range from $77 million to $167 million. See Exhibit 9.

EXHIBIT 9.—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS OF FORGOING VISAS, 2008–2018

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$0.856	$0.697	$1.042	$0.850	$90	$87	$109	$106
Method 2	0.755	0.619	0.920	0.754	79	77	96	84
Method 3	1.053	0.838	1.290	1.026	111	105	135	128
Method 4	1.293	1.019	1.588	1.251	136	127	167	156

Benefits of Not Having To Complete the I–94W and I–94 Forms

We can also quantify the benefits of not having to complete the I–94W paper form. These benefits will accrue to all travelers eventually covered by ESTA as the requirement to present a paper I–94W is eliminated. The estimated time to complete either the I–94W or I–94 is 10 minutes (0.17 hours). We then subtract out those travelers who are not able to obtain a travel authorization through ESTA (see previous section on costs) and then apply a low and high value of time to the burden to estimate total savings that are expected to be accrued as a result of this rule.

Benefits of not having to complete the paper forms are expected to range from $457 million to $1.7 billion over 10 years depending on the value of time used and the discount rate applied. Annualized benefits range from $57 million to $178 million. See Exhibit 10.

EXHIBIT 10.—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS OF FORGOING THE I–94W, 2008–2018

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$0.636	$0.519	$1.336	$1.090	$67	$65	$140	$136
Method 2	0.557	0.457	1.179	0.968	58	57	124	121
Method 3	0.706	0.568	1.495	1.203	74	71	157	150
Method 4	0.801	0.641	1.697	1.357	84	80	178	169

In addition to these benefits to travelers, CBP and the carriers should also experience the benefit of not having to administer the I–94W. While CBP has not conducted an analysis of the potential savings, it should accrue benefits from not having to produce, ship, and store blank forms. CBP should also be able to accrue savings related to data entry and archiving. Carriers should realize some savings as well, though carriers will still have to administer the I–94 for those passengers not traveling under the VWP and the Customs Declaration forms for all passengers aboard the aircraft and vessel.

Total Benefits to Travelers

Total benefits to travelers could total $1.1 billion to $3.3 billion over the period of analysis. Annualized benefits could range from $134 million to $345 million. See Exhibit 11.

EXHIBIT 11.—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS TO TRAVELERS, 2008–2018

[10-year costs in $billions; annualized costs in $millions]

	Total present value benefits ($billions)				Annualized benefits ($millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3%	7%	3%	7%	3%	7%	3%	7%
Method 1	$1.492	$1.216	$2.378	$1.940	$157	$152	$249	$242
Method 2	1.312	1.076	2.099	1.722	137	134	220	215
Method 3	1.759	1.406	2.785	2.229	185	176	292	278
Method 4	2.094	1.660	3.285	2.608	220	207	345	325

Benefits of Enhanced Security

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the VWP under section 217 of the Immigration and Nationality Act (INA, 8 U.S.C. 1187) by simultaneously enhancing program security requirements and extending visa-free travel privileges to citizens and eligible nationals of eligible foreign countries that are partners in the war on terrorism.

In previous DHS analyses, a ''breakeven'' analysis has been conducted in the absence of information regarding baseline risks of terrorist attacks and risk reduced as the result of a regulatory action. Such an analysis was conducted for CBP's final rule implementing enhancements to APIS (this rule is familiarly referred to as APIS 30/AQQ).[8] The APIS 30/AQQ and the ESTA rules essentially have the same objective: Prevent a traveler who has been matched to an individual on a government watchlist from boarding an aircraft or passenger vessel bound for the United States. This layered approach is a key component of the DHS and CBP goal of safe and secure travel. However, if we were to conduct a breakeven analysis for ESTA without taking into account the breakeven analysis for APIS 30/AQQ, we would be double-counting security benefits, though the extent is unknown. The APIS 30/AQQ analysis accounted for identifying a traveler of concern prior to the issuance of a boarding pass. Thus, we must not take credit for preventing a traveler from boarding an aircraft as a result of ESTA because that benefit has already been counted. We have not conducted a breakeven analysis for this rule because CBP has already accounted for preventing a traveler on a watchlist from boarding an aircraft and coming to the United States. This does not mean, however, that there are no security benefits of this rule—we simply have not quantitatively accounted for them here.

Annualized costs and benefits are presented in the following accounting statement, as required by OMB Circular A–4.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2008–2018

[$2008]

	3% discount rate	7% discount rate
Costs:		
Annualized monetized costs	$16 million to $118 million	$17 million to $118 million.
Annualized quantified, but un-monetized costs	None quantified	None quantified.
Qualitative (un-quantified) costs	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
Benefits:		
Annualized monetized benefits	$21 million to $29 million	$17 million to $23 million.
Annualized quantified, but un-monetized benefits.	None quantified	None quantified.
Qualitative (un-quantified) benefits	Enhanced security and efficiency	Enhanced security and efficiency.

We estimate that the annualized costs of this rule will be $16 million to $118 million. These costs are for U.S. and foreign-based air and sea carriers. Quantified benefits of $17 million to $29 million to carriers and CBP are for annual travel authorizations denied by ESTA that prevent inadmissible persons from applying for admission under the VWP at a United States port of entry. Firms participating in the U.S. economy may also face unquantified or indirect burdens if, for example, U.S. travel agents invest in resources to assist their foreign clients in obtaining a travel authorization, if the requirements lead to trips forgone, or if the requirements lead to increased queues in airports or seaports. Under the simplifying assumption for this analysis only that all affected travelers, including those from roadmap countries, will comply with this rule beginning in 2009, there are quantified benefits to those travelers from Roadmap countries who no longer need to obtain a visa to visit the United States. In addition, there are quantified benefits for all ESTA participants who no longer need to complete I–94W forms. Because these benefits accrue to foreign entities, however, we do not include them in the accounting statement. Non-quantified benefits are enhanced security and efficiency.

Regulatory Alternatives

We consider three alternatives to this rule—

- The ESTA requirements in the rule, but with a $1.50 fee per each travel authorization (more costly)
- The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the I–94W form (less burdensome)
- The ESTA requirements in the rule, but only for the countries entering the VWP after 2009 (no new requirements for VWP, reduced burden for newly entering countries)

Because this rule only directly affects travelers, these alternatives only directly affect travelers, not air and sea carriers. The first alternative would create additional burden for carriers, who would potentially need to collect credit card information and the fee to cover the costs of the ESTA application. The second alternative would create less burden for the carriers because the biographic information would not be included. The third alternative would be less costly and burdensome for the carriers who would now not need to handle as many ESTA participants. Because the range of high and low cost estimates for carriers presented is so broad in the primary analysis (see previous section), we do not estimate carrier costs for these alternatives. The comparison of alternatives, therefore, is just for affected travelers.

For the sake of brevity, we present the 10-year present value cost of the rule and these alternatives for the high value estimates, Method 1 traveler projection, at the 7 percent discount rate only. Benefits are expressed as negative values in this presentation See Exhibit 12.

[8] See 72 FR 48320, 48339.

EXHIBIT 12.—COMPARISON OF 10-YEAR IMPACTS OF THE RULE AND REGULATORY ALTERNATIVES, 2008–2018, IN $BILLIONS, METHOD 1, HIGH ESTIMATE, 7 PERCENT DISCOUNT RATE

	Rule	Alternative 1	Alternative 2	Alternative 3
ESTA burden	$1.653	$1.653	$1.102	$0.045.
Visa costs	0.591	0.591	0.591	0.
ESTA fee	0	0.231	0	0.
Benefit of no visa	(0.850)	(0.850)	(0.850)	(0.850).
Benefit of no I–94W	(1.090)	(1.090)	(1.090)	(0.030).
Net impact	$0.304	$0.535	($0.247)	($0.835).
Comment		Fee will not be charged at this time.	All data elements are required for proper screening.	Does not meet statutory requirements.

DHS has determined that the rule provides the greatest level of enhanced security and efficiency at an acceptable cost to the traveling public and potentially affected air carriers.

E. Executive Order 13132

The rule 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, under Control Number 1651–0111.

The information collection provisions of this regulation are in §§ 212.1 and 217.5 of the CFR. CBP will use the information collected under this rule to determine the eligibility of nonimmigrant aliens to travel to the United States under the VWP so as to enhance border security and streamline entry processes at U.S. ports of entry. The respondents to this collection are non-U.S. citizen travelers to the United States. When the Secretary publishes notice in the **Federal Register** that each alien wishing to travel to the United States by air or sea must apply for and obtain ESTA authorization prior to such travel, under 8 CFR 217.5, any nonimmigrant alien wishing to travel to the United States by air or sea under VWP would be required in advance to have a travel authorization before embarking on a carrier for travel to the United States. To obtain a travel authorization, travelers must provide to CBP via a CBP Web site an application consisting of biographic and other information specified by the Secretary of Homeland Security as necessary to determine the eligibility of the alien to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk.

The collection of information regarding the I–94W Form procedures was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651–0111, and its renewal is currently being vetted through **Federal Register** notice as discussed in the document. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The additional respondents and burden estimates for this collection are as follows:

Estimated annual reporting and/or recordkeeping burden: 4,225,000 hours.

Estimated average annual burden per respondent/recordkeeper: 15 minutes (0.25 hours).

Estimated number of respondents and/or recordkeepers: 17,000,000.

Estimated annual frequency of responses: Once per year.

The estimated annual public cost for ESTA is $63.8 million. This is based on the number of responses (17,000,000) × a response time of 15 minutes × an average hourly rate of $15 = $63.8 million.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

H. Privacy Interests

DHS will be publishing a Privacy Impact Assessment (PIA) on its Web site. DHS also is preparing a separate SORN for publication in conjunction with this interim final rule.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

■ For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

PART 217—VISA WAIVER PROGRAM

■ 1. The general authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

* * * * *

■ 2. A new § 217.5 is being added to read as follows:

§ 217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air or sea to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization,

each nonimmigrant alien intending to travel to the United States by air or sea under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein.

(b) *Time.* Each alien falling within the provisions of paragraph (a) of this section must receive a travel authorization prior to embarking on a carrier for travel to the United States.

(c) *Required elements.* ESTA will collect such information as the Secretary deems necessary to issue a travel authorization, as reflected by the I–94W Nonimmigrant Alien Arrival/Departure Form (I–94W).

(d) *Duration.* (1) *General Rule.* A travel authorization issued under ESTA will be valid for a period of two years from the date of issuance, unless the passport of the authorized alien will expire in less than two years, in which case the authorization will be valid until the date of expiration of the passport.

(2) *Exception.* For travelers from countries which have not entered into agreements with the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport, a travel authorization issued under ESTA is not valid beyond the six months prior to the expiration date of the passport. Travelers from these countries whose passports will expire in six months or less will not receive a travel authorization.

(e) *New travel authorization required.* A new travel authorization is required if any of the following occur:

(1) The alien is issued a new passport;

(2) The alien changes his or her name;

(3) The alien changes his or her gender;

(4) The alien's country of citizenship changes; or

(5) The circumstances underlying the alien's previous responses to any of the ESTA application questions requiring a ''yes'' or ''no'' response (eligibility questions) have changed.

(f) *Limitations.* (1) *Current authorization period.* An authorization under ESTA is a positive determination that an alien is eligible, and grants the alien permission, to travel to the United States under the VWP and to apply for admission under the VWP during the period of time the travel authorization is valid. An authorization under ESTA is not a determination that the alien is admissible to the United States. A determination of admissibility is made only after an applicant for admission is inspected by a CBP Officer at a U.S. port of entry.

(2) *Not a determination of visa eligibility.* A determination under ESTA that an alien is not eligible to travel to the United States under the VWP is not a determination that the alien is ineligible for a visa to travel to the United States and does not preclude the alien from applying for a visa before a United States consular officer.

(3) *Judicial review.* Notwithstanding any other provision of law, a determination under ESTA is not subject to judicial review pursuant to 8 U.S.C. 217(h)(3)(C)(iv).

(4) *Revocation.* A determination under ESTA that an alien is eligible to travel to the United States to apply for admission under the VWP may be revoked at the discretion of the Secretary.

(g) *Compliance date.* Once ESTA is implemented as a mandatory program, 60 days following publication by the Secretary of a notice in the **Federal Register**, citizens and eligible nationals of countries that participate in the VWP planning to travel to the United States under the VWP must comply with the requirements of this section. As new countries are added to the VWP, citizens and eligible nationals of those countries will be required to obtain a travel authorization via ESTA prior to traveling to the United States under the VWP.

Dated: June 2, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–12673 Filed 6–6–08; 8:45 am]

BILLING CODE 9111–14–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 72, 73, 74 and 150

[NRC–2007–0002]

RIN 3150–AH85

Regulatory Improvements to the Nuclear Materials Management and Safeguards System

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to licensee reporting requirements for source material and special nuclear material (SNM) to the Nuclear Materials Management and Safeguards System (NMMSS). The amendments lower the threshold of the quantities of SNM and certain source materials that require the submission of material status reports to the NMMSS. Also, the amendments modify the types and timing of submittals of some transaction reports to the NMMSS. The amendments also require licensees to reconcile any material inventory discrepancies that NRC identifies in the NMMSS database. The amendments reduce some regulatory burden by reducing the current reporting requirements related to the export of certain source material and SNM. However, the annual reporting requirements are new requirements for licensees who possess 350 grams or less of SNM. These amendments are needed to improve the accuracy of the material inventory information maintained in the NMMSS.

DATES: This final rule is effective on January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Neelam Bhalla, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6843, e-mail, *nxb@nrc.gov.*

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I. Background
II. Discussion
A. Special Nuclear Material Transfer Reports
B. Special Nuclear Material Status Reports
C. Source Material Transfer Reports
D. Source Material Status Reports
E. Reconciliation of Submitted Inventories
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I. Background

The Nuclear Materials Management and Safeguards System (NMMSS) is the national database used in the United States by Nuclear Regulatory Commission (NRC) licensees, the Agreement State licensees, and Department of Energy (DOE) contractors to report the possession of certain special nuclear material (SNM) and source material. The NMMSS was created as a result of comprehensive

accounting procedures developed by the Atomic Energy Commission in response to the passage of the Atomic Energy Act of 1954 and began processing of facility submittals in 1965. The DOE is responsible for maintaining the NMMSS database. The NMMSS database supports NRC domestically in the review of licensee material control and accounting programs, and internationally as the U.S. Government database for collecting and reporting information required by international treaties. The NRC reporting requirements related to the NMMSS are primarily contained in 10 CFR Parts 40, 72, 74, 75, and 150.

The NMMSS database uses licensee submittals to serve two important functions: (1) Meeting international reporting obligations, and (2) assisting in the oversight of licensee material control and accounting (MC&A) programs required by 10 CFR Parts 40, 72, 74, 75, 76, and 150.

With regard to international commitments, the United States has committed to a national accountancy and control system for nuclear materials through treaties with nuclear trading partners and the International Atomic Energy Agency (IAEA). The NMMSS is part of the overall program to help satisfy these international commitments by constituting the national database used by NRC and the Agreement State licensees, and DOE contractors to report the possession of certain quantities of SNM and source material. The information submitted to the NMMSS is then reported externally by the United States in order to satisfy these treaty requirements. The NMMSS also maintains accounting data on U.S. peaceful use exports and imports of nuclear materials that have occurred since 1965.

With respect to NRC's oversight of the MC&A at licensed facilities, the NMMSS is the national database that serves as the central collection and processing point for inventory, shipment, and receipt information required to be reported by commercial and Federal Government facilities. Applicable NRC reporting requirements are specified in 10 CFR Parts 40, 72, 74, 75, and 150. As a result of these reporting requirements, the NMMSS can provide the NRC staff with a projection of quantities of reportable materials located, shipped, or received at a particular licensee site.

In October 2001, the DOE Office of the Inspector General (OIG) issued a report based on an audit of the NMMSS for DOE-owned nuclear materials.[1] One of the findings of that report was that DOE could not fully account for DOE-owned nuclear materials loaned or leased to licensees. A similar audit conducted by NRC's OIG also raised concerns over the accuracy of material inventories in the NMMSS.[2] In the report, the NRC OIG recommended that the scope of licensee reporting be expanded to include a requirement that smaller licensees (those possessing less than 350 grams of SNM) submit inventory information to the NMMSS annually.

As a result of its audit, NRC took immediate steps to verify and reconcile inventories in the NMMSS database by issuing a bulletin, NRC Bulletin 2003–04: ''Rebaselining of Data in the Nuclear Materials Management and Safeguards System.'' (Agencywide Documents Access and Management System (ADAMS) Accession Number ML0732760009.) The bulletin was sent to all NRC and Agreement State licensees then holding NMMSS accounts and requested that they provide inventory information to the NMMSS. The NRC staff also conducted site visits to review selected licensees' submitted information in comparison to actual physical inventories. The review concluded that licensees did not submit or update inventories to the NMMSS for several years (or decades) because they possessed or transferred materials that did not meet minimum reporting thresholds. These efforts also helped identify accounts with zero balances. The rebaselining efforts resulted in decreasing the number of active accounts and supported a further review and reconciliation of material inventories in the remaining accounts.

At the end of these efforts, NRC determined that enhanced reporting of inventory information by those licensees not presently required to do so would provide greater assurance about the accuracy of licensee inventory information maintained in the database. NRC believes that licensee inventories must be submitted regularly and reconciled in comparison to values projected by the NMMSS database to maintain the usefulness of the database for international and domestic regulatory needs.

II. Discussion

The NRC staff has had extensive interactions with the NMMSS operator and industry representatives since the issuance of NRC Bulletin 2003–04. On the basis of these efforts and an evaluation of the current regulations related to the NMMSS reporting, the NRC staff concluded that many of the discrepancies in NMMSS information resulted because: (1) Many licensees (those that possess less than 350 grams of SNM) infrequently ship and/or receive reportable materials, and (2) many licensees do not meet the current regulatory threshold for annual reporting of SNM or source material and lose institutional awareness of the NMMSS over time. As a result, for many licensees there are no requirements to periodically confirm the accuracy of values projected by the NMMSS.

This conclusion led NRC to embark on an effort to amend its regulations to enhance the accuracy of the NMMSS database. The amendments lower the threshold of quantities of special nuclear materials and certain source materials requiring the submission of both status and transaction reports to the NMMSS. Another amendment to keep the NMMSS data more current modifies reporting requirements in § 40.64 to require licensees involved in enrichment services, downblending material initially enriched in uranium-235 (U^{235}) isotope 10 percent or more, or mixed-oxide (MOX) fuel fabrication of uranium, to report the transfer, receipt, inventory adjustment, inventory, and material balance information for source material. These changes to NMMSS reporting requirements will improve the accuracy of material balance (inputs/outputs) information. Currently, licensees are only required to report source material subject to international treaty requirements. However, source material reporting is an important part of the material balance equation because these materials are used as an input material in the downblending of uranium, in MOX fuel fabrication, and in the uranium enrichment cycle. This type of facility reporting will facilitate the evaluation of the prior and ending source material balances of licensees that engage in activities that change the SNM values of materials.

The NRC staff considered other possible consequences posed by inaccurate NMMSS information associated with these holders of small quantities of SNM. Gram quantities of SNM held by many small quantity licensees do not appear to pose a significant challenge to the promotion of security from an MC&A perspective. However, if periodic reporting and evaluation of small licensee balances are not required, it could reduce public

[1] This report entitled, ''Accounting for Government Owned Nuclear Materials Provided to Non-Department Domestic Facilities'' (October 26, 2001), is available at *http://www.ig.doe.gov/documents/calendaryear2001/ig-0529.pdf.*

[2] This report entitled, ''Audit of NRC's Regulatory Oversight of Special Nuclear Materials'' (OIG–03–A–15, May 23, 2003), is available at *http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2003/03-a-15.pdf.*

confidence in the primary tool used by the NRC in the oversight of small licensee MC&A activities since NRC would not have assurance that projected material balances are representative of the quantities of materials at these sites.

The following sections summarize the significant changes to the regulations and the NRC's basis for those changes.

A. Special Nuclear Material Transaction Reports

Currently, licensees are required by § 74.15(a) to report to the NMMSS whenever they transfer or receive one gram or more of SNM. The revision adds a requirement that a licensee must also report to the NMMSS whenever it makes an on-site adjustment to the SNM inventory involving a quantity of one gram or more SNM. The inventory adjustments may be due to decay, or normal operational losses. The adjustments must be made, at a minimum, when the licensee reports its physical inventory. Domestic MC&A safeguards will be enhanced by this change and NMMSS generated inventories will more accurately reflect actual facility inventory values. The required reporting of these adjustments will improve the accuracy of the NMMSS database.

Additionally, §§ 72.78 and 74.15 require submission of material transaction reports for the transfer and receipt of SNM but do not specify the time frames in which the reports must be made. However, the reporting time frames are specified in NUREG/BR–0006, ''Instructions for the Preparation and Distribution of Material Transaction Reports.'' In contrast, for source material transactions under § 40.64(a), nuclear material transaction reports are required to be submitted by the close of business the next working day for the transfer of source material, and within ten days of receipt for the receipt of source material. Therefore, for consistency between those provisions and also with the guidance documents, §§ 72.78 and 74.15 are amended to require each licensee who transfers SNM to submit a nuclear material transaction report no later than the close of business the next working day, and to require each licensee who receives the material to submit a nuclear material transaction report within ten days after the material is received. Consistent with this change, 10 CFR Part 150 is amended to require licensees who transfer SNM to submit a nuclear material transaction report to NMMSS no later than the close of business the next working day. Currently, § 150.16(a) requires licensees only to submit the SNM transaction report ''promptly'' after the SNM transfer takes place. By changing ''promptly'' to ''no later than the close of business the next working day,'' the regulation will be unambiguous.

A revision is also made to the section headings of §§ 72.78, 74.15 and 150.16. Currently, §§ 72.78 and 74.15 are entitled ''Nuclear material transfer reports,'' and § 150.16 is entitled ''Submission to Commission of nuclear material transfer reports.'' The amended heading of §§ 72.78 and 74.15 is ''Nuclear material transaction reports.'' Section 150.16 is now entitled ''Submission to Commission of nuclear material transaction reports.'' The amended section headings more accurately reflect the requirements contained in these sections for both receipt and transfer of nuclear material, and are consistent with the name of the submitted report.

B. Special Nuclear Material Status Reports

Currently, licensees are required by § 74.13(a) to report annual SNM inventories to the NMMSS only if they are authorized to possess more than 350 grams of SNM. The amendments lower the reporting threshold to one gram or more, requiring a licensee who possesses, or who had possessed in the previous reporting period, one gram or more of SNM to report an annual inventory to the NMMSS. By lowering the reporting threshold, NRC will improve its knowledge of the location and presence of SNM possessed by licensees. The staff considered changing the current 350-gram threshold to a number of values that were less than 350 grams but more than one gram. However, these approaches were rejected because they would still result in a number of licensees that would not have to report inventory regularly and ultimately cause a variation of the same problem i.e., that NRC would not have adequate input regarding inventories held by these licensees. The staff also considered lowering the inventory/material balance threshold to less than one gram of SNM. This method was not pursued because it would ''mis-align'' NRC regulations with DOE and with international entities with whom the U.S. has treaty agreements in place. Also, the licensee community would potentially have an additional burden to develop new (less than one gram) measurement techniques. Finally, the staff established the new threshold at one gram of SNM because: (1) International entities (those with which the United States has treaties) recognize one gram as the basic measuring unit for SNM; (2) one gram is a threshold value accepted by DOE and would meet its reporting expectations for licensees possessing government-owned material; (3) a one gram threshold would address the NRC OIG concern about ensuring that NRC has interaction with and reporting from small-quantity licensees; and (4) the one gram threshold for inventory/material balance reporting would align with the present one gram requirement for licensees reporting shipments and receipts (transactions) of SNM.

The submission of material balance reports under the current rule is linked to the performance and conduct of annual physical inventories and related reports required by §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6) and in March and September for those subject to § 74.51. Those provisions are linked for the convenience of licensees, since both reports contain the same minimum threshold requirements of more than 350 grams. However, the activities associated with performing, documenting, and maintaining records associated with a physical inventory, as required by § 74.19(c), are different and more encompassing than those associated with preparing and submitting a material status report required by § 74.13. Because the staff does not plan to revise § 74.19(c) as part of this rulemaking, it would therefore no longer be possible to link the reporting requirements of the two rules since a physical inventory under § 74.19(c) is only implicated if a licensee is authorized to possess greater than 350 grams of SNM.

Thus, § 74.13 is revised to continue to permit licensees authorized to possess greater than 350 grams of SNM to submit material status reports along with their physical inventory reports as required by §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6) and in March and September of each year, for those subject to § 74.51. However, for those licensees who are authorized to possess 350 grams or less of SNM, the rule requires the submission of material balance reports no later than March 31 of each year. The NRC finds that this schedule will eliminate any reporting problems related to inconsistencies in reporting quantities that persist between §§ 74.13 and 74.19, but will also maintain the intended flexibility and efficiency of the current rule.

C. Source Material Transaction Reports

Currently, § 40.64(a) requires submission of a Nuclear Material Transaction Report whenever a licensee transfers, receives, or adjusts the inventory of foreign obligated source material by one kilogram or more. Foreign obligated materials are those

nuclear materials that are subject to tracking by international treaties. Also, reports are required for the import and export of one kilogram or more of any source material, regardless of obligation. However, the current requirements do not require reporting when material is utilized. The revision amends the rule to require reporting when a licensee utilizes one kilogram or more of source material in enrichment services, in downblending material initially enriched in the U^{235} isotope to 10 percent or more, or in MOX fuel fabrication, regardless of obligation. The NRC staff believes that source material reporting is an important part of the material balance equation because these materials are used as an input material in the downblending of uranium, in MOX fuel fabrication, and in the uranium enrichment cycle. This amendment to NMMSS reporting will facilitate the evaluation of the prior and ending balances of licensees that engage in activities that change the SNM values of their inventories and thus will improve the accuracy of the NMMSS data.

D. Source Material Status Reports

Currently, § 40.64(b) requires annual source material inventory reports of foreign obligated source material for licensees authorized to possess more than 1,000 kilograms of source material. The revision lowers this value to one kilogram or more of foreign obligated source material. A lowered reporting threshold will provide the NRC with better knowledge of the location and presence of foreign obligated source material possessed by the licensees. The revision also requires the licensees to report annual source material inventory when a licensee utilizes one kilogram or more of any source material in enrichment services, in downblending material initially enriched in the U^{235} isotope to 10 percent or more, or in MOX fuel fabrication, regardless of the obligation. Based on a review of the rebaselining efforts, the NRC staff has concluded that many licensees did not submit or update inventories to the NMMSS for several years, because they possessed or transferred materials that did not meet the minimum reporting thresholds. By lowering the reporting threshold from 1000 kilograms to 1 kilogram of foreign obligated material, the staff believes the information maintained in the NMMSS database will be more current and reliable and help fulfil U.S. obligations under bilateral agreements.

E. Reconciliation of Submitted Inventories

Many facilities that presently report inventory and material balance information also participate in a periodic reconciliation process with the NMMSS to address any differences between NMMSS generated inventory values and the facility reported inventory values. Currently, the reconciliation process is not explicitly required by regulations; however, it is considered to be an integral part of routine NMMSS operations. To address this issue, the amendments to §§ 40.64(b), 72.76(a), 74.13(a), 150.17(a) and 150.17(b) require licensees to reconcile any inventory discrepancies identified by NRC in the NMMSS database within 30 days of being notified of a discrepancy by NRC. In the amendments to §§ 40.4, 72.3, 74.4 and 150.3, a new definition, ''reconciliation,'' is added to describe the process by which licensees' reports are evaluated and compared by NRC to the projected material balances by the NMMSS. The NMMSS projected balances are the NMMSS calculated material balances based on the transfer, receipt, or other adjustments reported to the NMMSS by the licensees during the previous reporting period. The process is considered complete when a licensee resolves any differences between the reported inventory and the inventory projected by the NMMSS database. This requirement will help maintain the accuracy of information in the NMMSS database.

F. Reporting Identification Symbol (RIS) and Holding Accounts

NRC currently assigns a NMMSS account number called a Reporting Identification Symbol (RIS) to each licensee for submitting information to the NMMSS. The revisions to §§ 40.64(b) and 74.13(a) require licensees to report inventory of source material and SNM, respectively, not only for their primary RIS account but also source and SNM inventories in associated holding accounts. Holding accounts were established by a few licensees to identify the material that the licensee was not actively using. Currently, licensees are not required to acknowledge shipments and receipts, or to report inventory information pertaining to the holding accounts to the NMMSS. The revisions will enhance MC&A safeguards because of the increased accuracy and availability of inventory information to the NRC staff.

G. Reduction in Reporting Requirements for Export of Material Shipments

Currently, licensees who export reportable quantities of SNM or source material file both the shipper's and receiver's information on two separate forms when exporting nuclear material, as described in NUREG/BR–0006. Based on the NRC inspector observations, the current additional requirement to report a foreign facility description of the same transactions has not been useful in assuring the accuracy of domestic MC&A information and it is not necessary to meet international reporting requirements. Consequently, this requirement can be eliminated to reduce burden without adverse effects on safety or security or the NMMSS database. This change is reflected in the amendments to §§ 40.64, 74.15 and 150.16 and will be reflected in the revised NUREG/BR–0006.

In the amendment, licensees are required to file only the shipper's information form unless there is a significant shipper/receiver difference or a theft or diversion is identified. In this context ''significant'' refers to a difference, for SNM, that requires resolution as described in §§ 74.31, 74.43, or 74.59, as applicable. For source material, the quantities delineated in § 40.64(c)(1) involving a theft or unlawful diversion would be the threshold quantities for additional reporting. This change to the reporting requirement will reduce the licensee's reporting burdens when shipping nuclear materials without significantly impacting the quality of the information reported to the database.

H. Who Would This Action Affect?

Currently, licensees possessing more than 350 grams of SNM report inventory and material balance information annually to the NMMSS. The lowering of the threshold to one gram of SNM and one kilogram of source material subject to treaty obligations will affect approximately 200 additional NRC and Agreement State licensees who presently possess between one and 350 grams of SNM.

New requirements associated with source material reporting will also apply to licensees that perform uranium enrichment services, downblend material initially enriched in the U^{235} isotope to 10 percent or more, and perform MOX fuel fabrication. However, the actual impact on these licensees will be minimal because much of the source material used for these type of processes has associated treaty obligations and is subject to the current reporting requirements.

Finally, the reduction in reporting requirements associated with export of SNM and source material will impact approximately 17 NRC and Agreement State licensees that export such materials. This change to the reporting requirements as specified in NUREG/BR–0006 will result in a reduction of about 1,700 reports per year, from the current number of 3,400 reports per year to the NMMSS, without impacting the quality of information in the NMMSS database.

I. How Would the Information be Reported?

Licensees may continue to submit foreign obligated source material information pursuant to § 40.64(b) as a statement and may submit the statement with other reports that the licensee is required to submit, such as the SNM material balance report. However, source material and SNM transaction reports must be submitted by filing the Nuclear Material Transaction Reports form in computer-readable format as specified in NRC NUREG/BR–0006. Additional source and SNM inventory and material balance reports must be submitted in computer-readable format as specified in the NRC NUREG/BR–0007, ''Instructions for the Preparation and Distribution of Material Status Reports.'' Specific details about the forms and format for these reports are contained in the NRC NUREG/BR–0006 and 0007. Additionally, reporting software is available to the licensees free of charge from the NMMSS contractor.

III. Summary of Public Comments on the Proposed Rule

The NRC received 5 comment letters on the proposed rule. The commenters were all representatives of industry. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. A review of the comments and the NRC staff's responses follow:

Comment 1: Four commenters indicated that the proposed language in 10 CFR 74.15(a) regarding on-site inventory adjustments needed to be clarified. As written, the commenters were concerned that frequent (daily to monthly) reporting would be necessary to account for decay and burnup in the reactor core. Commenters described this as an unnecessary reporting burden with no commensurate benefit or improvement in SNM accountability. Two of the licensees suggested revised language that would clarify the rule text to make it clear that the adjustments would be submitted to coincide with the submission of the annual or semi-annual Material Balance Report. One commenter requested that the rule state that its current practice of bi-monthly adjustments is acceptable.

Response: NRC agrees with the commenters that the rule language needs to be clarified. Early in the comment period, the NRC posted a Frequently Asked Question on the Ruleforum Web site after several licensee inquiries during the comment period. The question and answer was also included in a special edition of the NMMSS News in March 2007. The answer stated that the NRC expects that a licensee, at a minimum, report all inventory adjustments no later than when the licensee reports its physical inventory results to NMMSS (i.e., 12 months for power reactors). The NRC has revised the final rule language to clarify the timing of the inventory adjustments. Licensees are allowed to adjust inventory on a more frequent basis than what is required by the regulations. Therefore the commenter is correct to assume that it is acceptable to continue to report its adjustments with its bi-monthly inventory data. However, the NRC does not agree that this option needs to be acknowledged in the final rule text. A licensee can always do more than required by the regulations as long as it meets the minimum requirements.

Comment 2: One commenter requested that 10 CFR 73.67(g)(2)(ii) be revised to remove a reference to § 70.54 because that section of the regulations no longer exists. The commenter noted that the correct reference should be to § 74.15. The commenter requested that the inadvertent omission be picked up in this rule since changes are being made that affect § 74.15.

Response: The NRC agrees with the commenter that the correction should be made. In a final rule published in 2002 (67 FR 78130; December 23, 2002), the NRC deleted § 70.54 in its entirety. The requirements in that section are now covered by the requirements found in § 74.15. The 2002 rulemaking was part of an effort to move all of the MC&A requirements into 10 CFR Part 74. References to the deleted sections were revised to reference the new locations in 10 CFR Part 74. The reference to § 70.54 contained in § 73.67(g)(2)(ii) should have been changed to § 74.15 in the 2002 rulemaking but was overlooked. Because this is a minor conforming change and no purpose would be served by seeking public comment on the correction, the Commission, under 5 U.S.C. 553(b)(3)(B), finds that good cause exists to dispense with notice and comment procedures for this correction. The NRC has made the correction to the rule text.

Comment 3: One commenter stated that complete reconciliation of all reports submitted to NMMSS may not be practical due to reporting precision and errors caused by rounding. The commenter stated that the rule should be limited to reconciliation of the ending inventory balances in the Material Status Reports (742 section A line 81 and 742 section B) between the licensee and NMMSS. The commenter noted that this limitation would be consistent with the Discussion section of the proposed rule.

Response: The staff disagrees that reconciliation is limited to the ending inventory balance. The commenter is correct that reconciliation of licensee submittals is partially a review of database ending values, based on other licensee submittals, compared to the ending balances reported by the licensee in the Material Status Report, section A line 81 and section B. However, the reconciliation effort also includes section A Line 80 (government-owned materials, if any) of the Material Status Report and a comparison of the Total line values listed on Form 742C, the Physical Inventory Listing. Additionally, to correct any identified inconsistencies in these ending values, a licensee may find it necessary to review previous submittals made during the period being reconciled. No changes to the rule language have been made.

Comment 4: One commenter stated that a definition for 'holding accounts' should be added to 10 CFR Part 74. The commenter stated that the addition of holding accounts to a licensee's reporting requirements should be clarified such that the excess material from a reload campaign or any other inventory that may be held at a supplier is not considered a 'holding account' under the new requirement.

Response: The staff does not find it appropriate to add such a definition to the regulations because other types of NMMSS accounts are not separately defined. However, the NRC has included further description of 'holding accounts' in both NUREG/BR–0006 and NUREG/BR–0007. The staff agrees with the commenter that material that is held at a supplier is not considered a holding account.

Comment 5: One commenter stated that the 10-day rule for submitting receipt data conflicts with the 10-business day submittal required by DOE and that the revised reporting requirements should be consistent with the DOE reporting requirements and specify 10 business days for submittal of receipt data.

Response: The NRC disagrees with the commenter. The 10 days versus 10

business days has been NRC practice for many years, as documented in previous versions of NUREG/BR–0006. Allowing 10 business days could cause delays associated with facility closure during holiday periods. The commenter has not provided an adequate reason for changing the reporting time. The rule only applies to Agreement State and NRC licensees and certificate holders and does not apply to DOE sites. Even if the requirements applied to DOE sites, there would be no conflict because by filing the report within 10 days, the 10 business days would also be met.

Comment 6: One commenter stated that it is currently using ''V'' RISs for waste containers for which safeguards have been terminated and that operations would be adversely impacted if it had to use holding accounts instead of ''V'' RISs. The commenter argued that significant resources would be needed to inventory all items currently in the ''V'' RIS (thousands of waste drums) before returning them to active inventory. The commenter stated that DOE allows the use of ''V'' RISs for waste containers for which safeguards have been terminated and this allowance for waste containers should be allowed by the rule. The commenter stated that the costs associated with adding waste items to active inventory must be evaluated against the benefits obtained from increasing the level of accountability.

Response: The NRC disagrees with the commenter. Waste containers should be properly accounted for in a licensee's inventory. A licensee could have kilogram quantities of special nuclear material in waste drums and this material should be accounted for. Lack of knowledge of the contents of waste containers is both a safety and security concern.

The rule only applies to Agreement State and NRC licensees and certificate holders and does not apply to DOE sites. For NRC and Agreement State licensees, the ''V'' accounts are limited to those licensees authorized for land disposal of radioactive waste and are not considered to be 'holding accounts'. These licensees do not need to report and reconcile the values of source and special nuclear material in their account with the NMMSS database. The fact that the commenter has a ''V'' account is an artifact of the facility previously being operated by DOE. Because the facility is under NRC jurisdiction, the ''V'' account should be changed to an ''H'' account.

Comment 7: One commenter stated that it is operating under an exemption to the reporting requirements of 10 CFR Part 74 for material balance and inventory reports and that the exemption remains in effect until the reporting guidance is revised and appropriate programming changes are made to the NMMSS software. Therefore, the commenter stated that its site systems have not been upgraded for this purpose and that it could not report data to NMMSS in the proposed licensee format until October 2009.

Response: This comment is beyond the scope of the rulemaking. This is a licensing issue that the commenter should discuss with its NRC Project Manager.

Comment 8: One commenter stated that it prefers to continue to report and reconcile NMMSS data as is currently submitted and to certify the NMMSS-generated M–742 report. The commenter stated that the existing method of reporting meets the intent of the reporting requirements and there is no benefit in altering its current reporting method.

Response: The commenter has not provided adequate information to determine if the process it currently uses meets the intent of the regulation. The commenter should discuss this with its NRC Project Manager.

IV. Summary of Amendments by Section

Section 40.4 Definitions

Section 40.4 is amended to add a definition of ''reconciliation.'' Reconciliation is defined to mean the process by which licensee inventory submittals are compared to values projected by the NMMSS, and the process is considered complete when the licensee resolves any differences between the two values, including foreign obligated materials.

Section 40.64 Reports

Section 40.64(a) is amended to (1) require licensees who utilize one kilogram or more of source material, regardless of obligation, in enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of MOX fuels, complete and submit a Nuclear Material Transaction Report; and (2) require licensees who export source material to complete only the licensee portion of the transaction report unless there is an indication of loss, theft, or diversion of the source material, in which case both the licensee's and the foreign facility's information on the form must be reported.

Section 40.64(b) is amended to (1) lower reporting thresholds for possession and reporting of inventory of foreign obligated source material to one kilogram; (2) require each licensee who possesses one kilogram or more of uranium or thorium source material in the operation of enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of MOX fuels, to complete and submit, in computer-readable format, Material Balance and Physical Inventory Listing Reports concerning all source material (both foreign obligated and non-obligated) that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost in the previous reporting period; (3) resolve any inventory discrepancies within 30 calendar days of notification of the discrepancy identified by the NRC; (4) require inventory reporting not only in the (RIS) account but also in all associated holding accounts; and (5) correct the NRC address for obtaining the reporting instructions.

Section 72.3 Definitions

Section 72.3 is amended to add a definition of ''reconciliation.'' Reconciliation is defined to mean the process by which licensee submittals are compared to projected values developed by the NMMSS, and the process is considered complete when the licensee resolves any differences between the two values, including foreign obligated materials.

Section 72.72 Material Balance Inventory and Records Requirements for Stored Materials

Section 72.72(a) is amended to (1) correct the reference for SNM to § 74.13(a) (the current reference to § 74.13(a)(1) is incorrect because there is no paragraph (a)(1) in § 74.13); and (2) require licensees to keep records showing the receipt, inventory, disposal, acquisition, and transfer of source material in quantities as specified in § 40.64.

Section 72.76 Material Status Reports

Section 72.76(a) is amended to (1) require reports on source material as specified in § 40.64; (2) require licensees to resolve any discrepancies identified during the report review (3) and reconciliation process within 30 calendar days of submission of the information; and correct the NRC address for obtaining the reporting instructions.

Section 72.78 Nuclear Material Transfer Reports

The section heading is revised to read, ''Nuclear material transaction reports.'' The amendment is consistent with the

name of the report (transaction report) and describes requirements for both receipt and transfer of nuclear materials.

Section 72.78(a) is amended to (1) add a reporting requirement when a licensee adjusts the inventory of SNM as specified by § 74.15 or source material as specified by § 40.64; and (2) correct the NRC address for obtaining the reporting instructions.

Section 73.67 Licensee Fixed Site and In-Transit Requirements for the Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance

Paragraph (g)(2)(ii) is revised to correct the reference to § 70.54. Section 70.54 was removed from the regulations in a previous revision. The correct reference is to § 74.15.

Section 74.2 Scope

Section 74.2(a) is amended to lower the applicable threshold of general reporting and recordkeeping requirements of subpart B of 10 CFR Part 74 to each person who possesses one gram or more of SNM.

Section 74.4 Definitions

Section 74.4 is amended to add a definition of ''reconciliation.'' Reconciliation is defined to mean the process by which licensee submittals are compared to projected values developed by NMMSS, and the process is considered complete when the licensee resolves any differences between the two values, including foreign obligated materials.

Section 74.13 Material Status Reports

Section 74.13(a) is amended to (1) lower reporting thresholds from authorization to possess more than 350 grams of SNM to possession of one gram or more of SNM, or possession of one gram or more of SNM in the inventory reporting period; (2) require inventory reporting to include not only the primary Reporting Identification Symbol (RIS) account but also SNM in any associated holding accounts; (3) require licensees to resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by the NRC; (4) require licensee submission of material balance reports no later than March 31 of each year for reports not covered under §§ 74.19, 74.31(c)(5), 74.33(c)(4), 74.43(c)(6), or 74.51; and (5) correct the NRC address for obtaining the reporting instructions.

Section 74.15 Nuclear Material Transfer Reports

The section heading is revised to read, ''Nuclear material transaction reports.'' The amendment is consistent with the name of the report (transaction report) and describes requirements for both receipt and transfer of nuclear materials.

Section 74.15(a) is amended to (1) add a reporting requirement when the inventory of SNM is adjusted in a quantity of one gram or more; (2) specify that each licensee who transfers SNM must submit a Nuclear Material Transaction Report no later than the close of business the next working day, and each licensee who receives the material must submit a Nuclear Material Transaction Report within ten (10) days after the material is received; and (3) correct the NRC address for obtaining the reporting instructions.

The current paragraph (c) is redesignated as a new paragraph (d). A new paragraph (c) is added to § 74.15 to require licensees who export one gram or more of SNM to complete only the supplier's portion of the form unless a significant shipper-receiver difference as described in §§ 74.31, 74.43, or 74.59 is identified.

Section 150.3 Definitions

Section 150.3 is amended to add a definition of ''reconciliation.'' Reconciliation is defined to mean the process by which licensee submittals are compared to projected values developed by the NMMSS, and the process is considered complete when the licensee resolves any differences between the two values, including foreign obligated materials.

Section 150.8 Information Collection Requirements: OMB Approval

In Section 150.8 paragraph (c)(1) is revised, paragraph (c)(2) is redesignated as a new paragraph (c)(3), and a new paragraph (c)(2) is added to describe that in § 150.17, DOE/NRC Form 742 and its computer-readable format are approved under OMB control number 3150–0004, and DOE/NRC Form 742C and its computer-readable format are approved under OMB control number 3150–0058.

Section 150.16 Submission to Commission of Nuclear Material Transfer Reports

The section heading is revised to read, ''Submission to the Commission of nuclear material transaction reports.'' The amendment is consistent with the name of the report (transaction report) and describes requirements for both receipt and transfer of nuclear materials.

Section 150.16(a) is revised to add a new paragraph (a)(1) that generally retains the requirements of current paragraph (a), but is amended to (1) require reporting when the inventory of SNM is adjusted in a quantity of one gram or more; (2) specify that for transfer of SNM, the information be submitted no later than the close of next business day; (3) require completion of only the licensee's portion of the form for exporting SNM unless a significant shipper-receiver difference as described in §§ 74.31, 74.43, or 74.59 is identified; and (4) correct the NRC address for obtaining the reporting instructions.

The new paragraph (a)(2) in § 150.16 describes the material transaction reporting requirements for the source material. Currently, source material transaction reporting requirements are described in § 150.17(a), under the heading ''Submission to Commission of source material reports.'' Moving these requirements to § 150.16 will help licensees locate the material transaction reporting requirements for both SNM and source material in § 150.16.

The new § 150.16(a)(2) also (1) requires a licensee who utilizes any uranium or thorium source material, regardless of obligation, in a quantity of one kilogram or more, in enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of MOX fuels, to submit source material transaction reports; (2) requires licensees to file only the licensee's portion of the form when exporting one kilogram or more of source material, unless there is an indication of theft or diversion as described in § 40.64(c), in which case both the receiver's and shipper's portion of the form must be completed; (3) requires the shipper's portion of the form to be completed for imports; and (4) corrects the NRC address for obtaining the reporting instructions.

Section 150.17 Submission to Commission of Source Material Reports

The section heading is revised to read, ''Submission to Commission of nuclear material status reports.'' This amendment will help licensees locate the reporting requirements for material status reports for both source material and SNM. This format is similar to the reporting formats for source and SNM status reporting in 10 CFR Parts 40, 72, and 74.

Section 150.17(a) is amended to require each licensee who is in possession of, or had possessed in the previous reporting period, SNM in a quantity of one gram or more, to annually complete and submit in

computer-readable format Material Balance and Inventory Reports concerning special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. It also requires licensees to resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC.

Section 150.17(b) is amended to (1) lower the annual inventory reporting threshold from the current 1000 kilogram of foreign obligated source material to one kilogram; (2) add a reporting requirement that a licensee who utilizes one kilogram or more of any source material in enrichment services, in downblending material initially enriched in the U^{235} isotope to 10 percent or more, or in MOX fuel fabrication is required to submit material balance and physical inventory listing reports concerning source material that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost; (3) require licensees to resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC; and (4) correct the NRC address for obtaining the reporting instructions.

V. Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR Parts 40, 72, 73, 74, and 150 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is designated Compatibility Category ''NRC.'' The Compatibility Categories for the sections amended in this proposed rule would be the same as the sections in the current rule. The revisions to §§ 40.64, 72.72(a), 72.76, 72.78, 73.67, 74.4, 74.13, 74.15, 150.16 and 150.17 are designated as Category ''NRC,'' because these are areas of exclusive NRC regulatory authority. The following new sections, §§ 40.4, 72.3 and 150.3, are also designated Compatibility Category ''NRC.'' Compatibility Category ''NRC'' is the NRC program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act or provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is modifying current reporting requirements for source material and special nuclear material to the NMMSS. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) for the changes to part 150 and as described in 10 CFR 51.22(c)(3)(iii) for the changes to parts 40, 72, 73, and 74. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0020, 3150–0003, 3150–0132, 3150–0123, 3150–0032, 3150–0004, and 3150–0058.

Because the rule will reduce the burden for existing information collection requirements, the public burden for these information collections is expected to be decreased by 695 hours (NRC Form 741, –1495 hours at 1.25 hours/response; NRC Form 742, +400 hours at 2 hours/response; and NRC Form 742C, +400 hours at 2 hours/response). This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for further reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0020, 3150–0003, 3150–0132, 3150–0123, 3150–0032, 3150–0004, and 3150–0058), Office of Management and Budget, Washington, DC 20503.

X. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The rule will affect about 180 licensees who are currently required to file reports and approximately 200 additional NRC and Agreement State licensees. Affected licensees include enrichment facilities, fuel fabricators, laboratories, reactors, universities, colleges, medical clinics, and hospitals, some of which may qualify as small business entities as defined by 10 CFR 2.810. The rule will result in annual savings for the 17 licensees subject to current reporting requirements because there is a reduction in the number of transaction forms submitted for certain export transactions. However, for the licensees possessing 350 grams or less of SNM, there is an additional cost from the regulations. The annual time required by these licensees to complete each inventory and material balance report is estimated at two hours. The total annual burden to perform the reporting and reconciliation for these 200 licensees is 400 hours. The annual costs of the amendments for affected licensees are estimated to be $37,200 total or on average about $186 per affected licensee.

The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Neelam Bhalla, telephone (301) 415–6843, e-mail, *nxb@nrc.gov* of the Office of Federal and State Materials and Environmental Management Programs.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would affect about 180 licensees who are currently required to file reports and approximately 200 additional NRC and Agreement State licensees. Affected licensees include enrichment facilities, fuel fabricators, laboratories, reactors, universities, colleges, medical clinics, and hospitals, some of which may qualify as small business entities as defined by 10 CFR 2.810. The rule will result in annual savings for the 17 licensees subject to current reporting requirements because there is a reduction in the number of transaction forms submitted for certain export transactions. However, for the licensees possessing 350 grams or less of SNM, there is an additional cost from the regulations. The annual time required by these licensees to complete each inventory and material balance report is estimated at two hours. No research or compilation is necessary because all information is transcribed from in-house records kept for other purposes. The total annual burden to perform the reporting and reconciliation for these 200 licensees is 400 hours. Based on the regulatory analysis conducted for this action, the annual costs of the amendments for affected licensees are estimated to be $37,200 total or on average about $186 per affected licensee. NRC believes that the selected alternative reflected in the amendment is the least burdensome, most flexible alternative that accomplishes the NRC's regulatory objective.

XIII. Backfit Analysis

NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

XIV. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XV. Lists of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR parts 40, 72, 73, 74, and 150:

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 40.4, a new definition, *Reconciliation,* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Reconciliation means the process of evaluating and comparing licensee reports required under this part to the projected material balances generated by the Nuclear Materials Management and Safeguards System. This process is considered complete when the licensee resolves any differences between the reported and projected balances, including those listed for foreign obligated materials.

* * * * *

■ 3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory in any manner, of uranium or thorium source material with foreign obligations by one kilogram or more; or who imports or exports one kilogram or more of uranium or thorium source material; or who uses one kilogram or more of any uranium or thorium source material in enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels, shall complete a Nuclear Material Transaction Report in computer-readable format as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' Each licensee who exports one kilogram or more of uranium or thorium source material shall complete in the format listed above the licensee's portion of the Nuclear Material Transaction Report unless there is indication of loss, theft, or diversion as discussed under paragraph (d) of this section, in which case both the licensee's and the foreign facility's information must be reported. Licensees who import one kilogram or more of uranium or thorium source material shall complete the supplier's and the licensee's portion of the Nuclear Material Transaction Report. Copies of the instructions may be obtained either by writing the U.S. Nuclear Regulatory

Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to RidsNmssFcss@nrc.gov. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee who:

(1) Possesses, or had possessed in the previous reporting period, at any one time and location, one kilogram or more of uranium or thorium source material with foreign obligations as defined in this part, shall document holdings as of September 30 of each year and submit to the Commission within 30 days, a statement of its source material inventory with foreign obligations as defined in this part. Alternatively, this information may be submitted with the licensee's material status reports on special nuclear material filed under part 72 or 74 of this chapter, as a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions in NUREG/BR–0007, and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee.

(2) Possesses, or had possessed in the previous reporting period, one kilogram or more of uranium or thorium source material pursuant to the operation of enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels shall complete and submit, in computer-readable format, Material Balance and Physical Inventory Listing Reports concerning all source material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. Reports must be submitted for each Reporting Identification Symbol (RIS) account including all holding accounts. Each licensee shall prepare and submit these reports as specified in the instructions in NUREG/BR–0007 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' These reports must document holdings as of September 30 of each year and must be submitted to the Commission within 30 days. Alternatively, these reports may be submitted with the licensee's material status reports on special nuclear material filed under parts 72 or 74 of this chapter. Copies of the reporting instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee required to report material balance, inventory, and/or foreign obligation information, as detailed in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by the NRC.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 4. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec.651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 5. In § 72.3, a new definition, *Reconciliation,* is added in alphabetical order to read as follows:

§ 72.3 Definitions.

* * * * *

Reconciliation means the process of evaluating and comparing licensee reports required under this part to the projected material balances generated by the Nuclear Materials Management and Safeguards System. This process is considered complete when the licensee resolves any differences between the reported and projected balances, including those listed for foreign obligated materials.

* * * * *

■ 6. In § 72.72, paragraph (a) is revised to read as follows:

§ 72.72 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all special nuclear material with quantities as specified in § 74.13(a) of this chapter and for source material as specified in § 40.64 of this chapter. The records must include as a minimum the name of shipper of the material to the ISFSI or MRS, the estimated quantity of radioactive material per item (including special nuclear material in spent fuel and reactor-related GTCC waste), item identification and seal number, storage location, onsite movements of each fuel assembly or storage canister, and ultimate disposal. These records for spent fuel and reactor-related GTCC waste at an ISFSI or for spent fuel, high-level radioactive waste, and reactor-related GTCC waste at an MRS must be retained for as long as the material is stored and for a period of 5 years after the material is disposed of or transferred out of the ISFSI or MRS.

* * * * *

■ 7. In § 72.76, paragraph (a) is revised to read as follows:

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete in computer-readable format and submit to the Commission a Material Balance Report and a Physical Inventory Listing Report as specified in the instructions in NUREG/BR–0007 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees.'' Copies of these instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission,

Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* These reports, as specified by § 74.13 or 40.64 of this chapter, provide information concerning the special nuclear material and/or source material possessed, received, transferred, disposed of, or lost by the licensee. Each report must be submitted within 60 days of the beginning of the physical inventory required by § 72.72(b). The Commission may, when good cause is shown, permit a licensee to submit Material Balance Reports and Physical Inventory Listing Reports at other times. Each licensee required to report material balance and inventory information as described in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed, computer-readable forms replace the DOE/NRC Forms 742 and 742C previously submitted in paper form.

* * * * *

■ 8. In § 72.78 the section heading and paragraph (a) are revised to read as follows:

§ 72.78 Nuclear material transaction reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives or adjusts the inventory, in any manner, of special nuclear material as specified by § 74.15 and/or source material as specified by § 40.64 of this chapter, the licensee shall complete in computer-readable format a Nuclear Material Transaction Report as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' Copies of these instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and the receiver's portion of the Nuclear Material Transaction Report, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form. These prescribed computer-readable forms replace the DOE/NRC Form 741 which have been previously submitted in paper form.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169) and under sec. 652, Pub. L. 109–58, 119 Stat 810 (42 U.S.C. 2169).

■ 10. In § 73.67, paragraph (g)(2)(ii) is revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(g) * * *

(2) * * *

(ii) Notify the shipper of receipt of the material as required in § 74.15 of this chapter, and

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 11. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec.1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 12. In § 74.2, paragraph (a) is revised to read as follows:

§ 74.2 Scope.

(a) The general reporting and recordkeeping requirements of subpart B of this part apply to each person licensed under this chapter who possesses special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium; or who transfers or receives a quantity of special nuclear material of one gram or more of contained uranium-235, uranium-233, or plutonium. The general reporting and recordkeeping requirements of subpart B of this part do not apply to licensees whose MC&A reporting and recordkeeping requirements are covered by §§ 72.72, 72.76, and 72.78 of this chapter.

* * * * *

■ 13. In § 74.4, a new definition, *Reconciliation*, is added in alphabetical order to read as follows:

§ 74.4 Definitions.

* * * * *

Reconciliation means the process of evaluating and comparing licensee reports required under this part to the projected material balances generated by the Nuclear Materials Management and Safeguards System. This process is considered complete when the licensee resolves any differences between the reported and projected balances, including those listed for foreign obligated materials.

* * * * *

■ 14. In § 74.13, paragraph (a) is revised to read as follows:

§ 74.13 Material status reports.

(a) Each licensee, including nuclear reactor licensees as defined in §§ 50.21 and 50.22 of this chapter, possessing, or who had possessed in the previous reporting period, at any one time and location, special nuclear material in a quantity totaling one gram or more of contained uranium-235, uranium-233, or plutonium shall complete and submit, in computer-readable format Material Balance Reports concerning special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost. This prescribed computer-readable report replaces the DOE/NRC form 742 which has been previously submitted in paper form. The Physical Inventory Listing Report must be submitted with each Material Balance Report. This prescribed computer-readable report replaces the DOE/NRC Form 742C which has been previously submitted in paper form. Reports must be submitted for each Reporting Identification Symbol (RIS) account including all holding accounts. Each licensee shall prepare and submit the reports described in this paragraph

as specified in the instructions in NUREG/BR–0007 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees.'' Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee subject to the requirements of § 74.51 shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. Licensees subject to the requirements of §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6) shall submit a report within 60 calendar days of the beginning of the physical inventory. All other licensees shall submit a report no later than March 31 of each year. The Commission may permit a licensee to submit the reports at other times for good cause. Each licensee required to report material balance, and inventory information, as detailed in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC.

* * * * *

■ 15. In § 74.15 the section heading and paragraph (a) are revised, paragraph (c) is redesignated as a new paragraph (d), and a new paragraph (c) is added to read as follows:

§ 74.15 Nuclear material transaction reports.

(a) Each licensee who transfers or receives special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium shall complete in computer-readable format a Nuclear Material Transaction Report. In addition, each licensee who adjusts the inventory in any manner, other than for transfers and receipts, shall submit a Nuclear Material Transaction Report, in computer-readable format, to coincide with the submission of the Material Balance report. This shall be done as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' Copies of these instructions NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees'' may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. This prescribed computer-readable format replaces the DOE/NRC Form 741 which has been previously submitted in paper form.

* * * * *

(c) Each licensee who ships special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium to foreign recipient shall complete in computer-readable format the supplier's portion of the Nuclear Material Transaction Report. The licensee shall complete the receiver's portion of the Nuclear Material Transaction Report only if a significant shipper-receiver difference as described in §§ 74.31, 74.43, or 74.59, as applicable, is identified.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 16. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

■ 17. In § 150.3, a new definition, *Reconciliation,* is added in alphabetical order to read as follows:

§ 150.3 Definitions.

* * * * *

Reconciliation means the process of evaluating and comparing licensee reports required under this part to the projected material balances generated by the Nuclear Materials Management and Safeguards System. This process is considered complete when the licensee resolves any differences between the reported and projected balances, including those listed for foreign obligated materials.

* * * * *

■ 18. In § 150.8, paragraph (c)(1) is revised, paragraph (c)(2) is redesignated as a new paragraph (c)(3), and a new paragraph (c)(2) is added to read as follows:

§ 150.8 Information collection requirements: OMB Approval.

* * * * *

(c) * * *

(1) In § 150.16, DOE/NRC FORM 741 and its computer-readable format are approved under control number 3150–0003.

(2) In § 150.17, DOE/NRC Form 742 and its computer-readable format are approved under control number 3150–0004, and DOE/NRC Form 742C and its computer-readable format are approved under control number 3150–0058.

* * * * *

■ 19. In § 150.16, the section heading and paragraph (a) are revised to read as follows:

§ 150.16 Submission to Commission of nuclear material transaction reports.

(a)(1) Each person who transfers or receives special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium under an Agreement State license shall complete and submit in computer-readable format Nuclear Material Transaction Reports as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' In addition, each person who adjusts the inventory in any manner, other than for transfers and receipts, shall submit in computer-readable format Nuclear Material Transaction Reports as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' Each licensee who receives special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium from a foreign source, or who ships special nuclear material in a quantity of one gram or more of contained uranium-235, uranium-233, or plutonium to a foreign source, shall submit the licensee portion of this information as specified in the instructions in this part. The applicable foreign facility portion of the form must be completed and submitted for imports. The foreign facility portion of the form must be completed for exports only if a significant shipper-receiver difference as described in §§ 74.31,

74.43, or 74.59 of this part, as applicable, is identified. Each person who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each person who receives special nuclear material shall submit a Nuclear Material Transaction Report in the computer-readable format as specified in the instructions within ten (10) days after the special nuclear material is received. Copies of these instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* These prescribed computer-readable formats replace the DOE/NRC Form 741 which have been previously submitted in paper form.

(2) Except as specified in §§ 150.17(d) and 150.17a, each person who, under an Agreement State specific license transfers, receives, or adjusts the inventory in any manner, of uranium or thorium source material with foreign obligations by one kilogram or more; imports or exports one kilogram or more of uranium or thorium source material; or uses one kilogram or more of any uranium or thorium source material in enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels, shall complete and submit in computer-readable format Nuclear Material Transaction Reports as specified in the instructions in NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' Each person who, under an Agreement State specific license exports one kilogram or more of uranium or thorium source material shall complete in the format listed above the licensee's portion of the Nuclear Material Transaction Report unless there is indication of loss, theft, or diversion as discussed in § 40.64(c)(1) of this chapter is identified, in which case both the licensee's and the foreign facility's information shall be reported. For imports, the shipper's portion of the form must also be completed. Copies of the instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which have been previously submitted in paper form.

* * * * *

■ 20. In § 150.17, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of nuclear material status reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person possessing, or who had possessed in the previous reporting period, at any one time and location, under an Agreement State license, special nuclear material in a quantity totaling one gram or more of contained uranium-235, uranium-233, or plutonium, shall complete and submit, in computer-readable format Material Balance Reports concerning special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. This prescribed computer-readable report replaces the DOE/NRC Form 742 which has been previously submitted in paper form. The Physical Inventory Listing Report must be submitted with each Material Balance Report. This prescribed computer-readable report replaces the DOE/NRC Form 742C which has been previously submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph as specified in the instructions in NUREG/BR–0007 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees.'' Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each person subject to this requirement shall submit a report no later than March 31 of each year. The Commission may, when good cause is shown, permit a licensee to submit Material Balance Reports and Physical Inventory Listing Reports at other times. Each licensee required to report material balance, and inventory information, as described in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person possessing, or who had possessed in the previous reporting period, at any one time and location, under an Agreement State license:

(1) One kilogram or more of uranium or thorium source material with foreign obligations, shall document holdings as of September 30 of each year and submit to the Commission within 30 days. Alternatively, these reports may be submitted with the licensee's material status reports on special nuclear material filed under part 72 or 74 of this chapter. This statement must be submitted to the address specified in the reporting instructions in NUREG/BR–007, and include the Reporting Identification Symbol (RIS) assigned by the Commission.

(2) One kilogram or more of uranium or thorium source material in the operation of enrichment services, downblending uranium that has an initial enrichment of the U^{235} isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels shall complete and submit, in computer-readable format, Material Balance and Physical Inventory Listing Reports concerning source material that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost. Reports must be submitted for each Reporting Identification Symbol (RIS) account including all holding accounts. Each licensee shall prepare and submit these reports as specified in the instructions in NUREG/BR–0007 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees.'' These reports must document holdings as of September 30 of each year and submitted to the Commission within 30 days. Alternatively, these reports may be submitted with the licensee's material status reports on special nuclear material filed under part 72 or 74 of this chapter. Copies of the reporting instructions may be obtained by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001, or by e-mail to *RidsNmssFcss@nrc.gov.* Each licensee required to report material balance, and inventory information, as described in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of the notification of a discrepancy identified by the NRC.

* * * * *

Dated at Rockville, Maryland, this 3rd day of June 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–12830 Filed 6–6–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 192

[CBP Dec. No. 08–20]

Mandatory Pre-Departure Filing of Export Cargo Information Through the Automated Export System

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice of compliance.

SUMMARY: This notice informs the public of the date when U.S. Customs and Border Protection (CBP) will require compliance with its regulations pertaining to the mandatory, pre-departure electronic filing of export information through the Automated Export System (AES). CBP regulations at 19 CFR 192.14 setting forth requirements for the advance electronic filing of export information by vessel, air, truck, and rail carriers provide a compliance date contingent upon the redesign of CBP's AES commodity module and the effective date of Department of Commerce (DOC) regulations pertaining to mandatory electronic filing of export information. Since the redesign of the AES commodity module is complete, and the DOC regulations were published as a final rule on June 2, 2008, with an effective date of July 2, 2008, and an implementation date of September 30, 2008, the CBP regulations must be complied with starting September 30, 2008.

DATES: The compliance date for the CBP regulations pertaining to the mandatory, pre-departure electronic filing of export cargo information through the AES (19 CFR 192.14) is September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Gregory Olsavsky, Director, Cargo Control Division, Office of Field Operations, 202–344–1049.

SUPPLEMENTARY INFORMATION: On December 5, 2003, CBP published a final rule in the **Federal Register** (68 FR 68140) amending the CBP regulations pertaining to the filing of export cargo information through the AES (19 CFR, Part 192, Subpart B). Specifically, the final rule added new § 192.14 to require (with a provision for exceptions) that vessel, air, truck, and rail carriers electronically file export cargo information through a CBP-approved electronic data interchange system (then and still the AES) and that such filing occur prior to departure from the United States for vessel and air carriers (24 hours for vessel carriers, two hours prior to scheduled departure time for air carriers) and prior to arrival at the border for truck and rail carriers (one hour for truck carriers, two hours for rail carriers). (The actual filing responsibility is imposed on the U.S. principal party in interest (USPPI), or its agent, representing the carrier.) These regulations were published pursuant to section 343(a) of the Trade Act of 2002, as amended by the Maritime Security Act (19 U.S.C. 2071 note). (See the published rule for a further discussion of these provisions and their underlying authorities.)

Under the 2003 CBP final rule (specifically, § 192.14(e)), the requirements of these regulations were set to be implemented upon the completion of the redesign of CBP's AES commodity module and the effective date of DOC regulations pertaining to mandatory electronic filing of export cargo information. The redesign of the AES is complete, and the DOC has recently published its regulations.

On June 2, 2008, the Bureau of the Census (U.S. Census Bureau or Census Bureau), DOC, published a final rule in the **Federal Register** (73 FR 31548) amending its Foreign Trade regulations to implement provisions of the Foreign Relations Authorization Act (FRA Act). Under the FRA Act, the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, is authorized to publish regulations mandating that all persons required to file export information via a Shippers Export Declaration (SED) under chapter 9 of title 13, United States Code (13 U.S.C.) do so through the AES. Thus, under the final rule, the Census Bureau is requiring mandatory filing of export cargo information through CBP's AES (or through AESDirect, the Census Bureau's free Internet-based system) for all shipments: Vessel, aircraft, truck, and rail. (See the published rule for a further discussion of these provisions and their underlying authorities.) The publication of these DOC regulations and the effective date set forth in those DOC regulations trigger the effectiveness of the CBP regulations.

The effective date of the Census Bureau final rule is July 2, 2008, but the Census Bureau will not commence implementation of the final rule's provisions until September 30, 2008. Accordingly, the compliance date for the CBP regulations pertaining to pre-departure electronic filing (through AES) of export cargo information, pursuant to 19 CFR 192.14(e), is the implementation date of the DOC final rule, September 30, 2008. After September 30, 2008, CBP will publish a technical amendment to the CFR amending § 192.14 to reflect the compliance date.

Dated: June 2, 2008.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E8–12627 Filed 6–6–08; 8:45 am]

BILLING CODE 9111–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2007–0318; FRL–8577–1]

RIN 2025–AA22

Community Right-To-Know; Corrections and 2007 Updates to the Toxics Release Inventory (TRI) North American Industry Classification System (NAICS) Reporting Codes; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulations to make certain updates and corrections to the list of North American Industry Classification System (NAICS) codes subject to reporting under the Toxics Release Inventory (TRI) to reflect the Office of Management and Budget (OMB) 2007 NAICS revision. EPA is making corrections to the list of NAICS codes subject to reporting under TRI that was published on June 6, 2006, in the final rule adopting NAICS for TRI reporting and is correcting a longstanding typographical error in the regulatory text.

DATES: This final rule is effective on August 8, 2008. Facilities will be required to report to TRI using 2007 NAICS codes beginning with TRI reporting forms that are due on July 1, 2009, covering releases and other waste management quantities for the 2008 calendar year.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2007–0318. 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., CBI or other information for which disclosure is restricted by statute. Certain other materials, 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 OEI 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 Public Reading Room is open Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For specific information on this rulemaking contact: Judith Kendall, Toxics Release Inventory Program Division, Mailcode 2844T, OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone: (202) 566–0750; Fax: (202) 566–0741; e-mail: *kendall.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Does This Action Apply to Me?

Entities that may be affected by this action are those facilities that have 10 or more full-time employees or the equivalent 20,000 hours per year that manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA) to report annually to EPA and States their environmental releases and other waste management quantities of covered chemicals. Under Executive Order 13423, published on January 24, 2007 (72 FR 3919), all federal facilities are required to comply with the provisions set forth in section 313 of EPCRA and section 6607 of the PPA. On April 2, 2007, the White House Council on Environmental Quality (CEQ) issued *Instructions for Implementing Executive Order 13423,* including annual reporting to the TRI program. Executive departments and agencies are required to implement the activities described in the instructions in accordance with sections 1, 2, 3 and 4(b) of the Executive Order.

To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority for Taking This Action?

EPA is finalizing this action under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499). In general, section 313 of EPCRA requires owners and operators of facilities in specified Standard Industrial Classification (SIC) codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Section 313(g)(1)(A) requires owners and operators of facilities that are subject to section 313 requirements to report the principal business activities at the facilities. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the ''Administrator [to] prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

Consistent with these authorities, EPA amended 40 CFR Part 372 to include the 2002 NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA. 71 FR 32464 (June 6, 2006). EPA is now amending 40 CFR Part 372 to include OMB's revised NAICS codes for 2007.

Owners and operators of facilities that are subject to section 313 must identify their principal business activities using 2007 NAICS codes beginning with TRI reporting forms that are due on July 1, 2009, covering releases and other waste management quantities at the facility for the 2008 calendar year.

III. Background Information

What Is the General Background for This Action?

EPA promulgated a final TRI NAICS rule on June 6, 2006, to amend its regulations for TRI, found at 40 CFR Part 372, to include the NAICS codes. The list of TRI NAICS codes that appeared in the final rule was developed from the 2002 NAICS revision. EPA is now updating that list based on the OMB 2007 NAICS revision. In addition, certain TRI-covered NAICS codes and certain exceptions and limitations to TRI-covered NAICS codes did not appear in the June 6, 2006, notice's list of TRI-covered NAICS codes and are now being included.

IV. Final Action

A. What Is the Agency's Final Action?

EPA is amending 40 CFR Part 372 to correct the list of NAICS codes for TRI reporting and to update the list using 2007 NAICS codes so that the NAICS codes listed in the TRI regulations accurately reflect the universe of covered facilities under section 313 of EPCRA and section 6607 of the PPA.

In addition, unrelated to the NAICS codes, EPA is using this rulemaking as an opportunity to correct a reference to a nonexistent section in Part 372. Specifically, § 372.5 (Persons subject to this part) reads, in pertinent part ''If the owner and operator of a facility are different persons, only one need report under § 372.17 or provide a notice under § 372.45 for each toxic chemical in a mixture or trade name product distributed from the facility.'' There is no 40 CFR 372.17 and therefore, reference to this section is an error which the Agency is proposing to revise to refer to the appropriate section on TRI reporting requirements, § 372.30 (Reporting requirements and schedule for reporting).

B. Will This Final Rule Affect the Universe of Facilities That Are Currently Required To Report to EPA and the States?

This action will not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not adding or deleting industry groups from the list of industries currently subject to section 313 reporting requirements.

C. How Will Section 313 Reporting Requirements Change as a Result of This Rule?

TRI reporting requirements will not change as a result of this final rule. This rule revises the NAICS codes to reflect

the OMB NAICS 2007 revision and corrects inadvertent omissions that occurred when identifying the NAICS codes that are associated with the SIC codes that are covered by the statute. This rule will help clarify that certain sectors are still required to report to TRI and to accurately reflect all covered sectors in the list of TRI-covered NAICS codes.

D. Office of Management and Budget (OMB) Updates to NAICS

OMB plans to update NAICS every five years with the next update scheduled for 2012. If necessary, the TRI program will issue a **Federal Register** notice to update the TRI NAICS codes at that time.

V. Summary of Public Comments and EPA Responses

No comments were received during the 30-day comment period following publication of the proposed rule to update TRI NAICS codes.

VI. What Additional Reporting Burden Is Associated With This Action?

This rule adds no new reporting requirements, and there will be no net increase in respondent burden. Facilities were first required to report their toxic chemical releases and other waste management activities to EPA using NAICS codes beginning in 2007 for reporting year 2006. Covered facilities should refer to the updated NAICS code list in 40 CFR 372.23 when reporting. Crosswalk tables between 2007 NAICS and 2002 NAICS can be found on the Internet at *http://www.census.gov/epcd/www/naics.html.*

VII. Regulatory Assessment Requirements

A. Executive Order 12866

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. Facilities that are affected by the rule are already required to report their industrial classification codes on the approved reporting forms under section 313 of EPCRA and 6607 of the PPA.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the Information Collection Request (ICR) OMB control numbers 2070–0093 (EPA ICR No. 1363–15) for Form R and 2070–0143 (EPA ICR No. 1704–09) for Form A. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Rick Westlund, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration 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 this 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 rule are TRI reporting facilities that have 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater). We have determined that, since this rule makes only very minor revisions and updates to the TRI NAICS codes that are already being used by TRI-covered facilities on TRI reporting forms, the resulting burden due to these minor changes is negligible, and will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of the regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Because this rule simply updates and makes very minor corrections to the TRI NAICS codes that have already been implemented for reporting by TRI facilities, the rule will not impose substantial direct compliance costs on TRI reporting facilities regulated under section 313 of EPCRA and 6607 of the PPA.

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 rule does not have federalism implications. It will not have a substantial direct effect on 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. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' EPA has concluded that this rule may have tribal implications as TRI reporting facilities may be on tribal lands. However, the rule simply updates and makes corrections to the TRI NAICS codes that have already been implemented for reporting by TRI facilities, including those on tribal lands. As such, the rule will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (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, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through 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

Executive Order (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 the rule addresses information collection and does not affect the level of protection provided to human health or the environment.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 3, 2008.

Stephen L. Johnson,

Administrator.

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

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.5 [Amended]

■ 2. Amend § 372.5, by removing the reference to ''372.17'' and adding in its place the reference ''372.30''.

■ 3. Amend § 372.22 by revising paragraph (b) introductory text to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(b) The facility is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in § 372.23(b) and (c) by virtue of the fact that it meets one of the following criteria:

* * * * *

■ 4. Amend § 372.23 by revising paragraphs (b) and (c) to read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

* * * * *

(b) NAICS codes that correspond to SIC codes 20 through 39.

Subsector code or industry code	Exceptions and/or limitations
113310 Logging.	
311 Food Manufacturing	Except 311119—Exception is limited to facilities primarily engaged in Custom Grain Grinding for Animal Feed (previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning); Except 311330—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311340—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries); Except 311611—Exception is limited to facilities primarily engaged in Custom Slaughtering for individuals (previously classified under SIC 0751, Livestock Services, Except Veterinary, Slaughtering, custom: for individuals); Except 311612—Exception is limited to facilities primarily engaged in the cutting up and resale of purchased fresh carcasses for the trade (including boxed beef), and in the wholesale distribution of fresh, cured, and processed (but not canned) meats and lard (previously classified under SIC 5147, Meats and Meat Products);
312 Beverage and Tobacco Product Manufacturing.	Except 312112—Exception is limited to facilities primarily engaged in bottling mineral or spring water (previously classified under SIC 5149, Groceries and Related Products, NEC); Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);
313 Textile Mills	Except 313311—Exception is limited to facilities primarily engaged in converting broadwoven piece goods and broadwoven textiles, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, broadwoven and non-broadwoven piece good converters), and facilities primarily engaged in sponging fabric for tailors and dressmakers (previously classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers)); Except 313312—Exception is limited to facilities primarily engaged in converting narrow woven Textiles, and narrow woven piece goods, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, converters, except broadwoven fabric);
314 Textile Product Mills	Except 314121—Exception is limited to facilities primarily engaged in making Custom drapery for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores); Except 314129—Exception is limited to facilities primarily engaged in making Custom slipcovers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores); Except 314999—Exception is limited to facilities primarily engaged in Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Business Services Not Elsewhere Classified, Embroidering of advertising on shirts and Rug binding for the trade);
315 Apparel Manufacturing	Except 315222—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors)); Except 315223—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors)); Except 315233—Exception is limited to custom tailors primarily engaged in making and selling bridal dresses or gowns, or women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(custom dressmakers) (previously classified under SIC Code 5699, Miscellaneous Apparel and Accessory Stores);
316 Leather and Allied Product Manufacturing.	
321 Wood Product Manufacturing.	
322 Paper Manufacturing.	

Subsector code or industry code	Exceptions and/or limitations
323 Printing and Related Support Activities	Except 323114—Exception is limited to facilities primarily engaged in reproducing text, drawings, plans, maps, or other copy, by blueprinting, photocopying, mimeographing, or other methods of duplication other than printing or microfilming (*i.e.*, instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));
324 Petroleum and Coal Products Manufacturing.	
325 Chemical Manufacturing	Except 325998—Exception is limited to facilities primarily engaged in Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging));
326 Plastics and Rubber Products Manufacturing.	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
327 Nonmetallic Mineral Product Manufacturing.	Except 327112—Exception is limited to facilities primarily engaged in manufacturing and selling pottery on site (previously classified under SIC 5719, Miscellaneous Homefurnishing Stores);
331 Primary Metal Manufacturing.	
332 Fabricated Metal Product Manufacturing.	
333 Machinery Manufacturing.	
334 Computer and Electronic Product Manufacturing.	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));
	Except 334612—Exception is limited to facilities primarily engaged in mass reproducing prerecorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of Video));
335 Electrical Equipment, Appliance, and Component Manufacturing.	Except 335312—Exception is limited to facilities primarily engaged in armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing));
336 Transportation Equipment Manufacturing.	
337 Furniture and Related Product Manufacturing.	Except 337110—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom wood kitchen cabinets and counter tops (previously classified under SIC 5712, Furniture Stores (custom wood cabinets));
	Except 337121—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom made upholstered household furniture (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture));
	Except 337122—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture nonupholstered, household type, custom wood furniture (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets));
339 Miscellaneous Manufacturing	Except 339113—Exception is limited to facilities primarily engaged in manufacturing orthopedic devices to prescription in a retail environment (previously classified under SIC 5999, Miscellaneous Retail Stores, NEC);
	Except 339115—Exception is limited to lens grinding facilities that are primarily engaged in the retail sale of eyeglasses and contact lenses to prescription for individuals (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription));
	Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);
111998 All Other Miscellaneous Crop Farming	Limited to facilities primarily engaged in reducing maple sap to maple syrup (previously classified under SIC 2099, Food Preparations, NEC, Reducing Maple Sap to Maple Syrup);
211112 Natural Gas Liquid Extraction	Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic chemicals, NEC (recovering sulfur from natural gas));
212324 Kaolin and Ball Clay Mining	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1455));
212325 Mining	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459));
212393 Other Chemical and Fertilizer Mineral Mining.	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479));
212399 All Other Nonmetallic Mineral Mining	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));
488390 Other Support Activities for Water Transportation.	Limited to facilities that are primarily engaged in providing routine repair and maintenance of ships and boats from floating drydocks (previously classified under SIC 3731, Shipbuilding and Repairing (floating drydocks not associated with a shipyard));
511110 Newspaper Publishers.	
511120 Periodical Publishers.	
511130 Book Publishers.	

Subsector code or industry code	Exceptions and/or limitations
511140 Directory and Mailing List Publishers ..	Except facilities that are primarily engaged in furnishing services for direct mail advertising including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing , Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compilers));
511191 Greeting Card Publishers.	
511199 All Other Publishers.	
512220 Integrated Record Production/Distribution.	
512230 Music Publishers	Except facilities primarily engaged in Music copyright authorizing use, Music copyright buying and licensing, and Music publishers working on their own account (previously classified under SIC 8999, Services, NEC (music publishing));
519130 Internet Publishing and Broadcasting and Web Search Portals.	Limited to facilities primarily engaged in Internet newspaper publishing (previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing), Internet periodical publishing (previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing), Internet book publishing (previously classified under SIC 2731, Books: Publishing, or Publishing and Printing), Miscellaneous Internet publishing (previously classified under SIC 2741, Miscellaneous Publishing), Internet greeting card publishers (previously classified under SIC 2771, Greeting Cards); Except for facilities primarily engaged in web search portals;
541712 Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	Limited to facilities that are primarily engaged in Guided missile and space vehicle engine research and development (previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts), and in Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified);
811490 Other Personal and Household Goods Repair and Maintenance.	Limited to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats (previously classified under SIC 3732, Boat Building and Repairing (pleasure boat building));

(c) NAICS codes that correspond to SIC codes other than SIC codes 20 through 39.

Subsector or industry code	Exceptions and/or limitations
212111 Bituminous Coal and Lignite Surface Mining.	
212112 Bituminous Coal and Underground Mining.	
212113 Anthracite Mining.	
212221 Gold Ore Mining.	
212222 Silver Ore Mining.	
212231 Lead Ore and Zinc Ore Mining.	
212234 Copper Ore and Nickel Ore Mining.	
212299 Other Metal Ore Mining.	
221111 Hydroelectric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112 Fossil Fuel Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113 Nuclear Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221119 Other Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121 Electric Bulk Power Transmission and Control.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221122 Electric Power Distribution	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221330 Steam and Air Conditioning Supply	Limited to facilities engaged in providing combinations of electric, gas, and other services, not elsewhere classified (N.E.C.) (previously classified under SIC 4939, Combination Utility Services Not Elsewhere Classified.)
424690 Other Chemical and Allied Products Merchant Wholesalers..	
424710 Petroleum Bulk Stations and Terminals.	
425110 Business to Business Electronic Markets.	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
425120 Wholesale Trade Agents and Brokers	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112 Hazardous Waste Collection	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC).

Subsector or industry code	Exceptions and/or limitations
562211 Hazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562212 Solid Waste Landfill	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562213 Solid Waste Combustors and Incinerators.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562219 Other Nonhazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562920 Materials Recovery Facilities	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2008–0104]

RIN 2127–AK27

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Side Impact Phase-In Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of a September 11, 2007 final rule that substantially upgraded Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side Impact Protection,'' by incorporating a vehicle-to-pole test into the standard, adopting technically-advanced test dummies and enhanced injury criteria, and incorporating the advanced dummies into the standard's moving deformable barrier test. To respond to petitioners' concerns about lead time as quickly as possible, the agency is publishing its response to the petitions in parts. Today's document addresses lead time issues, and other matters that need to be resolved or clarified concerning lead time and the phasing-in of the new requirements. A second document will be published subsequently that addresses the other issues raised by the petitions.

DATES: *Effective date:* August 8, 2008. If you wish to petition for reconsideration of this rule, your petition must be received by July 24, 2008.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202–366–4801. For legal issues, you may call Deirdre R. Fujita, NHTSA Office of Chief Counsel, telephone 202–366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

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I. Background

On September 11, 2007, NHTSA published a final rule that substantially upgraded Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side impact protection,'' (72 FR 51908, Docket No. NHTSA–29134).[1] Until the final rule, FMVSS No. 214 provided only thoracic and pelvic protection in a test using a moving deformable barrier (MDB) to simulate an intersection collision with one vehicle being struck in the side by another vehicle. NHTSA upgraded FMVSS No. 214 to require all light vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg or less (10,000 lb. or less) to protect front seat occupants in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects, such as utility poles and trees. By doing so it required vehicle manufacturers to assure head and improved chest protection in side crashes for a wide range of occupant sizes and over a broad range of seating positions. It ensured the installation of new technologies, such as side curtain air bags[2] and torso side air bags, which are capable of improving head and thorax protection to occupants of

[1] The final rule fulfilled the mandate of the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU),'' which was signed by President George W. Bush in August 2005. Evidently aware of the agency's then-pending notice of proposed rulemaking to upgrade FMVSS No. 214, Section 10302 of the Act directed the agency ''to complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes.''

[2] These different side air bag systems are described in a glossary in Appendix A to the September 11, 2007 final rule (72 FR at 51954).

vehicles that crash into poles and trees or of vehicles that are laterally struck by a higher-riding vehicle. The side air bag systems installed to meet the requirements of the final rule also reduce fatalities and injuries caused by partial ejections through side windows.

Under the September 11, 2007 final rule, vehicles will be tested with two new, scientifically advanced test dummies representing a range of occupants from mid-size males to small females. A test dummy known as the ES–2re represents mid-size adult male occupants. The ES–2re has improved biofidelity and enhanced injury assessment capability compared to all other mid-size adult male dummies used today. A test dummy known as the SID–IIs, the size of a 5th percentile adult female, represents smaller stature occupants. This dummy better represents occupants 5 feet 4 inches (163 cm) or less, which crash data indicates comprise 34 percent of all serious and fatal injuries to near-side occupants in side impacts.[3]

The September 11, 2007 final rule also enhanced FMVSS No. 214's MDB test by specifying the use of the ES–2re dummy in the front seat and the SID–IIs dummy in the rear seating position. Through use of both test dummies, vehicles must provide head, enhanced thoracic and pelvic protection to occupants ranging from mid-size males to small occupants in vehicle-to-vehicle side crashes.

After reviewing the comments to the notice of proposed rulemaking (NPRM)[4] preceding the final rule, the results of the agency's FMVSS No. 214 fleet testing program and manufacturers' production plans which showed installation of side air bags in vehicles ahead of the schedule proposed in the NPRM, the September 11, 2007 final rule adopted a two-year lead time prior to the beginning of the phased-in pole test requirements. We provided for a four-year phase-in period, made allowance for use of advanced credits towards meeting the new requirements, and made other adjustments to the schedule for heavier vehicles, to enhance the practicability of meeting the new requirements and provide additional flexibility to manufacturers to meet the requirements. We also adopted a phase-in for the MDB test and aligned the phase-in schedule with the oblique pole test requirements, providing also for the use of advance credits.

II. Petitions for Reconsideration

The agency received petitions for reconsideration of the September 11, 2007 final rule from: the Alliance of Automobile Manufacturers (Alliance),[5] General Motors North America (GM), Toyota Motor North America, Inc. (Toyota), American Honda Motor Co., Inc. (Honda), Nissan North America, Inc. (Nissan), Porsche Cars North America, Inc. (Porsche), the National Truck Equipment Association (NTEA), and Robert Bosch LLC (Bosch). The issues raised by the petitioners are summarized below.

a. Alliance

The Alliance stated that it supports the goal of improving side impact occupant protection beyond that already accomplished and generally supports the changes to FMVSS No. 214. The Alliance petitioned for agency reconsideration of the following issues:[6]

1. *Lead time.* The final rule specifies that manufacturers must begin meeting the upgraded pole and MDB test requirements on a phased-in schedule beginning September 1, 2009. The petitioner asked NHTSA to begin the start of the phase-in on September 1, 2011.

2. *Lower bound on speed range for the pole test.* The final rule specifies that vehicles must meet the requirements of the pole test when tested ''at any speed up to and including 32 km/h (20 mph).'' The petitioner asked that the pole test speed be specified as 26 to 32 kilometers per hour (km/h) (16 to 20 miles per hour) (mph).

3. *Clarification of phase-in requirements.* The final rule adopted a phased-in compliance schedule for the MDB test, aligned the phase-in schedule with the oblique pole test, and provided for the use of advance credits to meet the MDB requirements. The Alliance asked us to clarify that for each production year, the agency meant to have separate, concurrent phase-in requirements for the MDB and pole tests.

4. *Convertibles.* The final rule applied the pole test requirements to convertible vehicles after the agency had made a determination that it was practicable for the vehicles to meet the requirements. The Alliance petitioned the agency to allow convertible vehicles to follow the lead time requirements applicable to vehicles with a GVWR between 8,500 and 10,000 pounds, i.e., 100 percent of vehicles manufactured on or after September 1 of the fifth production year after the start of the phase-in.

5. *SID–IIs pelvic criterion.* The final rule adopted a pelvic force injury assessment reference value of 5,525 Newtons (N) for the SID–IIs small female dummy. The petitioner asked that this value be changed to 8,550 N.

6. *Rear seat dummy arm positioning in the MDB test.* The final rule specifies that the SID–IIs dummy in the rear seat of the vehicle has its upper arm in the down position. The petitioner asked that the arm be set in the detent representing a 45 degree angle between the torso and the arm.

7. *Multi-stage and altered vehicles, including vehicles with partitions.* The petitioner recommended that NHTSA ''exempt'' multi-stage/altered vehicles (including vehicles with partitions behind the front seats) from the oblique pole test requirements.

8. *FMVSS No. 301 dummy application.* The petitioner asked that the wording of FMVSS No. 301, ''Fuel system integrity,'' be revised to specify that the agency will conduct the side crash test of that standard using whichever dummies the manufacturer has used to certify the vehicle to FMVSS No. 214.

9. *Corrections of test procedures and typographical errors.* The petitioner cited omissions or errors in the regulatory text in need of correction.

b. General Motors (GM)

GM, an Alliance member, expressed support for the Alliance's petition and elaborated on its concern about the lack of a lower bound for the speed of the pole test. The petitioner stated that attempts to comply with the ''up to'' 32 km/h (20 mph) test speed will require vehicles to sacrifice significant immunity from unwanted deployments which will increase the frequency of unnecessary air bag deployments. GM petitioned NHTSA to either bound the test speed at a lower speed of 26 km/h (16 mph) or 23 km/h (14.3 mph), or delay implementation of the ''up to'' aspect of the requirement until the end of the phase-in to allow for additional sensing technology development.

c. Toyota

Toyota, an Alliance member, expressed support for the Alliance's petition and elaborated on its concern about lead time and the pole impact test speed of ''up to'' 32 km/h (20 mph). Toyota requested that the phase-in be

[3] Samaha R. S., Elliott D. S., ''NHTSA Side Impact Research: Motivation for Upgraded Test Procedures,'' 18th International Technical Conference on the Enhanced Safety Of Vehicles Conference (ESV), Paper No. 492, 2003.

[4] 69 FR 27990; May 17, 2004, Docket No. NHTSA–2004–17694; reopening of comment period, 70 FR 2105; January 12, 2005.

[5] 5 The Alliance is made up of BMW group, Chrysler LLC, Ford Motor Company, General Motors, Mercedes-Benz USA, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[6] Categorization of the issues into these nine areas was made by the Alliance in its petition.

effective from September 1, 2011. The petitioner noted that though side air bags have advanced in the years since NHTSA's NPRM, they are only one portion of the system and their deployment depends heavily on the capability of the sensors.

The petitioner stated that the typical side air bag sensor is a deceleration sensor, or G sensor. Toyota said that the state of technology for G sensors, while highly advanced, is limited by deployment ''gray zones'' that denote the measurement tolerance of the sensor. The petitioner noted that real-world evidence of inadvertent deployments exist. In late 2006, the 2005-late 2006 model year Scion tC vehicles were recalled when complaints were received of inadvertent deployment of the side air bag when the door was slammed. It noted there have been other investigations by NHTSA into complaints for other manufacturers' vehicles as well. Toyota recommended that NHTSA require 26 km/h as the lowest limit of impact velocity in the pole test, since bounding the lower impact velocity in that way would make it possible to distinguish the G sensor output necessary for side air bag deployment from the output characteristic of a door slam or minor impact event.

d. Honda

Honda supported the upgraded FMVSS No. 214 and sought correction and clarification with respect to referenced materials and test procedures, such as making FMVSS No. 214 consistent with cross-references to the test dummy used in the FMVSS No. 301 and 305 crash tests, providing for adjustment of telescopic steering columns, and clarifying adjustment of seat belt shoulder anchorages.

e. Nissan

Nissan requested additional lead time before the start of the phase-in period. The petitioner stated that the upgraded FMVSS No. 214 requirements will necessitate a redesign of the side impact air bag system, and that the pending rulemaking activity in the area of ejection mitigation raises concerns that a near-term rulemaking on ejection mitigation will put significant additional strain on Nissan's engineering resources and increase costs of compliance for both regulations.[7] The petitioner requested that NHTSA begin phasing-in the requirements on September 1, 2010. Further, the petitioner requested that we delay the effective date for convertible vehicles until a year after completion of the phase-in for other vehicle types, i.e., under the schedule of the September 11, 2007 final rule, until September 1, 2014.

f. Porsche

Porsche, an Alliance member, expressed support for the Alliance's petition and elaborated on its concern about lead time, the rear seat dummy arm position, and the pole impact test speed. The petitioner stated that two years of lead time is inadequate because the final rule imposes new crash test requirements, incorporates new test dummies with unresolved issues and new injury criteria, and ''compliance with all of the requirements, plus adequate compliance margins, has not been demonstrated by NHTSA.''

g. Volkswagen (VW)

VW, an Alliance member, expressed support for the Alliance's petition and elaborated on its belief that convertible models should be excluded from the pole test due to practicability issues.

h. National Truck Equipment Association (NTEA)

NTEA requested that NHTSA ''exempt multi-stage produced vehicles such as specialized work trucks from the new requirements of this regulation.'' Alternatively, NTEA requested that NHTSA ''consider amending the phased-in effective dates such that the effective date for multi-stage produced vehicles with a gross vehicle weight rating greater than 8,500 is September 1, 2014 (one year later than the effective date for single stage produced vehicles).''

i. Bosch

Bosch stated that it fully supported the pole test but asked that NHTSA ''modify the test set-up by optionally allowing information being made available from the Electronic Stability Control [ESC] on the vehicle CAN-bus. This would allow advanced restraint electronics to achieve the same performance and occupant protection as in real world accidents.'' Bosch stated that in the test set-up specified in the final rule, no ESC signals are communicated on the vehicle CAN-bus, since the vehicle is not sliding laterally with wheels moving on the ground. As a result, the petitioner stated, ''advanced restraint triggering algorithms cannot utilize any ESC data, resulting in significantly later TTF [time-to-fire] and thus reduced occupant protection.'' Bosch believed that certain sensor information should be used to trigger the side curtain air bags and torso side air bags as soon as possible. Bosch recommended that the agency should ''directly feed-in the lateral velocity of 20 mph cos (15°),'' or feed in ''the ESC-data communicated on the CAN-bus during a real lateral pole crash (with 20 mph under 75°)'' provided by the original equipment manufacturer.

III. To Which Issues From the Petitions for Reconsideration Does This Rule Respond?

To respond to petitioners' concerns about lead time as quickly as possible, the agency is publishing its response to the petitions for reconsideration in parts. Today's document addresses lead time issues, and other matters that need to be resolved or clarified concerning lead time and the phasing-in of the new requirements. A second document will be published subsequently that addresses the other issues raised by the petitions.

This final rule:

a. Extends the lead time period before manufacturers must begin phasing in vehicles to meet the upgraded FMVSS No. 214 requirements to September 1, 2010 and amends the percentages of manufacturers' vehicles that are required to meet the new requirements from 20/50/75/all to 20/40/60/80/all[8];

b. Specifies the test speed for the pole test as ''26 km/h to 32 km/h'' (16 mph to 20 mph) until the end of the phase-in, at which time vehicles must meet the requirements of the pole test when tested ''at any speed up to and including 32 km/h (20 mph)'';

c. Delays the effective date for convertible vehicles until after completion of the phase-in for other vehicle types, i.e., until September 1, 2015;

d. Delays the effective date for multi-stage vehicles and alterers until after completion of the phase-in for all other vehicle types, i.e., until September 1, 2016; and,

e. Corrects the omissions and minor errors found in the regulatory text relating to the earning of credits for early compliance, the SID–IIs dummy arm positioning, the definition of limited line manufacturer, and the reinstatement of the seat adjustment procedure for the SID dummy.

[7] NHTSA has announced that it is developing a proposal for an ejection mitigation containment requirement. (''NHTSA Vehicle Safety Rulemaking Priorities and Supporting Research: 2003–2006,'' July 2003, Docket 15505.) Additionally, Sec. 10301 of SAFETEA–LU requires the Secretary to issue by October 1, 2009 an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions (49 U.S.C. 30128(c)(1)).

[8] ''All'' vehicles must meet the requirements without the use of advance credits.

Each of these issues is discussed below in this preamble.

IV. The Issues To Be Addressed in a Later Document

The issues from the petitions for reconsideration that we will be resolving in a later notice are listed below. We will address requests pertaining to:

a. The SID–IIs pelvic criterion;

b. Whether vehicles manufactured in more than one stage, particularly with partitions, should be excluded from the pole test;

c. The specification as to which test dummy will be used in FMVSS No. 301 and FMVSS No. 305 crash tests;

d. Bosch's suggestion to optionally allow sensor information to be fed into the restraint triggering algorithms; and,

e. Further correction of typographical and other minor errors in the regulatory text set forth in the September 11, 2007 final rule.

V. Response to Petitions

a. Extension of Lead Time and Phase-In Percentages

The Alliance, GM, Nissan, Porsche and Toyota petitioned the agency to revise the lead time schedule. There was general concern regarding the technical and practical challenges of meeting the new requirements with two years of lead time.

NHTSA specified a two-year lead time in the September 11, 2007 final rule based on an analysis of product plans submitted by seven vehicle manufacturers, whose combined production accounted for approximately 90 percent of all light vehicle sales. The data on planned side air bag installations and projected sales through model year (MY) 2011 indicated that 90 percent of all MY 2010 light vehicles will be equipped with side air bags protecting the head, and 72 percent will be equipped with side air bags protecting the thorax. The percentage of side air bags protecting the head was fairly uniform between the manufacturers. Further, according to test results from the agency's FMVSS No. 214 fleet testing program, we estimated that the majority of currently available head side air bags would meet the head protection requirement of this final rule's pole test (about 80 percent of tested vehicles equipped with head air bags passed the pole test). However, with regard to thorax bags, the product plans indicated there were large differences between manufacturers in the percentage of thorax bags being planned, particularly for light trucks. Also, of the vehicles tested equipped with thorax bags, only 56 percent met the chest requirement in the pole test.

From our FMVSS No. 214 fleet testing program, we believed that side air bags installed in most passenger cars and small and medium size light trucks (including SUVs and minivans) would not need extensive modifications to meet the new FMVSS No. 214 requirements. Instead, we believed that the rule would only result in current side air bags having to be widened and the inflators made more robust, redesigns that we believed could reasonably be made with a two-year lead time and the phase-in percentages of the final rule.[9] We believed that, while some vehicles would need an added sensor at the location of the SID–IIs 5th percentile female dummy at the full-forward seating position, current sensor technology used today (e.g., to meet the ''voluntary commitment'' made by auto manufacturers)[10] would generally suffice to enable manufacturers to certify vehicles to the pole test requirements. We believed that extensive vehicle structural modifications were not necessary for passenger cars and small and medium size light trucks to meet the pole test requirements, while it would take longer than two years to add a thorax bag to a vehicle model that has not had one previously (e.g., vehicles with a GVWR greater than 8,500 lb).

Moreover, based on our experience, if structural changes were needed, the modification could be done within three to four years since most vehicle lines would likely experience some level of redesign over the next three to four years. Accordingly, the 75 percent phase-in percentage was adopted to elongate the phase-in schedule one year longer than proposed and to provide vehicle manufacturers the flexibility of a four-year phase-in schedule to incorporate side structure and restraint system modifications into their production cycles for those vehicles needing such changes. The additional phase-in year provided more opportunity to incorporate side impact protection design changes during the course of each manufacturer's normal production cycle.

After considering the information submitted in the petitions for reconsideration, NHTSA has decided to provide an additional year of lead time to the two-year lead time provided in the final rule. The agency's determination of the lead time of the final rule was based in large part on the information from the manufacturer survey, on the conformance dates of the voluntary commitment,[11] and on the results of the FMVSS No. 214 fleet testing program. We assumed, based on the information, that manufacturers would be able to meet the requirements with current sensor designs and configurations, did not need to redesign vehicle interior spacing, or to undertake a substantial door and seat redesign to accommodate the side air bag systems needed to meet the requirements of the pole test. We recognized that the final rule would necessitate changes to the air bag design, inflator characteristics and door trim and roof rail designs, which typically are associated with a three-year lead time for implementation. However, we assumed that a two-year lead time would be sufficient given our estimate that 90 percent of MY 2010 light vehicles will be equipped with side air bags protecting the head,

[9] Under the phase-in schedule adopted in the final rule, the following percentages of each manufacturer's vehicles were required to meet the new requirements: 20 percent of a ''light'' vehicles (GVWR less or equal to 3,855 kilograms (kg)(8,500 pounds)(lb)) manufactured during the period from September 1, 2009 to August 31, 2010; 50 percent of light vehicles manufactured during the period from September 1, 2010 to August 31, 2011; 75 percent of light vehicles manufactured during the period from September 1, 2011 to August 31, 2012; 100 percent of light vehicles manufactured on or after September 1, 2012, including limited line and small volume vehicles; 100 percent of vehicles with a GVWR greater than 3,855 kg (8,500 lb) manufactured on or after September 1, 2013 and vehicles produced by alterers and multi-stage manufacturers. Vehicle manufacturers were able to earn credits for meeting the requirements ahead of schedule.

[10] On December 4, 2003, the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers (AIAM), and the Insurance Institute for Highway Safety (IIHS) announced a new voluntary commitment to enhance occupant protection in front-to-side and front-to-front crashes. The industry initiative consisted of improvements and research made in several phases, focusing, among other things, on accelerating the installation of side impact air bags. See footnote 8 of the September 11, 2007 final rule (72 FR 51910).

[11] Under Phase 1 of the voluntary commitment, manufacturers agreed that, not later than September 1, 2007, at least 50 percent of each manufacturer's new passenger car and light truck (GVWR up to 3,855 kg) (8,500 lb) production intended for sale in the U.S. will be designed in accordance with either of the following head protection alternatives: (a) HIC_{36} performance of 1000 or less for a SID–H3 crash dummy in the driver's seating position in an FMVSS No. 201 pole impact test, or (b) HIC_{15} performance of 779 or less (with no direct head contact with the barrier) for a SID–IIs crash dummy in the driver's seating position in the Insurance Institute for Highway Safety (IIHS) MDB perpendicular side impact test. In Phase 2, not later than September 1, 2009, 100 percent of each manufacturer's new passenger car and light truck (GVWR up to 3,855 kg)(8,500 lb) production will be designed in accordance with the IIHS MDB recommended practice of HIC_{15} performance of 779 or less for a SID–IIs crash dummy in the driver's seating position. See Docket NHTSA–2003–14623–13.

presumably in conformance with the voluntary agreement.

Information submitted by the petitioners indicates that notwithstanding conformance with the voluntary agreement, new changes will have to be incorporated into vehicles to meet the pole test requirements, including new sensors and wider air bags, as well as changes to interior spacing configurations, door, seat and roof designs. Current side air bag systems conforming to the voluntary commitment will need to be made more robust to meet the FMVSS No. 214 pole test,[12] and that for vehicles that do not meet the pole test, redesigning the vehicle interior to accommodate systems that meet the requirements is a significant undertaking that cannot be accomplished within two years.[13] Data from pole tests we conducted in support of NHTSA's New Car Assessment Program (NCAP) support this assessment. We tested six vehicles that were in conformance with the voluntary agreement and that had been characterized as ''good'' performers in the IIHS rating program. Of these, four of the six vehicles did not meet the criteria of the pole test when tested with the SID–IIs test dummy: two vehicles need improved head protection, and four vehicles need better pelvic protection. The results of the testing are set forth in Table 1, below.

TABLE 1. SID—IIS OBLIQUE POLE TESTS WITH VEHICLES RATED ''GOOD'' BY IIHS

NHTSA test No. *	Vehicles	Vehicle class	Side air bag type	HIC36	Lower spine (Gs)	Pelvis force (N)
				1000	82	5525
V06287	2007 Honda Pilot	SUV	Curtain + Torso	3464	68	6649
V06293	2007 Nissan Quest	Van	Curtain	5694	79	5786
V06285	2007 Ford Escape	SUV	Curtain + Torso	407	65	6515
V06284	2006 VW Passat	Medium PC	Curtain + Torso	323	40	3778
V06286	2006 Subaru Impreza	Medium PC	Combo	184	58	4377
V06283	2007 Toyota Avalon	Heavy PC	Curtain + Torso	642	62	6672

* Test numbers correspond to those in the NHTSA vehicle crash test database, *http://www-nrd.nhtsa.dot.gov/database/nrd-11/veh_db.html*.

To provide manufacturers more time to meet the upgraded FMVSS No. 214 requirements, this document extends the lead time period before manufacturers must begin phasing in vehicles to meet the upgraded FMVSS No. 214 requirements to September 1, 2010. Thus, three years of lead time have been provided to account for redesigns to the vehicle interior necessitated by the demands of the pole test. At the same time, we do not believe that more than a total of three years of lead time should be necessary, since interior redesigns typically can be achieved in three years and since we have also extended the phase-in period. To facilitate the installation of side impact air bags and other safety countermeasures to meet the new requirements in light vehicles as quickly as possible, we are providing only one additional year of lead time, but we are adjusting the phase-in schedule of manufacturers' vehicles that are required to meet the new requirements from 20/50/75/all to 20/40/60/80/all.[14] The adjusted schedule will also continue to couple the phase-in of the MDB with the pole test to enhance the practicability of meeting the new requirements. Moreover, Nissan is correct that the agency's upcoming rulemaking on ejection mitigation containment requirements will build on the foundations laid by the September 11, 2007 final rule.[15] For the convenience of the reader, the revised compliance schedule is shown in Table A of the Appendix to this preamble.

b. Test Speed

The agency has decided to retain in the long run that the FMVSS No. 214 pole test requirements must be met at any speed ''up to'' 32 km/h (20 mph), but has decided to bound the test speed at a lower speed of 26 km/h (16 mph) until the end of the phase-in to allow for additional sensing technology development.

The suggestion that the pole test speed should be limited to 26 to 32 km/h (16 to 20 mph) was made by the Alliance and some other commenters to the NPRM. In our final rule, we decided against the suggestion because our crash data showed that crashes with a delta-V of 26 km/h (16 mph) or less resulted in approximately a third of the fatalities and almost half of the MAIS 3–5 non-fatal injured occupants in near-side crashes.[16] Based on the crash data, we believed there was a safety need to require manufacturers to ensure that vehicles provide improved protection in crashes below 26 km/h (16 mph). We wanted to ensure that occupants would be protected if, for example, head contact could occur with a pole or other rigid narrow object. We also believed that the threshold for deployment of side impact air bags would vary based on vehicle design. Establishing a lower test speed range in the oblique pole test could have the causal effect of establishing ''design points'' for restraint systems that may or may not be optimal to vehicle design or occupant protection.

We continue to believe that prescribing a 26 km/h (16 mph) lower bound for the test speed might force a test condition that would not be ideal for vehicle safety. An occupant's head could strike a pole or rigid narrow object in crashes at less than 26 km/h (16 mph). To address the fatalities and serious injuries occurring in near-side crashes with a delta-V of 26 km/h (16 mph) or less, we again decline the request to permanently bound the pole test speed to 26 to 32 km/h (16 to 20 mph).

However, at the time of the final rule, the agency was not aware of any technical challenges to manufacturers to comply with the pole test requirements at the lower range of test speeds. The agency assumed the side impact sensing technology had developed to the state where sensors could discriminate between collision events at lower speeds and non-crash events. The

[12] E.g., the Alliance stated in its petition for reconsideration (p. 5): ''NHTSA's fleet data has demonstrated that, in order to comply with the requirements using the ES2–re and SID–IIs dummies, a vehicle manufacturer will need to provide countermeasures beyond the installation of a side curtain air bag or a combination side air bag.''

[13] Toyota petition for reconsideration.

[14] Other amended provisions related to the phase-in percentages, including the phase-in requirements for convertible vehicles, vehicles manufactured in more than one stage, and altered vehicles are addressed in sections below in this preamble.

[15] NHTSA believes that side curtains installed pursuant to FMVSS No. 214's pole test could be one countermeasure developed to satisfy ejection mitigation requirements.

[16] The analysis was based upon front-outboard adult occupants with serious or fatal injuries in 1997–2003 NASS non-rollover, near-side crashes.

comments to the NPRM did not raise concerns about the ability of current sensing technology to operate satisfactorily at the lower test speeds, and we did not consider in our fleet testing program the potential problems sensors would have in detecting crashes from non-crash events at the lower speeds.

The petitions for reconsideration now bring to light the limitations of current sensing technology to distinguish between situations where the side air bag should and should not deploy. GM confirmed our understanding that the lower speed at which side air bags will need to deploy will differ based upon the vehicle size, weight and available crush space between the occupant and the door trim. The petitioners also suggested that side air bag deployment will depend on whether the SID–IIs 5th percentile female test dummy or the ES–2re 50th percentile adult male test dummy is seated in the vehicle. We agree with the petitioners' explanations that side crashes require the sensing system to quickly discern whether to deploy the air bag. GM stated that side crashes not only require a much faster decision-making process compared to frontal impacts, but they typically require deployment at much lower vehicle crash energy levels, which makes them difficult to distinguish from abuse and other non-deployment events. According to petitioners, current sensing strategies (which use deceleration sensors, or ''G sensors'') cannot at lower test speeds distinguish the output needing side air bag deployment from the output characteristic of a door slamming or minor impact event. Petitioners also stated that at lower speeds in both the FMVSS No. 214 pole and MDB tests, the G sensor output is similar in magnitude and profile to door slams.

Unintended side air bag deployments have posed problems in the past, when side air bags were first introduced on the market in the late 1990s. Table 2 shows investigations conducted by NHTSA's Office of Defects Investigation (ODI) into unintended side air bag deployments. Separate from Table 2, there have also been a number of other manufacturer voluntary recalls involving unintended side air bag deployments.

TABLE 2.—ODI INVESTIGATIONS INTO UNINTENDED SIDE AIR BAG DEPLOYMENTS

ODI investigation No.	Vehicle model(s)	ODI resolution
PE04–081	2001–2002 Volkswagen Jetta, Golf and GTI	Closed without recall.
PE99–061	1998–1999 Cadillac DeVille	02V217 for 215K vehicles.
PE99–017	1999 BMW 3–Series	99V063 for 32,500 vehicles.
PE00–042	1999–2000 Lincoln Continental	Closed without recall.
RQ00–013	1997 Mercedes Benz E & SL Class	00V388 for 16,255 vehicles.
PE02–011	1999–2001 BMW 3–Series	02V223 for 20,500 vehicles.

After considering the issues raised by the petitioners, we are concerned about the potential safety implications associated with side air bags deploying without a side impact crash. NHTSA concludes that if the pole test speed were not bounded in the near term with a test speed of 26 km/h (16 mph), unwarranted deployments of the side air bags could become an issue and could negatively impact public acceptance of side air bags. The agency has thus decided to provide the manufacturers more time to select and develop the proper technology for their vehicles.

Accordingly, we are delaying the implementation of the ''up to'' requirements to the end of the phase-in. To meet the requirement that the pole test injury criteria must be met at any speed ''up to'' 32 km/h (20 mph), manufacturers will have to use new technologies and/or more sophisticated algorithms that distinguish a real crash from a non-event. GM indicated that it is working on the new sensing technologies, but needs additional time to develop them. We are therefore granting the request of the petitioner to bound the test speed range from 26 km/h to 32 km/h (16 to 20 mph) until the end of the phase-in. By providing manufacturers one year extra lead time and by extending the phase-in another year, the manufacturers will have sufficient time to develop the crash sensing technology to meet the full speed range of the pole test.

c. Effective Date for Convertible Vehicles

VW requested that convertibles be excluded from the pole test altogether ''due to their structural limitations which preclude the installation of roof-mounted curtain air bags for occupant protection.'' The Alliance requested that convertible vehicles be allowed to follow the lead time requirements applicable to vehicles with a GVWR greater than 8,500 lb, i.e., all vehicles manufactured on or after September 1 of the fifth production year after the start of the phase-in. The Alliance stated that it did not believe the challenges for convertible vehicles to meet the side pole test requirements are insurmountable. However, the Alliance stated, due to the inherent design constraints of convertibles (i.e., lack of pillars and roof rail to store and deploy curtain air bags) and the need to apply significant structural changes, the lead time needed to ensure compliance with the pole test is significantly longer for convertibles than for non-convertible vehicles. Nissan similarly requested that we delay the effective date for convertible vehicles until the last year of the phase-in, to provide manufacturers time to develop new potential countermeasures for convertibles, such as a seat-mounted thorax and curtain air bag deployed from the door.

In our FMVSS No. 214 fleet testing program, we tested two convertible vehicle models, the 2005 model year Saab 9–3 convertible and 2005 model year Volkswagen Beetle. Both vehicle models were tested to the oblique pole test requirements using an ES–2re dummy and in each case, the vehicle met the requirements of the final rule. The tests were conducted with the ES–2re 50th percentile male dummy because the agency believed it would be more difficult for convertibles to meet the pole test with the ES–2re than with the SID–IIs 5th percentile female dummy. The ES–2re is equipped with more instrumentation in the abdomen and thorax, and its larger mass requires more energy management by the restraint system. In their petitions for reconsideration, the Alliance and VW disagreed that the ES–2re dummy test was more challenging. The Alliance cited the FMVSS No. 214 fleet testing results and stated ''that the vast majority of these vehicles had larger injury assessment values when tested with the SID–IIs dummy: six out of ten vehicles had larger HIC_{36} values, nine out of ten vehicles had larger lower spine acceleration values, and all vehicles [footnote in text: 'Pelvic Force data for the SID–IIs was not available for one of the ten vehicles tested'] had larger

pelvic force values.'' As a result, the Alliance stated, ''NHTSA has not demonstrated practicability of this rule as applied to convertibles'' and requested more lead time for convertible vehicles.

After considering the issues raised by the petitioners, we have decided against VW's request to exclude convertibles from the pole test requirements. As explained in the September 11, 2007 final rule, there is safety need to include convertible vehicles in the pole test. In our comparative analysis between convertibles and all other passenger cars in side impact crashes with fixed objects, we found that 11.3 percent of convertible fatalities are from single vehicle side impacts into poles/trees, compared to 6.5 percent of other passenger car fatalities from single vehicle side impacts into poles/trees. The fatality rate [17] from single vehicle side impacts into poles/trees is 9.64 for convertibles, and 6.12 for all other passenger cars. When specifically looking at pole/tree fatality rates, convertibles are 58 percent higher than all other passenger cars. In general, NHTSA's crash data indicated that convertibles have higher rates of fatalities in run-off-the-road type crashes, such as single vehicle side impacts, rollovers, etc. Consequently, requiring enhanced protection against tree and pole side impacts will be paramount in improving the safety of these vehicles.

We have also demonstrated the practicability of meeting the pole test for convertible vehicles. The 2005 Saab 9–3 convertible and the 2005 Volkswagen Beetle met the pole test requirements with seat-mounted head/thorax air bag systems. There are other countermeasures that are effective and practicable for installation in convertible body types, such as door-mounted upward-inflating curtains as introduced in the 2006 model year Volvo C70 convertible and which Nissan has indicated they are now developing for its vehicles. We disagree with the Alliance that, as shown in the FMVSS No. 214 fleet testing program, we should not have used the ES–2re dummy to assess the practicability of meeting the pole test. The Alliance compared the performance of vehicles tested with the ES–2re and the SID–IIs to conclude that the SID–IIs resulted in a more rigorous test of the side air bag system. However, almost all of the vehicles cited by the Alliance (nine of ten vehicles) were equipped with roof-mounted window curtain side air bags. In determining which test dummy, the ES–2re or the SID–IIs, would produce a more demanding evaluation of a countermeasure available to convertible vehicles, we sought to assess the practicability of meeting the pole test with a seat-mounted side air bag system since convertibles will not have the roof-mounted countermeasure available to them. For seat-mounted systems, we determined that using the ES–2re, with its larger mass and more complex instrumentation as compared to the SID–IIs, would be more challenging to manufacturers of convertible vehicles in the pole test. Our test data showed that the two convertible vehicles evaluated in the FMVSS No. 214 fleet testing program met the pole test requirements.

As for testing with the SID–IIs, practicability was also shown by the results of the 2005 Subaru Forester tested in the FMVSS No. 214 fleet testing program. While not a convertible, the vehicle had a seat-mounted head and thorax combination side air bag that met the injury criteria of the pole test when tested with the SID–IIs. A recent oblique pole test of the 2006 VW Passat showed that the seat-mounted torso side air bag passed the lower spine and pelvic force injury criteria of the pole test with the SID–IIs test dummy (see Table 1, *supra*), again demonstrating the potential use of effective seat-mounted countermeasures for convertible vehicles in protecting small occupants.

Nonetheless, although data indicate that manufacturers are capable of installing countermeasures in convertible vehicles to meet the pole test, we agree that some manufacturers need more time to develop new countermeasures for convertible vehicles and implement changes to the door trim, packaging and air bag systems to meet the pole test requirements. Door-mounted, upwardly deploying curtain air bag technology remains a feasible option for head protection in convertibles. To provide manufacturers of convertibles more time to develop more advanced technologies, this final rule delays the compliance date for convertibles until September 1, 2015.

d. Effective Date for Vehicles Manufactured in More Than One Stage and for Altered Vehicles

The September 11, 2007 final rule specified a compliance date of September 1, 2013, that applied to vehicles with a GVWR greater than 3,855 kg (8,500 lb), to altered vehicles, and to vehicles manufactured in more than one stage. NTEA requested that NHTSA amend the compliance dates ''such that the effective date for multi-stage produced vehicles with a gross vehicle weight rating greater than 8,500 is September 1, 2014 (one year later than the effective date for single stage produced vehicles).'' NTEA stated that it would not be possible for manufacturers of vehicles produced in more than one stage (''multi-stage manufacturers'') of vehicles with a GVWR greater than 3,855 kg (8,500 lb) to comply on the same date as the chassis manufacturers of those vehicles, since multi-stage manufacturers ''cannot begin planning their compliance strategies until the chassis manufacturers have validated the single stage version of the chassis.''

NHTSA has decided to grant the request to provide multi-stage manufacturers additional time to meet the upgraded FMVSS No. 214 requirements. Today's final rule provides vehicles manufactured in more than one stage and altered vehicles until a year after completion of the phase-in for all other vehicle types, i.e., until September 1, 2016, to meet the pole test and the upgraded MDB test. To enhance the ability of manufacturers of these vehicles (which are often small businesses) to manage resources to meet the upgraded FMVSS No. 214 requirements, NHTSA is delaying the effective date for all vehicles manufactured in more than one stage and altered vehicles subject to the upgraded FMVSS No. 214 requirements, and not just vehicles with a GVWR greater than 3,855 kg (8,500 lb). This is consistent with the agency's final rule on ''Vehicles Built In Two Or More Stages,'' 70 FR 7414, February 14, 2005.

e. Clarifications and Corrections

This final rule corrects some of the omissions and minor errors found in the regulatory text, as discussed below.

1. Earning Credits for Early Compliance

The final rule adopted a phased-in compliance schedule for the MDB test, aligned the phase-in schedule of the MDB test with that of the pole test, and provided for the use of advance credits to meet the MDB and pole test requirements. The Alliance asked us to clarify that for each production year, the agency meant to have separate, concurrent phase-in requirements for the MDB and pole tests. Stated differently, the petitioner asked for clarification as to whether

[17] Data source: FARS 1999–2003. Model years 1998–2002 were used. Total registration years (in millions) were 140.8 for all other passenger cars and 4.7 for convertibles. The fatalities per million registration years in single vehicle side crashes were 11.32 for all other passenger cars and 16.71 for convertibles. The fatalities per million registration years in single vehicle side ''pole/tree'' crashes were 6.12 for all other passenger cars and 9.64 for convertibles.

manufacturers may earn a credit toward meeting the upgraded MDB requirement if a vehicle met the upgraded MDB requirement, and not the pole test, ahead of schedule, and vice versa (i.e., manufacturers may earn a credit toward meeting the pole test requirement if a vehicle met the pole test ahead of schedule, and not the upgraded MDB requirement).

Our answer is yes. We did not intend that a vehicle may only earn a credit if it met both the upgraded MDB and pole tests. In the September 11, 2007 final rule, we aligned the MDB and pole test phase-in schedules, and provided advance credits, to let manufacturers optimize engineering resources in designing vehicles that met the MDB and pole test requirements simultaneously, thus reducing costs. We sought to enable manufacturers the ability to use credits in a manner that efficiently distributes their resources to meet the requirements. To enhance manufacturers' ability to optimize the allocation of engineering resources and to encourage the early introduction of vehicles meeting the upgraded MDB test or the pole test, the phase-in schedules for the MDB and pole test requirements were made separate and concurrent. Thus, a vehicle that is not subject to the MDB test (e.g., a vehicle with a GVWR greater than 6,000 lb) may earn a credit toward the pole test if the manufacturer installed side air bags meeting the FMVSS No. 214 pole test ahead of schedule. Similarly, with separate compliance schedules, a manufacturer has incentive to modify a vehicle to meet the upgraded MDB requirements in the short term, to earn a credit toward the MDB phase-in, even when the vehicle needs a few years to meet the pole test. The agency has clarified the regulatory text of the standard to make clear that the phase-in schedules are separate and that manufacturers may earn credits for meeting the MDB test separate from earning credits for meeting the pole test, and vice versa.

2. SID–IIs Dummy Arm Positioning

In the preamble to the September 11, 2007 final rule, we specified that the SID–IIs arm position for the dummy seated in the driver and front passenger seating positions will be 40 degrees relative to torso (72 FR at 51939).[18] The Alliance petitioned: (a) To change this specification to one that specifies that the arm position is set in the detent representing a 45 degree angle between the torso and the arm; and (b) to use this specification for all seating positions in both the pole test and MDB tests.

The agency agrees to these suggestions. The reference to the 40 degree angle relative to torso was incorrect, as the shoulder-arm joint allows for discrete arm positions at 0, ± 45, ± 90, ± 135, and 180 degree settings where positive is forward of the spine, and does not have a discrete 40 degree setting.[19] Further, the agency inadvertently did not address in the September 11, 2007 final rule the arm position for the rear seat dummy. We agree with the Alliance that the arm position for the rear seat dummy should be placed at the 45 degree angle detent position, for the reasons explained in the September 11, 2007 final rule (testing with the arm up reduces possible interactions with the armrest—and resulting test variability—and also will not degrade the robustness of the test). Further, we agree with the petitioner that testing with the arm up results in a more meaningful test, as the dummy's thorax is fully exposed to the door trim.

3. Definition of Limited Line Manufacturer

In the regulatory text of FMVSS No. 214 published in the September 11, 2007 final rule, the definition of ''limited line manufacturer'' states that the term ''carline'' is defined in 49 CFR 585.4. Delphi pointed out that the reference to 585.4 is incorrect. The correct reference is 49 CFR 583.4. (See definition of ''limited line manufacturer'' in Subpart H of Part 585, ''Side Impact Protection Phase-In Reporting Requirements,'' published with the FMVSS No. 214 final rule, September 11, 2007. 72 FR 51972). This document makes the correction to FMVSS No. 214.

4. Reinstate the Seat Adjustment Procedure for 50th Percentile SID and SID–HIII Dummy in the MDB and FMVSS No. 201 Pole Tests, Respectively

The final rule adopted the seat adjustment procedure for the 50th percentile male ES–2re dummy proposed in the NPRM and removed from the regulatory text the procedure previously used for the 50th percentile male SID dummy in the MDB test. The seat adjustment procedure referenced for the pole test using the SID–HIII dummy (49 CFR Part 572, Subpart M) in FMVSS No. 201, ''Occupant protection in interior impact,'' was also changed to be consistent. The Alliance petitioned the agency to reinstate the seat adjustment procedure that had been in FMVSS No. 214 before the September 11, 2007 final rule (''pre-existing seat adjustment procedure'') to use with the SID and SID–HIII dummy because the new seat adjustment procedure can result in a different seat position and dummy location than when using the pre-existing seat adjustment procedure. The petitioners stated that vehicles currently certified to FMVSS Nos. 214 and 201 with the SID and SID–HIII would have to be recertified to account for changes in the seat position and dummy location.

The agency agrees with the Alliance that the new seat adjustment procedure can place the SID and SID–HIII dummy at a slightly different location in the vehicle when compared to the pre-existing seat adjustment procedure. It was not our intent for manufacturers to recertify vehicles to a new dummy position with the SID and SID–HIII dummy during the phase-out of the pre-existing FMVSS requirements. Therefore, we agree to reinstitute the pre-existing seat adjustment procedure for use with the SID in the MDB test until the phase-in of the new requirements is complete and for use with the SID–HIII in FMVSS No. 201 pole tests. Thus, when the SID and SID–HIII are used in compliance testing, the seat adjustment procedure that had been in FMVSS No. 214 before the September 11, 2007 will be used. When we use the ES–2re dummy in compliance tests, we will use the new seating procedure adopted in the September 11, 2007 final rule.

VI. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document amends the lead time and phase-in percentages set forth in the September 11, 2007 final rule and specifies the test speed for the pole test as 26 km/h to 32 km/h (16 mph to 20 mph) until the end of the phase-in. These changes are made to reflect better the capabilities of manufacturers in meeting the

[18] On page 51939 of the September 11, 2007 final rule (72 FR at 51939), second full sentence of the second column, we described how the arm of the SID–IIs in the front seating positions would be raised in the ''MDB'' test. We meant to describe the SID–IIs arm position in the pole test, since the SID–IIs is not used in the front seating positions in the MDB test.

[19] Similarly, the September 11, 2007 regulatory text states that the dummy's shoulder-arm joint allows for a discrete arm position at a ±140 degree setting where positive is forward of the spine. The value should be ''135'' degrees rather than ''140'' degrees. This document makes the correction.

requirements of the September 11, 2007 final rule. The document also corrects minor errors and clarifies text of the final rule. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this action will not affect the price of new motor vehicles.

The rule will have a positive effect on motor vehicle manufacturers. This final rule amends the lead time and phase-in percentages set forth in the September 11, 2007 final rule and specifies the test speed for the pole test as 26 km/h to 32 km/h (16 mph to 20 mph) until the end of the phase-in. These changes will positively affect vehicle manufacturers, including small vehicle manufacturers, of which there are four,[20] in that it better reflects the manufacturing capabilities of the manufacturers in meeting the September 11, 2007 final rule than the lead time and phase-in requirements as originally established in that document. The rule also provides more time to final-stage manufacturers and alterers to meet the requirements of the September 11, 2007 final rule. This will have a positive impact on those manufacturers, as they will be given more time and thus more flexibility to manage their engineering designs and resources in planning for compliance with the FMVSS No. 214 upgrade.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does 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.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's requirements. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The September 11, 2007 final rule contained a collection of information because of the phase-in reporting requirements. There is no burden to the general public.

The September 11, 2007 final rule required manufacturers of passenger cars and of trucks, buses and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the vehicle-to-pole and MDB test requirements of FMVSS No. 214 during the phase-in of those requirements. The purpose of the reporting and recordkeeping requirements is to assist the agency in determining whether a manufacturer of vehicles has complied with the requirements during the phase-in period. Today's final rule extends the lead time period and phase-in of both the pole and MDB test requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113),

all Federal agencies and departments shall use technical standards that are developed or

[20] Avanti, Panoz, Saleen, and Shelby.

adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

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, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The September 11, 2007 final rule discussed that NHTSA considered a proposed ISO test procedure found in ISO/SC10/WG1 (October 2001) and ISO draft technical reports related to side air bags performance to guide our decision-making to the extent consistent with the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30101 *et seq.*). In today's final rule, we explain our reasons for retaining the requirement that the FMVSS No. 214 pole test injury criteria must be met at any speed ''up to'' 32 km/h (20 mph).

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

Appendix to Preamble

TABLE A OF APPENDIX.—PERCENT OF EACH MANUFACTURER'S VEHICLES THAT MUST COMPLY WITH THE POLE AND MDB TESTS DURING THE PRODUCTION PERIOD

Production period	Pole test			MDB test	
	Pole test speed	Exclusions from pole test		Percent of vehicles that must comply with pole test during production period *	Percent of vehicles that must comply with MDB test during production period *
		GVWR > 8,500 lb	Convertibles		
September 1, 2010 to August 31, 2011.	26 to 32 km/h	Excluded	Excluded	20 percent	20 percent.
September 1, 2011 to August 31, 2012.	26 to 32 km/h	Excluded	Excluded	40 percent	40 percent.
September 1, 2012 to August 31, 2013.	26 to 32 km/h	Excluded	Excluded	60 percent	60 percent.
September 1, 2013 to August 31, 2014.	26 to 32 km/h	Excluded	Excluded	80 percent	80 percent.
On or after September 1, 2014.	Up to 32 km/h	Excluded	Excluded	''All'' vehicles excluding altered and multi-stage vehicles; all vehicles produced by limited line and small volume manufacturers.	''All'' vehicles excluding altered and multi-stage vehicles; all vehicles produced by limited line and small volume manufacturers.
On or after September 1, 2015.	Up to 32 km/h	Included	Included	All vehicles GVWR > 8.500 lb, and convertibles, excluding altered and multi-stage vehicles.	
On or after September 1, 2016.	Up to 32 km/h			All altered and multi-stage vehicles.	All altered and multi-stage vehicles.

* Limited line and small volume manufacturers, alterers, and multistage manufacturers are excluded from the 20/40/60/80 phase-in requirements for both the pole and MDB tests.

List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising S8.18, S8.19, and the first sentence of S8.28, to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S8.18 *Adjustable seats—vehicle to pole test.* Initially, adjustable seats shall be adjusted as specified in S8.3.2.1 of Standard 214 (49 CFR 571.214).

S8.19 *Adjustable seat back placement—vehicle to pole test.* Initially, position adjustable seat backs in the manner specified in S8.3.2.2 of Standard 214 (49 CFR 571.214).

* * * * *

S8.28 *Positioning procedure for the Part 572 Subpart M test dummy—vehicle to pole test.* The part 572, subpart M, test dummy is initially positioned in the front outboard seating position on the struck side of the vehicle in accordance with the provisions of S12.1 of Standard 214 (49 CFR 571.214), and the vehicle seat is positioned as specified in S8.3.2.1 and S8.3.2.2 of that standard. * * *

■ 3. Section 571.214 is amended by:

■ a. Revising the definition of ''Limited line manufacturer'' in S3;

■ b. Revising S7.1;

■ c. Revising the heading of S7.2.1, paragraphs S7.2.1(a) and 7.2.1(b), the heading of S7.2.2, paragraph S7.2.2(a), S7.2.4, and the heading of S8.3.1;

■ d. Adding S8.3.2, S8.3.2.1, and S8.3.2.2;

■ e. Revising S9.1, S9.1.1, S9.1.2, S9.1.3, S12.3.2(c), S12.3.3(c), S12.3.4(l), S13 heading, S13.1, S13.1.1, S.13.1.2, S13.1.3, and adding S13.1.4; and

■ f. Revising S13.3, and 13.4.

The revised and added text reads as follows:

§ 571.214 Standard No. 214; Side impact protection.

* * * * *

S3 *Definitions.*

* * *

Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

* * * * *

S7.1 *MDB test with SID.* For vehicles manufactured before September 1, 2010, the following requirements must be met. The following requirements also apply to vehicles manufactured on or after September 1, 2010 that are not part of the percentage of a manufacturer's production meeting the MDB test with advanced test dummies (S7.2 of this section) or are otherwise excluded from the phase-in requirements of S7.2. (Vehicles manufactured before September 1, 2010 may meet S7.2, at the manufacturer's option.)

* * * * *

S7.2 *MDB test with advanced test dummies.*

S7.2.1 *Vehicles manufactured on or after September 1, 2010 to August 31, 2014.*

(a) Except as provided in S7.2.4 of this section, for vehicles manufactured on or after September 1, 2010 to August 31, 2014, a percentage of each manufacturer's production, as specified in S13.1.1, S13.1.2, S13.1.3, and S13.1.4, shall meet the requirements of S7.2.5 and S7.2.6 when tested with the test dummy specified in those sections. Vehicles manufactured before September 1, 2014 may be certified as meeting the requirements of S7.2.5 and S7.2.6.

(b) For vehicles manufactured on or after September 1, 2010 that are not part of the percentage of a manufacturer's production meeting S7.2.1 of this section, the requirements of S7.1 of this section must be met.

* * * * *

S7.2.2 *Vehicles manufactured on or after September 1, 2014.*

(a) Subject to S7.2.4 of this section, each vehicle manufactured on or after September 1, 2014 must meet the requirements of S7.2.5 and S7.2.6, when tested with the test dummy specified in those sections.

* * * * *

S7.2.4 *Exceptions from the MDB phase-in; special allowances.*

(a)(1) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to S7.2.1 of this section (but vehicles that will be manufactured on or after September 1, 2014 are subject to S7.2.2);

(2) Vehicles that are manufactured by a limited line manufacturer are not subject to S7.2.1 of this section (but vehicles that will be manufactured on or after September 1, 2014 are subject to S7.2.2).

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2016 after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2016, are not subject to S7.2.1. Vehicles that are altered on or after September 1, 2016, and vehicles that are manufactured in two or more stages on or after September 1, 2016, must meet the requirements of S7.2.5 and S7.2.6, when tested with the test dummy specified in those sections. Place the Subpart U ES–2re 50th percentile male dummy in the front seat and the Subpart V SID-IIs 5th percentile female test dummy in the rear seat. The test dummies are placed and positioned in the front and rear outboard seating positions on the struck side of the vehicle, as specified in S11 and S12 of this standard (49 CFR 571.214).

* * * * * *

S8.3.1 *50th Percentile Male ES–2re Dummy (49 CFR Part 572 Subpart U) In Front Seats*

* * * * *

S8.3.2 *50th Percentile Male SID Dummy (49 CFR Part 572 Subpart F) in Front and Rear Seats*

S8.3.2.1 *Adjustable seats.* Adjustable seats are placed in the adjustment position midway between the forward most and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forward most and rearmost positions, the closest adjustment position to the rear of the mid-point is used.

S8.3.2.2 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. If the position is not specified, set the seat back at the first detent rearward of 25° from the vertical. Place each adjustable head restraint in its highest adjustment position. Position adjustable lumbar supports so that they are set in their released, i.e., full back position.

* * * * *

S9. *Vehicle-To-Pole Requirements.*

S9.1 Except as provided in S5, when tested under the conditions of S10:

S9.1.1 Except as provided in S9.1.3 of this section, for vehicles manufactured on or after September 1, 2010 to August 31, 2014, a percentage of each manufacturer's production, as specified in S13.1.1, S13.1.2, S13.1.3, and S13.1.4 shall meet the requirements of S9.2.1, S9.2.2, and S9.2.3 when tested under the conditions of S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any velocity between 26 km/h to 32 km/h (16 to 20 mph) inclusive. Vehicles manufactured before September 1, 2014 that are not subject to the phase-in may be certified as meeting the requirements specified in this section.

S9.1.2 Except as provided in S9.1.3 of this section, each vehicle manufactured on or after September 1, 2014, must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph). All vehicles manufactured on or after September 1, 2014 must meet S9.1.2 without the use of advance credits.

S9.1.3 *Exceptions from the phase-in; special allowances.*

(a)(1) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to S9.1.1 of this section (but vehicles manufactured on or after September 1, 2014 by these manufacturers are subject to S9.1.2);

(2) Vehicles that are manufactured by a limited line manufacturer are not

subject to S9.1.1 of this section (but vehicles manufactured on or after September 1, 2014 by these manufacturers are subject to S9.1.2).

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2016 after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2016, are not subject to S9.1.1. Vehicles that are altered on or after September 1, 2016, and vehicles that are manufactured in two or more stages on or after September 1, 2016, must meet the requirements of S9.1.2, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

(c) Vehicles with a gross vehicle weight rating greater than 3,855 kg (8,500 lb) manufactured before September 1, 2015 are not subject to S9.1.1 or S9.1.2 of this section. These vehicles may be voluntarily certified to meet the pole test requirements prior to September 1, 2015. Vehicles with a gross vehicle weight rating greater than 3,855 kg (8,500 lb) manufactured on or after September 1, 2015 must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

(d)(1) Convertibles manufactured before September 1, 2015 are not subject to S9.1.1 or S9.1.2 of this section. These vehicles may be voluntarily certified to meet the pole test requirements prior to September 1, 2015.

(2) Convertibles manufactured on or after September 1, 2015 must meet the requirements of S9.2.1, S9.2.2 and S9.2.3, when tested under the conditions specified in S10 into a fixed, rigid pole of 254 mm (10 inches) in diameter, at any speed up to and including 32 km/h (20 mph).

* * * * *

S12.3.2 *5th percentile female driver dummy positioning.*

* * * * *

(c) *Driver arm/hand positioning.* Place the dummy's upper arm such that the angle between the projection of the arm centerline on the midsagittal plane of the dummy and the torso reference line is 45° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 45, ± 90, ± 135, and 180 degree settings where positive is forward of the spine.

S12.3.3 *5th percentile female front passenger dummy positioning.*

* * * * *

(c) *Passenger arm/hand positioning.* Place the dummy's upper arm such that the angle between the projection of the arm centerline on the midsagittal plane of the dummy and the torso reference line is 45° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 45, ± 90, ± 135, and 180 degree settings where positive is forward of the spine.

S12.3.4 *5th percentile female in rear outboard seating positions.*

* * * * *

(l) *Passenger arm/hand positioning.* Place the rear dummy's upper arm such that the angle between the projection of the arm centerline on the midsagittal plane of the dummy and the torso reference line is 45° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, ± 45, ± 90, ± 135, and 180 degree settings where positive is forward of the spine.

S13 *Phase-in of moving deformable barrier and vehicle-to-pole performance requirements.*

S13.1 *Vehicles manufactured on or after September 1, 2010 and before September 1, 2014.* At anytime during the production years ending August 31, 2011, August 31, 2012, August 31, 2013, and August 31, 2014, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the moving deformable barrier test with advanced test dummies (S7.2), or the vehicles (by make, model and vehicle identification number) that have been certified as complying with the vehicle-to-pole test requirements (S9.1) of this standard. The manufacturer's designation of a vehicle as a certified vehicle meeting S7.2 or S9.1 is irrevocable.

S13.1.1 *Vehicles manufactured on or after September 1, 2010 and before September 1, 2011.*

(a) Subject to S13.4, for vehicles manufactured on or after September 1, 2010 and before September 1, 2011, the number of vehicles complying with S7.2 shall be not less than 20 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

(b) Subject to S13.4, for vehicles manufactured on or after September 1, 2010 and before September 1, 2011, the number of vehicles complying with S9.1 shall be not less than 20 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

S13.1.2 *Vehicles manufactured on or after September 1, 2011 and before September 1, 2012.*

(a) Subject to S13.4, for vehicles manufactured on or after September 1, 2011 and before September 1, 2012, the number of vehicles complying with S7.2 shall be not less than 40 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

(b) Subject to S13.4, for vehicles manufactured on or after September 1, 2011 and before September 1, 2012, the number of vehicles complying with S9.1 shall be not less than 40 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

S13.1.3 *Vehicles manufactured on or after September 1, 2012 and before September 1, 2013.*

(a) Subject to S13.4, for vehicles manufactured on or after September 1, 2012 and before September 1, 2013, the number of vehicles complying with S7.2 shall be not less than 60 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

(b) Subject to S13.4, for vehicles manufactured on or after September 1, 2012 and before September 1, 2013, the number of vehicles complying with S9.1 shall be not less than 60 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

S13.1.4 *Vehicles manufactured on or after September 1, 2013 and before September 1, 2014.*

(a) Subject to S13.4, for vehicles manufactured on or after September 1, 2013 and before September 1, 2014, the number of vehicles complying with S7.2 shall be not less than 80 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

(b) Subject to S13.4, for vehicles manufactured on or after September 1, 2013 and before September 1, 2014, the

number of vehicles complying with S9.1 shall be not less than 80 percent of:

(1) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(2) The manufacturer's production in the current production year.

* * * * *

S13.3(a) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S13.1.1(a), S13.1.2(a), S13.1.3(a), and S13.1.4(a), do not count any vehicle that is excluded by Standard No. 214 from the moving deformable barrier test with the ES–2re or SID–IIs test dummies (S7.2).

(b) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S13.1.1(b), S13.1.2(b), S13.1.3(b), and S13.1.4(b), do not count any vehicle that is excluded by Standard No. 214 from the vehicle-to-pole test (S9).

S13.4 *Calculation of complying vehicles.*

(a) For the purposes of calculating the vehicles complying with S13.1.1, a manufacturer may count a vehicle if it is manufactured on or after October 11, 2007 but before September 1, 2011.

(b) For purposes of complying with S13.1.2, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after October 11, 2007 but before September 1, 2012 and,

(2) Is not counted toward compliance with S13.1.1.

(c) For purposes of complying with S13.1.3, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after October 11, 2007 but before September 1, 2013 and,

(2) Is not counted toward compliance with S13.1.1 or S13.1.2.

(d) For purposes of complying with S13.1.4, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after October 11, 2007 but before September 1, 2014 and,

(2) Is not counted toward compliance with S13.1.1, S13.1.2, or S13.1.3.

(e) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer, each vehicle that is excluded from having to meet the applicable requirement is not counted.

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 1. The authority citation for part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Subpart H—Side Impact Protection Phase-in Reporting Requirements

■ 2. Revise § 585.75 to read as follows.

§ 585.75 Response to inquiries.

At any time during the production years ending August 31, 2011, August 31, 2012, August 31, 2013, and August 31, 2014, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the moving deformable barrier test with advanced test dummies (S7.2) or the vehicles (by make, model and vehicle identification number) that have been certified as complying with the vehicle-to-pole test requirements (S9.1) of FMVSS No. 214 (49 CFR 571.214). The manufacturer's designation of a vehicle as a certified vehicle that meets S7.2 or S9.1 is irrevocable.

■ 3. Revise § 585.76 (a), (b), (c), and (d)(2) to read as follows.

§ 585.76 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.* (1) Within 60 days after the end of the production years ending August 31, 2008, through August 31, 2014, each manufacturer choosing to certify vehicles manufactured during any of those production years as complying with the upgraded moving deformable barrier (S7.2 of Standard No. 214)(49 CFR 571.214) or vehicle-to-pole requirements (S9) of Standard No. 214 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 2011, August 31, 2012, August 31, 2013, and August 31, 2014, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the moving deformable barrier requirements of S7 of Standard No. 214 and with the vehicle-to-pole requirements of S9 of that Standard for its vehicles produced in that year. Each report shall provide the information specified in paragraph (c) of this section and in section 585.2 of this part.

(c) *Advanced credit phase-in report content*—(1) *Production of complying vehicles.* With respect to the reports identified in § 585.76(a), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year: That are certified as meeting the moving deformable barrier test requirements of S7.2 of Standard No. 214, *Side impact protection* (49 CFR 571.214), and that are certified as meeting the vehicle-to-pole test requirements of S9 of Standard No. 214.

(d) *Phase-in report content*—

* * * * *

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that vehicles produced during the preceding years are treated under Standard No. 214 as having been produced during the production year being reported on, information on the number of vehicles that meet the moving deformable barrier test requirements of S7 of Standard No. 214, *Side Impact Protection* (49 CFR 571.214), and the number of vehicles that meet the vehicle-to-pole test requirements of S9 of that standard.

■ 4. Revise § 585.77 to read as follows.

§ 585.77 Records

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.76 until December 31, 2018.

Issued on: May 15, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. E8–11273 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 73, No. 111
Monday, June 9, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0623; Directorate Identifier 2008–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.
>
> [A]ssessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

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

DATES: We must receive comments on this proposed AD by July 9, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0623; Directorate Identifier 2008–NM–089–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On February 28, 2008, we issued AD 2008–06–01, Amendment 39–15413 (73 FR 13098, March 12, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–06–01, we have determined that the initial compliance times for doing the tasks specified in paragraph (f)(1) of that AD must be reduced. AD 2008–06–01 resulted from Canadian Airworthiness Directive CF–2007–28, dated November 22, 2007 (referred to after this as ''the MCAI'').

The MCAI does not provide an initial compliance time for doing the tasks. In AD 2008–06–01, we required an initial compliance time that started from the effective date of the AD, or the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness, whichever occurs later. Although the initial compliance time for doing the tasks is unstated in the MCAI, we have determined that the intent of the MCAI is for the initial compliance time to start from the initial delivery date of the airplane in order to address the identified unsafe condition in a timely manner.

This proposed AD would require reduced thresholds for the initial compliance times. We have also revised the initial compliance times by providing a threshold and grace period for the tasks. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 289 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,120, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15413 (73 FR 13098, March 12, 2008) and adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0623; Directorate Identifier 2008–NM–089–AD.

Comments Due Date

(a) We must receive comments by July 9, 2008.

Affected ADs

(b) The proposed AD supersedes AD 2008–06–01, Amendment 39–15413.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

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 aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Models CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3 ''Fuel System Limitations'' to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Restatement of Certain Requirements of AD 2008–06–01

(f) Unless already done, within 60 days after April 16, 2008 (the effective date of AD 2008–06–01), revise the ALS of the Instructions for Continued Airworthiness to incorporate the inspection requirements in Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007 (''the MRM''). Accomplishing the revision in accordance with a later revision of the MRM is an acceptable method of compliance if the revision is approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

New Requirements of This AD: Actions and Compliance

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

(1) For task numbers 24–90–00–601, 24–90–00–602, 28–00–00–601, 28–11–23–601, 28–11–23–602, 28–12–13–601, 29–30–00–601, and 29–30–00–602 identified in the MRM, the initial compliance times start at the later of the applicable ''Threshold'' and ''Grace Period'' times specified in Table 1 of this AD, and the repetitive limitation tasks must be accomplished thereafter at the applicable interval specified in the MRM, except as provided by paragraphs (g)(2) and (h)(1) of this AD.

TABLE 1.—INITIAL INSPECTIONS

Description	Compliance time (whichever occurs later)	
	Threshold	Grace period
Tasks with limiting intervals of 8,000 flight hours.	Before the accumulation of 8,000 total flight hours.	Within 2,000 flight hours after the effective date of this AD.
Tasks with limiting intervals of 20,000 flight hours.	Before the accumulation of 20,000 total flight hours.	Within 6,000 flight hours after the effective date of this AD.
Tasks with limiting intervals of 30,000 flight hours.	Before the accumulation of 30,000 total flight hours.	Within 6,000 flight hours after the effective date of this AD.

(2) After accomplishing the actions specified in paragraph (g)(1) of this AD, no alternative inspections/limitation tasks or inspection/limitation task intervals may be used unless the inspections/limitation tasks or inspection/limitation task intervals are part of a later revision of the MRM, that is approved by the Manager, New York ACO, FAA; or TCCA (or its delegated agent); or unless the inspection/limitation task or inspection/limitation task interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) 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 Aircraft Certification Office, 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

(i) Refer to Canadian Airworthiness Directive CF–2007–28, dated November 22, 2007; and Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007; for related information.

Issued in Renton, Washington, on May 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12819 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0622; Directorate Identifier 2008–NM–064–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

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

Internal fuel tank wiring chafing damage, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

* * * * *

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

DATES: We must receive comments on this proposed AD by July 9, 2008.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No.

FAA–2008–0622; Directorate Identifier 2008–NM–064–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0041, dated February 27, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–014 which introduces changes to the wiring harness installations to the left (LH) and right (RH) fuel boost pumps, identified by modification number JM41672. In addition, to detect excessive cable lengths and evidence of chafing damage, SB J41–28–014 provides instructions to inspect and correct, as necessary, the internal fuel tank wiring routed to the LH and RH high level sensors.
>
> Internal fuel tank wiring chafing damage, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.
>
> For the reason stated above, this EASA Airworthiness Directive (AD) requires the replacement of the (LH and RH) fuel boost pump metallic conduit assemblies with loom assemblies and the inspection of internal fuel tank high level sensor wiring, including corrective actions, as necessary.

Corrective actions include replacing any damaged internal fuel tank high level sensor wiring and removing excess wiring. You may obtain further information by examining the MCAI in the AD docket.

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

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

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

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

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

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–28–014, Revision 1, dated December 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 7 products of U.S. registry. We also estimate that it would take 47 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $7,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $75,320, or $10,760 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2008–0622; Directorate Identifier 2008–NM–064–AD.

Comments Due Date

(a) We must receive comments by July 9, 2008.

Affected ADs

(b) None.

Applicability

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

Subject

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

Reason

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–014 which introduces changes to the wiring harness installations to the left (LH) and right (RH) fuel boost pumps, identified by modification number JM41672. In addition, to detect excessive cable lengths and evidence of chafing damage, SB J41–28–014 provides instructions to inspect and correct, as necessary, the internal fuel tank wiring routed to the LH and RH high level sensors.

Internal fuel tank wiring chafing damage, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

For the reason stated above, this EASA Airworthiness Directive (AD) requires the replacement of the (LH and RH) fuel boost pump metallic conduit assemblies with loom assemblies and the inspection of internal fuel tank high level sensor wiring, including corrective actions, as necessary.

Corrective actions include replacing any damaged internal fuel tank high level sensor wiring and removing excess wiring.

Actions and Compliance

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

(1) Modify the LH and RH wing fuel boost pump wiring in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–014, Revision 1, dated December 21, 2007.

(2) Inspect the LH and RH wing fuel high level sensor wiring in accordance with paragraph 2.D. of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–014, Revision 1, dated December 21, 2007.

(3) When excess wiring and/or damaged wiring is found during the inspection required by paragraph (f)(2) of this AD, before next flight, accomplish the corrective actions as specified in paragraph 2.D. of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–014, Revision 1, dated December 21, 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0041, dated February 27, 2008, and BAE Systems (Operations) Limited Service Bulletin J41–28–014, Revision 1, dated December 21, 2007, for related information.

Issued in Renton, Washington, on May 30, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12828 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0621; Directorate Identifier 2008–NM–015–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –800, and –900 series airplanes. This proposed AD would require installation of hot short protector (HSP) support brackets and equipment for the fuel quantity indicating system (FQIS) fuel densitometer and other specified actions as applicable. This proposed AD would also require a revision to the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–07. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the center tank fuel densitometer from overheating and becoming a potential ignition source inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 24, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0621; Directorate Identifier 2008–NM–015–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

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

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

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

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

Boeing has found that no separation was provided for the fuel quantity indication system (FQIS) wires. A potential hot short of the FQIS lead wire could cause the center fuel tank densitometer to overheat. In situations where the fuel level in the center tank is low, the overheated densitometer could ignite flammable fuel vapors inside the center fuel tank. This condition, if not corrected, could result in a center fuel tank explosion and consequent loss of the airplane.

Other Related Rulemaking

On April 29, 2008, we issued AD 2008–10–10, amendment 39–15516 (73 FR 25986, May 8, 2008), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued

Airworthiness (ICA) by incorporating new limitations for fuel tank systems to satisfy SFAR 88 requirements. That AD also requires the initial inspection of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary. That AD resulted from a design review of the fuel tank systems. We issued that AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. Incorporating AWL No. 28–AWL–07 into the AWLs section of the ICA in accordance with paragraph (g)(3) of AD 2008–10–10 would terminate the action specified in paragraph (g) of this proposed AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–28A1221, Revision 1, dated November 9, 2007. The service bulletin describes procedures for installing hot short protector (HSP) support brackets and equipment for the FQIS fuel densitometer and doing other specified actions as applicable. The other specified actions include installing wire bundle and ground stud support brackets, replacing certain wire bundle support brackets with new brackets, installing new support clamps and wire bundles, and rerouting certain wire bundles.

We have also reviewed Revision March 2007 R2 of Section 9 of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR (hereafter referred to as ''the MPD''). Subsection F, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' of the MPD describes AWLs for fuel tank systems. Subsection F of the MPD includes fuel system AWL No. 28–AWL–07, which is a critical design configuration control limitation (CDCCL) to maintain the design features of the center fuel tank HSP during its replacement.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require the following actions:

- Installing HSP equipment for the FQIS fuel densitometer and doing other specified actions as applicable.
- Revising the AWLs section of the ICA to incorporate AWL No. 28–AWL–07, which would require maintaining the design features of the center fuel tank HSP during its replacement.

This proposed AD would also allow accomplishing the revision to the AWLs section of the ICA in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office, FAA.

Costs of Compliance

We estimate that this proposed AD would affect 13 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of HSP support brackets and equipment.	Up to 16	Up to $14,698	Up to $15,978	13	Up to $207,714.
AWLs revision	1	None	$80	13	$1,040.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–0621; Directorate Identifier 2008–NM–015–AD.

Comments Due Date

(a) We must receive comments by July 24, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –800, and –900 series airplanes, certificated in any category; as identified in

Boeing Alert Service Bulletin 737–28A1221, Revision 1, dated November 9, 2007.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel densitometer from overheating and becoming a potential ignition source inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of the Hot Short Protector (HSP)

(f) Within 60 months after the effective date of this AD, install the HSP support brackets and equipment for the fuel quantity indicating system (FQIS) fuel densitometer and do all the other specified actions as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1221, Revision 1, dated November 9, 2007.

Airworthiness Limitations (AWLs) Revision for AWL No. 28–AWL–07

(g) Concurrently with accomplishing the actions required by paragraph (f) of this AD, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating AWL No. 28–AWL–07 of Subsection F of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Section 9, Revision March 2007 R2 (hereafter referred to as ''the MPD'').

No Alternative Critical Design Configuration Control Limitations (CDCCLs)

(h) After accomplishing the action specified in paragraph (g) of this AD, no alternative CDCCLs may be used unless the CDCCLs are part of a later revision of the MPD that is approved by the Manager, Seattle ACO; or unless the CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done According to Previous Issue of Service Bulletin

(i) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1221, dated January 14, 2007, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Terminating Action for AWLs Revision

(j) Incorporating AWL No. 28–AWL–07 into the AWLs section of the ICA in accordance with paragraph (g)(3) of AD 2008–10–10, amendment 39–15516, terminates the action required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, ATTN: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 30, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12829 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0625; Directorate Identifier 2008–NM–069–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes; CL–600–2D15 (Regional Jet Series 705) Airplanes; and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During a pre-delivery flight of a CL–600–2C10 aircraft, the AC essential bus did not come on-line following deployment of the Air Driven Generator (ADG). Following investigation, it was determined that a specific batch of contactors in the ADG Power Center (ADGPC) is susceptible to failure due to low contact pressure. * * *

The unsafe condition is malfunction of the emergency AC generation and control system that supplies emergency AC power to essential flight instruments, including the flap and slat system, pitch trim system, and hydraulic pump 3B. Loss of essential flight instruments could prevent continued safe flight and landing of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 9, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0625; Directorate Identifier 2008–NM–069–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–14, dated February 19, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a pre-delivery flight of a CL–600–2C10 aircraft, the AC essential bus did not come on-line following deployment of the Air Driven Generator (ADG). Following investigation, it was determined that a specific batch of contactors in the ADG Power Center (ADGPC) is susceptible to failure due to low contact pressure. This directive mandates inspection of the ADGPC and replacement of any contactors in the suspect batch. It also prohibits future installation of ADGPCs and contactors that have not been inspected per this directive.

The unsafe condition is malfunction of the emergency AC generation and control system that supplies emergency AC power to essential flight instruments, including the flap and slat system, pitch trim system, and hydraulic pump 3B. Loss of essential flight instruments could prevent continued safe flight and landing of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–24–021, Revision A, dated December 11, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 306 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $220,320, or $720 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0625; Directorate Identifier 2008–NM–069–AD.

Comments Due Date

(a) We must receive comments by July 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10004 and subsequent; Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15002 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

During a pre-delivery flight of a CL–600–2C10 aircraft, the AC essential bus did not come on-line following deployment of the Air Driven Generator (ADG). Following investigation, it was determined that a specific batch of contactors in the ADG Power Center (ADGPC) is susceptible to failure due to low contact pressure. This directive mandates inspection of the ADGPC and replacement of any contactors in the suspect batch. It also prohibits future installation of ADGPCs and contactors that have not been inspected per this directive.

The unsafe condition is malfunction of the emergency AC generation and control system that supplies emergency AC power to essential flight instruments, including the flap and slat system, pitch trim system, and hydraulic pump 3B. Loss of essential flight instruments could prevent continued safe flight and landing of the airplane.

Actions and Compliance

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

(1) For Model CL–600–2C10 airplanes having serial numbers 10004 through 10265, and Model CL–600–2D15 and CL–600–2D24 airplanes having serial numbers 15002 through 15162: Within 5,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, inspect for the serial number of the installed ADGPC and, as applicable, for the serial numbers of installed contactors K117, K147 and K153, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–24–021, Revision A, dated December 11, 2006. If the serial number of the ADGPC is in the range 134 through 250, and any installed contactor has a serial number in the range 411 through 777, before further flight, replace the affected contactor in accordance with Part B of the service bulletin.

(2) Previous inspection of the ADGPC, and replacement of contactors, before the effective date of this AD, in accordance with Bombardier Service Bulletin 670BA–24–021, dated May 30, 2005, meets the requirements of paragraphs (f)(1) of this AD if the ADGPC has not been replaced since accomplishment of the service bulletin.

(3) A review of the aircraft maintenance records to determine the ADGPC and contactor serial numbers also meets the inspection requirements of paragraph (f)(1) of this AD.

Parts Installation

(g) As of the effective date of this AD: No replacement/spare ADGPC having part number 781GA01Y00, with a serial number in the range 134 through 250, is permitted to be installed on any aircraft, unless the ADGPC has been modified according to paragraph (f)(1) of this AD.

(h) As of the effective date of this AD: No replacement/spare ADGPC contactor having part number 995CA01Y00, with a serial number in the range 411 through 777, is permitted to be installed on any aircraft, unless the ADGPC contactor is identified with two labels, as specified in Zodiac ECE Service Bulletin 995CA01Y–24–001, dated May 3, 2005.

FAA AD Differences

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

Other FAA AD Provisions

(i) 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: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; 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

(j) Refer to MCAI Canadian Airworthiness Directive CF–2008–14, dated February 19, 2008; and Bombardier Service Bulletin 670BA–24–021, Revision A, dated December 11, 2006; for related information.

Issued in Renton, Washington, on May 30, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12833 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0627; Directorate Identifier 2008–CE–033–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.

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

DATES: We must receive comments on this proposed AD by July 9, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0627; Directorate Identifier 2008–CE–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2008–0067–E, dated April 3, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.
>
> To address this condition, AD 2008–0063–E had been published to require a check of the pulley drive assembly for leakage and, as an interim action, removal of the compressor drive belt from the assembly, and adoption of a new operational procedure to keep the air-conditioning system deactivated.
>
> This AD retains the requirements of AD 2008–0063–E which is superseded, introduces a mandatory terminating action which consists in replacing the original pulley drive assembly by a new one of an improved design—corresponding to the EADS SOCATA modification MOD 70–0231–21—that permits reinstallation of the compressor drive belt.

The MCAI requires you to deactivate the air conditioning system, inspect the pulley drive assembly for leaks, and replace the pulley drive assembly (P/N) T700G215504900000 with the new P/N T700G215505710000 either immediately if leaks are found or at a certain time if no leaks are found.

On April 30, 2008, we issued AD 2008–10–13, Amendment 39–15520 (73 FR 26318; May 9, 2008). AD 2008–10–13 was issued as an interim action in order to address the need to deactivate the air conditioning system, inspect the pulley drive assembly for leaks, and replace the pulley drive assembly if leaks are found.

The Administrative Procedure Act does not permit the FAA to ''bootstrap'' a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action were analyzed separately for justification to bypass prior public notice.

We are issuing this proposed AD to address the mandatory long-term action of replacing the pulley drive assembly.

Relevant Service Information

EADS SOCATA has issued Mandatory Service Bulletin SB 70–156, Amendment 1, dated March 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD will affect 21 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,912 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $77,952, or $3,712 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15520 (73 FR 26318; May 9, 2008), and adding the following new AD:

EADS SOCATA: Docket No. FAA–2008–0627; Directorate Identifier 2008–CE–033–AD.

Comments Due Date

(a) We must receive comments by July 9, 2008.

Affected ADs

(b) This AD supersedes AD 2008–10–13, Amendment 39–15520.

Applicability

(c) This AD applies to Models TBM 700 airplanes, serial numbers 434 through 455, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Reason

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

A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.

To address this condition, AD 2008–0063–E had been published to require a check of the pulley drive assembly for leakage and, as an interim action, removal of the compressor drive belt from the assembly, and adoption of a new operational procedure to keep the air-conditioning system deactivated.

This AD retains the requirements of AD 2008–0063–E which is superseded, introduces a mandatory terminating action which consists in replacing the original pulley drive assembly by a new one of an improved design—corresponding to the EADS SOCATA modification MOD 70–0231–21—that permits reinstallation of the compressor drive belt.

Actions and Compliance

(f) Unless already done, do the following before further flight after May 9, 2008 (the compliance date retained from AD 2008–10–13):

(1) Position to ''OFF'' the air-conditioning ''AIR COND'' switch.

(2) Inspect for oil leakage in the pulley drive assembly by following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008.

(i) If any leak is found, before further flight after the inspection, replace the pulley drive assembly part number (P/N) T700G215504900000 with P/N T700G215505710000 following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008.

(ii) If no leak is found, before further flight, remove the compressor drive belt from the pulley drive assembly following either EADS SOCATA Service Bulletin (SB) No. 70–156, original issue; or EADS SOCATA Service Bulletin (SB) No. 70–156, Amendment 1; both dated March 2008.

(3) The air-conditioning ''AIR COND'' switch must be in the ''OFF'' position and the compressor drive belt must remain removed until the pulley drive assembly part number (P/N) T700G215504900000 is replaced with P/N T700G215505710000 following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008. This replacement must be done before further flight if any leak is found and may be done at any time as terminating action to this AD.

(g) Within the next 12 months after the effective date of this AD, unless already done, replace the pulley drive assembly P/N T700G215504900000 with P/N T700G215505710000 and reinstall the compressor drive belt, following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008.

FAA AD Differences

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

Other FAA AD Provisions

(h) 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:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(i) Under 14 CFR 39.23, we are limiting the special flight permits for the check of equipment of this AD under the following condition: The air-conditioning ''AIR-COND'' switch is set to the ''OFF'' position.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No.: 2008–0067–E, dated April 3, 2008, and EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008, for related information.

Issued in Kansas City, Missouri, on June 2, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12818 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0626; Directorate Identifier 2008–CE–035–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing

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

> This Airworthiness Directive (AD) is prompted due to the discovery of loose self-locking stop nuts Part Number (P/N) 938.07.65.105 in the tail landing gear fastener assemblies of some PC–6 aircraft.
>
> It is believed that this occurrence could also exist in other fastener assemblies using nuts P/N 938.07.65.105 at various identified locations in the aircraft.
>
> If left uncorrected, the identified assemblies may become loose and not function as designed and could lead to hazardous situations.

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

DATES: We must receive comments on this proposed AD by July 9, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0626; Directorate Identifier 2008–CE–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2008–0083, dated May 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to the discovery of loose self-locking stop nuts Part Number (P/N) 938.07.65.105 in the tail landing gear fastener assemblies of some PC–6 aircraft.
>
> It is believed that this occurrence could also exist in other fastener assemblies using nuts P/N 938.07.65.105 at various identified locations in the aircraft.
>
> If left uncorrected, the identified assemblies may become loose and not function as designed and could lead to hazardous situations.
>
> In order to prevent those conditions, the present AD requires you replace self-locking stop nuts P/N 938.07.65.105 from the Tail Landing Gear Assembly, the Parachute Cable Assembly, the Water Tank Assembly, the Cable Tensioner Assembly, the Fuel Filter Assembly, the Hydraulic Pump Assembly and the Engine Mounts Assembly in accordance with Pilatus PC–6 Service Bulletin No. 53–002 Revision 2.

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

Relevant Service Information

Pilatus Aircraft Ltd. has issued Pilatus PC–6 Service Bulletin Number 53–002, Revision No. 2, dated September 24, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $310 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $43,500, or $870 per product.

Authority for This Rulemaking

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

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

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2008–0626; Directorate Identifier 2008–CE–035–AD.

Comments Due Date

(a) We must receive comments by July 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, manufacturer serial numbers (MSN) MSN 101 through MSN 949 and MSN 2001 through MSN 2092, certificated in any category.

Note 1: These airplanes may also be identified as Fairchild Republic Company PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

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

Reason

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

This Airworthiness Directive (AD) is prompted due to the discovery of loose self-locking stop nuts Part Number (P/N) 938.07.65.105 in the tail landing gear fastener assemblies of some PC–6 aircraft.

It is believed that this occurrence could also exist in other fastener assemblies using nuts P/N 938.07.65.105 at various identified locations in the aircraft.

If left uncorrected, the identified assemblies may become loose and not function as designed and could lead to hazardous situations.

In order to prevent those conditions, the present AD requires you replace self-locking stop nuts P/N 938.07.65.105 from the Tail Landing Gear Assembly, the Parachute Cable Assembly, the Water Tank Assembly, the Cable Tensioner Assembly, the Fuel Filter Assembly, the Hydraulic Pump Assembly and the Engine Mounts Assembly in accordance with Pilatus PC–6 Service Bulletin No. 53–002 Revision 2.

Actions and Compliance

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

(1) Within the next 12 months after the effective date of this AD, inspect and modify the fastener assemblies as instructed in paragraph 3 of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin Number 53–002, Revision No. 2, dated September 24, 2007.

(2) After the effective date of this AD, no person shall install on any PC–6 series aircraft, water tank assemblies and hydraulic pump assemblies, unless they have been previously modified following paragraph 4 of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin Number 53–002, Revision No. 2, dated September 24, 2007.

FAA AD Differences

Note 2: 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, 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:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency EASA AD No.: 2008–0083, dated May 5, 2008; and Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin Number 53–002, Revision No. 2, dated September 24, 2007, for related information.

Issued in Kansas City, Missouri, on June 3, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–12816 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124590–07]

RIN 1545–BG11

Guidance Regarding Foreign Base Company Sales Income; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations that provide guidance relating to foreign base company sales income, as defined in section 954(d), in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC.

DATES: The public hearing is being held on Tuesday, July 29, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Tuesday, July 8, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, and 1111 Constitution Avenue, NW., Washington, DC 20224. Send Submissions to CC:PA:LPD:PR (REG–124590–07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–124590–07), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically to *Oluwafunmilayo.P.Taylor@irscounsel.treas.gov* (REG–124590–07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ethan Atticks at (202) 622–3840; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–124590–07) that was published in the **Federal Register** on Thursday, February 28, 2008 (73 FR 10716).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic (signed original and eight copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–12875 Filed 6–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106897–08]

RIN 1545–BH65

Qualified Nonpersonal Use Vehicles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to qualified nonpersonal use vehicles as defined in section 274(i). Qualified nonpersonal use vehicles are excepted from the substantiation requirements of section 274(d)(4) that apply to listed property as defined in section 280F(d)(4). These proposed regulations would add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicles. These proposed regulations would affect employers that provide their employees with qualified nonpersonal use vehicles and the employees who use such vehicles.

DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106897–08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106897–08), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Additionally, taxpayers may submit electronic comments directly via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–106897–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Don Parkinson or Selvan Boominathan at (202) 622–6040; concerning the submission of comments or requests for a hearing, Kelly Banks at (202) 622–3628 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations under section 274(i) added by section 2(b) of Public Law 99–44 (May 24, 1985), which provides a definition of qualified nonpersonal use vehicle. Temporary Regulation § 1.274–5T(k), identifying categories of qualified nonpersonal use vehicles, was issued in TD 8061 (1982–2 CB 93 (1985)). A notice of proposed rulemaking was issued by cross-reference to Temporary Regulation § 1.274–5T(k) (50 FR 46088, 1985–2 CB 809 (1985)). These proposed regulations incorporate the text of § 1.274–5T(k) and add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicle, listed along with clearly marked police and fire vehicles at § 1.274–5(k)(2)(ii)(A). Clearly marked public safety officer vehicles are added to the definition of clearly marked police and fire vehicles at § 1.274–5(k)(3), and an example is added at § 1.274–5(k)(8). (See § 601.601(d)(2)(ii)(*b*).)

Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to expenses incurred in the of use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. Section 274(d) does not apply to any qualified nonpersonal use vehicle as defined in section 274(i).

Section 274(i) provides that a qualified nonpersonal use vehicle is any vehicle which by reason of its nature is not likely to be used more than a de minimis amount for personal uses. The legislative history to section 274(i) provided a list of qualified nonpersonal use vehicles and identified a number of examples of qualified nonpersonal use vehicles such as school buses, qualified specialized utility repair trucks, and qualified moving vans. The legislative history indicated that Congress wanted the Commissioner to expand the list to include other vehicles appropriate for listing because by their nature it is highly unlikely that they will be used more than a very minimal amount for personal purposes. H.R. Rep. No. 99–34, at 11 (1985).

Passenger automobiles such as sedans and sport utility vehicles are generally not exempt from taxation as qualified nonpersonal use vehicles because by design they can easily be used for personal purposes. However, unmarked law enforcement vehicles and clearly marked police and fire vehicles are included in the list of qualified nonpersonal use vehicles set forth in the legislative history to section 274(i) and incorporated into the proposed and temporary regulations.

The IRS and the Treasury Department have become aware of a need for an

additional category of vehicles to be included in the list of qualified nonpersonal use vehicles. Clearly marked vehicles provided to Federal, state and local government workers who respond to emergency situations do not satisfy the current regulations governing qualified nonpersonal use vehicles if the individual workers are not employed by either the fire department or police department. Accordingly, the proposed regulations add clearly marked public safety officer vehicles to the list of qualified nonpersonal use vehicles so that emergency responders receive the same treatment whether they work for the police department, fire department or another department of state or local government.

A clearly marked public safety officer vehicle is a vehicle owned or leased by a governmental unit or any agency or instrumentality thereof, that is required to be used for commuting by a public safety officer as defined in section 402(l)(4)(C) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a public safety officer vehicle.

Section 402(l)(4)(c) provides that the term ''public safety officer'' shall have the same meaning given such term by the Omnibus Crime Control and Safe Streets Act of 1968, as codified at 42 U.S.C. 3796b(9)(A). 42 U.S.C. 3796b(9)(A) defines public safety officer as ''an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew.''

Proposed § 1.274–5(k) and (l) provide a list of qualified nonpersonal use vehicles and related definitions. Section 1.274–5(k) and (l) were originally proposed in 1985 (LR–145–84, 50 FR 46088, November 6, 1985) and simultaneously issued as a temporary regulation (TD 8061, 50 FR 46006, November 6, 1985). Paragraph (k) of LR–145–84 is being re-proposed, with amendments, as part of these proposed regulations. Paragraph (l) provides definitions of the terms ''automobile,'' ''vehicle,'' ''employer,'' ''employee,'' and ''personal use.'' Paragraph (l) is being re-proposed, with no changes, as part of these proposed regulations. The corresponding provisions of the proposed regulations in LR–145–84 are withdrawn upon publication of this notice. The corresponding provisions of the temporary regulations in TD 8061 will be withdrawn once these proposed regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Council for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearings

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted to CC:PA:LPD:PR (REG–106897–08). All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed regulation. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Don E. Parkinson and Selvan V. Boominathan, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.132–5 paragraph (h) is revised to read as follows:

§ 1.132–5 Working condition fringes.

* * * * *

(h) *Qualified nonpersonal use vehicles*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274–5(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in § 1.274–5(k)(3) through (8), the use of the vehicle conforms to the requirements of that paragraph.

(2) *Shared usage of qualified nonpersonal use vehicles.* In general, a working condition fringe under this paragraph (h) is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe under this paragraph (h) is available only with respect to the driver and not with respect to any passengers of a qualified nonpersonal use vehicle described in § 1.274–5(k)(2)(ii)(L) or (P).

* * * * *

Par. 3. Section 1.274–5 paragraphs (k) and (l) and the last sentence of paragraph (m) are revised to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(k) *Exceptions for qualified nonpersonal use vehicles*—(1) *In general.* The substantiation requirements of section 274(d) and this section do not apply to any qualified nonpersonal use vehicle (as defined in paragraph (k)(2) of this section).

(2) *Qualified nonpersonal use vehicle*—(i) *In general.* For purposes of section 274(d) and this section, the term *qualified nonpersonal use vehicle* means any vehicle which, by reason of its nature (that is, design), is not likely to be used more than a de minimis amount for personal purposes.

(ii) *List of vehicles.* Vehicles which are qualified nonpersonal use vehicles include the following:

(A) Clearly marked police, fire, and public safety officer vehicles (as defined and to the extent provided in paragraph (k)(3) of this section).

(B) Ambulances used as such or hearses used as such.

(C) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.

(D) Bucket trucks (cherry pickers).

(E) Cement mixers.

(F) Combines.

(G) Cranes and derricks.

(H) Delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat.

(I) Dump trucks (including garbage trucks).

(J) Flatbed trucks.

(K) Forklifts.

(L) Passenger buses used as such with a capacity of at least 20 passengers.

(M) Qualified moving vans (as defined in paragraph (k)(4) of this section).

(N) Qualified specialized utility repair trucks (as defined in paragraph (k)(5) of this section).

(O) Refrigerated trucks.

(P) School buses (as defined in section 4221(d)(7)(c)).

(Q) Tractors and other special purpose farm vehicles.

(R) Unmarked vehicles used by law enforcement officers (as defined in paragraph (k)(6) of this section) if the use is officially authorized.

(S) Such other vehicles as the Commissioner may designate.

(3) *Clearly marked police, fire, or public safety officer vehicles.* A police, fire, or public safety officer vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used for commuting by a police officer, fire fighter, or public safety officer (as defined in section 402(l)(4)(C) of this chapter) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph (k).

(4) *Qualified moving van.* The term *qualified moving van* means any truck or van used by a professional moving company in the trade or business of moving household or business goods if—

(i) No personal use of the van is allowed other than for travel to and from a move site (or for de minimis personal use, such as a stop for lunch on the way between two move sites);

(ii) Personal use for travel to and from a move site is an irregular practice (that is, not more than five times a month on average); and

(iii) Personal use is limited to situations in which it is more convenient to the employer, because of the location of the employee's residence in relation to the location of the move site, for the van not to be returned to the employer's business location.

(5) *Qualified specialized utility repair truck.* The term *qualified specialized utility repair truck* means any truck (not including a van or pickup truck) specifically designed and used to carry heavy tools, testing equipment, or parts if—

(i) The shelves, racks, or other permanent interior construction which has been installed to carry and store such heavy items is such that it is unlikely that the truck will be used more than a de minimis amount for personal purposes; and

(ii) The employer requires the employee to drive the truck home in order to be able to respond in emergency situations for purposes of restoring or maintaining electricity, gas, telephone, water, sewer, or steam utility services.

(6) *Unmarked law enforcement vehicles*—(i) *In general.* The substantiation requirements of section 274(d) and this section do not apply to officially authorized uses of an unmarked vehicle by a ''law enforcement officer''. To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

(ii) *Law enforcement officer.* The term *law enforcement officer* means an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). The term ''law enforcement officer'' may include an arson investigator if the investigator otherwise meets the requirements of this paragraph (k)(6)(ii), but does not include Internal Revenue Service special agents.

(7) *Trucks and vans.* The substantiation requirements of section 274(d) and this section apply generally to any pickup truck or van, unless the truck or van has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes. For example, a van that has only a front bench for seating, in which permanent shelving that fills most of the cargo area has been installed, that constantly carries merchandise or equipment, and that has been specially painted with advertising or the company's name, is a vehicle not likely to be used more than a de minimis amount for personal purposes.

(8) *Examples.* The following examples illustrate the provisions of paragraphs (k)(3) and (6) of this section:

Example 1. Detective C, who is a ''law enforcement officer'' employed by a state police department, headquartered in City M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C's use of the vehicle for commuting between headquarters or a surveillance site and home and for personal errands is authorized personal use as described in paragraph (k)(6)(i) of this section. With respect to these authorized uses the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not included in C's gross income.

Example 2. Detective T is a ''law enforcement officer'' employed by City M. T is authorized to make arrests only within M's city limits. T, along with all other officers of the force, is ordinarily on duty for eight hours each work day and on call during the other sixteen hours. T is provided with the use of a clearly marked police vehicle in which T is required to commute to his home in City M. The police department's official policy regarding marked police vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, T uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within City M. All use of the vehicle by T conforms to the requirements of paragraph (k)(3) of this section. Therefore, the value of that use is excluded from T's gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274(d).

Example 3. Director C is employed by City M as the director of the City's rescue squad and is provided with a vehicle for use in responding to emergencies. The City's rescue

squad is not a part of City M's police or fire departments. The director's vehicle is a sedan which is painted with insignia and words identifying the vehicle as being owned by the City's rescue squad. C, when not on a regular shift, is on call at all times. The City's official policy regarding clearly marked public safety officer vehicles prohibits personal use (other than for commuting) of the vehicle outside of the limits of the public safety officer's obligation to respond to an emergency. When not using the vehicle to respond to emergencies, City M authorizes C to use the vehicle only for commuting, personal errands on the way between work and home, and personal errands within the limits of C's obligation to respond to emergencies. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not includable in C's gross income.

(l) *Definitions*. For purposes of section 274(d) and this section, the terms *automobile* and *vehicle* have the same meanings as prescribed in §§ 1.61–21(d)(1)(ii) and 1.61–21(e)(2), respectively. Also, for purposes of section 274(d) and this section, the terms *employer*, *employee* and *personal use* have the same meanings as prescribed in § 1.274–6T(e).

(m) * * * However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) applies to clearly marked public safety officer vehicles, as defined in 1.274–5(k)(3), only with respect to uses occurring after January 1, 2009.

Par. 4. Section 1.274–5T is revised by amending paragraphs (k) and (l) as follows:

§ 1.274–5T Substantiation requirements (temporary).

* * * * *

(k) and (l) [Reserved]. For further guidance, see §§ 1.274–5(k) and (l).

* * * * *

Par. 5. Section 1.280F–6 is amended by revising paragraph (b)(2)(ii) to read:

§ 1.280F–6 Special rules and definitions.

* * * * *

(b) * * *

(2) * * *

(ii) *Exception*. The term ''listed property'' does not include any vehicle that is a qualified nonpersonal use vehicle as defined in section 274(i) and § 1.274–5(k).

* * * * *

Steven Miller,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–12805 Filed 6–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–143716–04]

RIN 1545-BD67

Declaratory Judgments—Gift Tax Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 7477 of the Internal Revenue Code (Code) regarding petitions filed with the United States Tax Court for declaratory judgments as to the valuation of gifts. Changes to the applicable law were made by section 506(c)(1) of the Taxpayer Relief Act of 1997 (TRA). The proposed regulations primarily affect individuals who are donors of gifts. The proposed regulations provide rules for determining whether a donor may petition the Tax Court with respect to the value of a gift, including guidance regarding the definition of ''exhaustion of administrative remedies.'' This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by September 8, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 16, 2008, must be received by September 11, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143716–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–143716–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–143716–04). The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Juli Ro Kim or George Masnik, (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Gift tax is computed by determining a tax on the total of the gifts deemed made by the donor in the year for which the return is filed (the current calendar year) plus the total of that donor's gifts in prior years (prior taxable gifts). The tax so computed is then reduced by the tax that would have been payable on the prior taxable gifts, had the tax rate for the current taxable year applied to the prior taxable gifts. The result (after taking into account the applicable credit amount under section 2505) is the gift tax on the gifts in the current calendar year. Similarly, the estate tax is computed by determining a tax on the sum of the value of the decedent's taxable estate and the value of certain taxable gifts (adjusted taxable gifts) made by the decedent prior to death. The tax computed is then reduced by the gift tax that would have been payable on the adjusted taxable gifts, had the estate tax rate applied to the adjusted taxable gifts. The result (after allowing for various credits) is the estate tax on the taxable estate.

The Taxpayer Relief Act of 1997 (TRA) (Pub. L. 105–34, 111 Stat. 855), the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685), and the Tax and Trade Relief Extension Act of 1998 (Pub. L. 105–277, 112 Stat. 2681–909), (collectively, the 1998 Acts), enacted or amended sections 2001(f), 2504(c), 6501(c)(9), and 7477, effective in the case of gifts made after August 5, 1997, to provide a degree of finality regarding the valuation of lifetime gifts for gift and estate tax purposes. Congress was concerned that the prior regime resulted in the resolution of controversies based on stale evidence, and necessitated the retention of records for unduly long periods of time. H.R. Rep. No. 105–148 at 359 (1997).

Under sections 6501(a) and (c)(9) as amended by TRA and the 1998 Acts, and the applicable regulations, if a transfer of property is adequately disclosed on a gift tax return, then the period of limitations for assessment of gift tax with regard to that transfer will commence to run on the date the return is filed. Once the time for assessment of gift tax has expired for a transfer made after August 5, 1997, the value of the gift as ''finally determined'' for gift tax purposes, as defined in section 2001(f), is the value to be used for purposes of determining prior taxable gifts in computing the gift tax liability in subsequent years under section 2504(c),

and for purposes of determining adjusted taxable gifts in computing the estate tax liability under section 2001(f). Under §§ 20.2001–1(b) and 25.2504–2(b), this finality rule applies with respect to all issues that might be raised with respect to the transfer, including valuation issues and legal issues. The amount of a gift is finally determined if: (1) The amount is shown on a gift tax return and the IRS does not contest the amount before the period for assessing gift tax expires; (2) before the period for assessing gift tax expires, the amount is adjusted by the IRS and the taxpayer does not contest the adjusted amount; or, (3) the amount is determined by a court or pursuant to a settlement agreement between the taxpayer and the IRS.

Section 7477 was enacted as part of TRA in conjunction with these other provisions to provide a declaratory judgment procedure pursuant to which taxpayers may contest in the United States Tax Court an IRS determination regarding the value of a gift. See H.R. Conf. Rep. No. 105–220, at 407–408 (1997). In the absence of section 7477, without an actual gift tax deficiency, a taxpayer would be unable to petition the Tax Court to contest the determination or, without an overpayment of tax, file a claim for refund or bring suit for refund in Federal court. This could occur, for example, if an increase in gift tax determined under section 2502 is offset by the taxpayer's applicable credit amount under section 2505(a), so that no additional tax would be assessed as a result of the valuation increase. Thus, without section 7477, such a taxpayer would be left without any way to challenge the IRS determination, even though, upon the expiration of the statute of limitations, that determination would become binding for purposes of calculating the cumulative gift tax on all future gifts of that taxpayer, as well as the taxpayer's estate tax liability.

Explanation of Provisions

Under section 7477(a), the donor may contest an IRS determination of the amount of a gift. Specifically, the donor may petition the Tax Court for a declaratory judgment, provided that certain requirements are met. Section 7477(a) applies in the case of an actual controversy involving a determination by the IRS regarding the value of a gift that is shown on the gift tax return or disclosed on the gift tax return or in a statement attached to that return.

These proposed regulations provide a procedure for pursuing a declaratory judgment in the Tax Court pursuant to section 7477 in situations where, prior to the enactment of that section, the taxpayer would have had no remedy to challenge the IRS determination. Specifically, the procedure provided by these proposed regulations applies only in those situations where an adjustment by the IRS does not result in a gift tax deficiency or refund. In situations where the IRS adjustment results in a proposed tax deficiency or a potential refund, taxpayers should not follow the procedures in these proposed regulations but should continue to follow the procedures already in place to dispute a deficiency or claim a refund. These procedures more efficiently address and resolve disputes involving a deficiency or refund.

The first requirement for eligibility for relief under section 7477 is that the transfer must be shown or disclosed ''on the return of tax imposed by chapter 12,'' that is, a Federal gift tax return, or on a statement attached to the return. Under the proposed regulations, the return of tax imposed by chapter 12 is defined as the last gift tax return for the calendar year filed on or before the due date of the return, including extensions granted (if any), or if a timely return is not filed, the first gift tax return for the calendar year filed after the due date.

If the transfer is not shown or disclosed on the gift tax return, or on a statement attached to the return, a declaratory judgment under section 7477 is not available. If, however, a transfer is disclosed on the return or on a statement attached to the return, this eligibility requirement for the section 7477 procedure is satisfied, even if the transfer is disclosed in a manner that does not satisfy the requirements of section 6501(c)(9) and § 301.6501(c)–1(e) or (f) pertaining to adequate disclosure sufficient to commence the running of the period of limitations on assessment. There may be no compelling reason for the IRS to examine a transaction that is disclosed on the return but not in a manner sufficient to trigger the running of the statute of limitations, because the time period for adjusting the value of the gift is not limited by the statute of limitations for assessments. The Treasury Department and the IRS, however, recognize that in many cases the IRS may prefer to contemporaneously resolve the transfer tax treatment of that transaction, even though the standards for adequate disclosure with regard to that transaction have not been satisfied by the donor. Thus, the IRS in its discretion may make a determination regarding the transfer and place the transfer in controversy by mailing a notice of determination of value used in unagreed cases (Letter 3569) with regard to that transfer. The ability to place a transfer that is not adequately disclosed in controversy is consistent with the Congressional purpose in enacting the TRA provisions, noted previously, to promote the early resolution of gift tax controversies based on contemporaneous evidence. The IRS and Treasury Department emphasize that the issuance of a Letter 3569 with regard to such a transfer does not constitute a determination by the IRS that the transfer was adequately disclosed or otherwise cause the period of limitations on assessment to commence to run with respect to that transfer.

Alternatively, the IRS may in its discretion decide not to put a transfer in controversy at that time (whether or not any other transfer reported on a gift tax return is then put into controversy). If the IRS decides not to put the transfer into controversy at that time, the IRS will not issue a Letter 3569 (described in this preamble) (or the Letter 3569 issued will not address that transfer), the declaratory judgment procedure will not be available for that transfer, and the limitations period applicable to that transfer will remain open.

Section 7477 also requires an actual controversy with respect to a determination by the IRS of the value of the disclosed transfer. Thus, the donor is not permitted to bypass the examination process and unilaterally seek a declaratory judgment. Generally, the IRS must propose adjustments with which the donor disagrees. Accordingly, the proposed regulations provide that, in order for the section 7477 declaratory judgment procedure to be available to a donor, the IRS must first make a determination regarding the gift tax treatment of the transfer that results in an actual controversy in a situation where the adjustments do not result in a gift tax deficiency or refund. This IRS determination is deemed to be made by the mailing of a Letter 3569 to notify the taxpayer of the adjustments proposed by the IRS. The mailing of this letter to the donor is the prerequisite for filing a petition with the Tax Court requesting a declaratory judgment under section 7477.

Section 7477 also requires that the donor's pleading seeking a declaratory judgment under section 7477 must be filed with the Tax Court before the 91st day after the mailing of the Letter 3569 by the IRS. The pleading must be in the form of a petition subject to Tax Court Rule 211(d).

Finally, section 7477(b)(2) provides that the Tax Court may not issue a declaratory judgment under section 7477 unless it first determines that the

donor has exhausted all administrative remedies available to the donor within the IRS with respect to the controversy. Tax Court Rule 211(d) requires that the petition in an action under section 7477 must contain a statement that the petitioner has exhausted all administrative remedies within the IRS. See also Tax Court Rule 210(c)(4). Accordingly, the proposed regulations set forth the administrative remedies available to the donor with respect to a determination by the IRS of the amount of a gift, and the circumstances in which the IRS will not contest the donor's allegation that administrative remedies have been exhausted. The administrative remedies are intended to parallel those applicable in the case of an asserted gift tax deficiency.

Specifically, the proposed regulations provide that the IRS will not contest the donor's allegation that the donor's administrative remedies have been exhausted if: (1) The donor requests Appeals consideration in writing within 30 calendar days after the mailing date of a notice of preliminary determination of value (Preliminary Determination Letter) from the IRS, or by such later date for responding to the Preliminary Determination Letter as determined pursuant to IRS procedures; (2) the donor participates fully in the Appeals consideration process, including without limitation timely submitting all additional information related to the amount of the gift that is requested by the IRS in connection with (or as a follow-up to) the Appeals consideration process; and (3) the IRS mails to the donor the Letter 3569, which will notify the donor of the proposed adjustments and of the donor's right to contest the determination by filing a petition for declaratory judgment with the Tax Court before the 91st day after the date of mailing the Letter 3569. The Letter 3569 usually will be issued by the Appeals office. However, because section 7477 requires that the Tax Court, rather than the IRS, determines whether the donor has exhausted all administrative remedies, the donor generally will be sent a Letter 3569 in those situations where the donor does not respond to the Preliminary Determination Letter, or expressly declines to participate in the Appeals process. If a donor does not respond to a Preliminary Determination Letter, or if a donor does not participate in the Appeals process, the IRS will consider the donor to have failed to exhaust administrative remedies. In such cases, the IRS may challenge any allegation in the donor's petition for a section 7477 declaratory judgment that the donor has exhausted all administrative remedies.

The proposed regulations also provide that the IRS will not contest the donor's allegation that all administrative remedies have been exhausted in certain circumstances where the above-described process is not followed by the IRS. (For example, the IRS might mail a Letter 3569 to the donor in the absence of these other preliminary steps where, because of the imminent expiration of the applicable statute of limitations, the IRS believes there is not sufficient time to issue a Preliminary Determination Letter to allow Appeals consideration.) If the IRS's decision not to issue a Preliminary Determination Letter is not due to the donor's actions or failure to act, the IRS will not contend that the donor failed to exhaust all administrative remedies, provided that the donor fully participates in the Appeals consideration process offered by the IRS during the pendancy of the Tax Court proceeding. In this regard, the IRS and Treasury Department do not view the reference to section 7477 contained in § 601.106(a)(2)(iv) of the Statement of Procedural Rules as currently in effect and Rev. Proc. 87–24 (1987–1 CB 720) as prohibiting Appeals' jurisdiction to consider docketed cases under current section 7477. The version of section 7477 referenced in those items was repealed prior to the enactment of the current section 7477 as part of the TRA.

The proposed regulations confirm that the donor is not required to consent to an extension of the time within which gift tax with respect to the transfer at issue may be assessed in order to exhaust the donor's administrative remedies, and that the failure to consent to such an extension will not be taken into account for this purpose. See section 7430(b)(1) and *Minahan* v. *Commissioner,* 88 T.C. 492 (1987), considering this issue in the context of section 7430(b)(1) prior to amendment by Public Law 104–168 (110 Stat. 1452).

Under the proposed regulations, a donor may petition for a declaratory judgment with respect to disputes regarding valuation and/or other related issues. This is consistent with §§ 20.2001–1(b) and 25.2504–2(b) providing that, once the gift tax statute of limitations has expired with respect to a transfer, the IRS is precluded from making any adjustments with respect to that transfer for purposes of determining prior taxable gifts or adjusted taxable gifts, regardless of whether the adjustment involves a valuation issue or a legal issue pertaining to the proper interpretation of the gift tax law. See also § 301.6501(c)–1(f)(5) providing a similar rule regarding transfers that are incomplete gifts but are reported as completed gifts. Accordingly, even if a gift tax adjustment does not generate any additional gift tax liability, the IRS nevertheless is required to propose the adjustment (and to take all other necessary steps) in order to challenge the return as filed within the statutory limitations period, regardless of the nature of the issue presented. Sections 2001(f), 2504(c), 6501(c)(9) and 7477, as enacted or amended by TRA and the 1998 Acts, provide an integrated statutory regime pursuant to which taxpayers are accorded finality with respect to adequately disclosed transfers (except for transfers that are reported as incomplete gifts), while the IRS is afforded the reasonable opportunity to identify in a timely manner returns that present issues that merit further examination. The section 7477 declaratory judgment procedure is a necessary part of this regime because it provides a mechanism to finally resolve any disputed adjustments in circumstances where there is no tax assessment and thus the donor would otherwise be unable to satisfy the jurisdictional requirements for any judicial resolution. The IRS and Treasury Department believe it is appropriate for the declaratory judgment mechanism under section 7477, when available in circumstances where there is no deficiency or refund, to be available for all adjustments regardless of whether the basis for those adjustments is factual, legal, or both.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request

comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 16, 2008 at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by September 8, 2008, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 8, 2008.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Juli Ro Kim, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7477–1 is revised to read as follows:

§ 301.7477–1 Declaratory judgments relating to the value of certain gifts for gift tax purposes.

(a) *In general.* If the requirements contained in paragraph (d) of this section are satisfied, a donor may petition the United States Tax Court under section 7477 for a declaratory judgment regarding the amount of one or more of the donor's gifts during the calendar year for Federal gift tax purposes, if the adjustment(s) proposed by the Internal Revenue Service (IRS) will not result in any deficiency in or refund of the donor's gift tax liability for that calendar year.

(b) *Declaratory judgment procedure*—(1) *In general.* If a donor does not resolve a dispute with the IRS concerning the value of a transfer for gift tax purposes at the Examination level, the donor will be sent a notice of preliminary determination of value, or such other document as may be utilized by the IRS for this purpose from time to time, but referred to in this section as a Preliminary Determination Letter, inviting the donor to file a formal protest and to request consideration by the appropriate IRS Appeals office. See §§ 601.105 and 601.106 of this chapter. Subsequently, the donor will be sent a notice of determination of value (Letter 3569, or such other document as may be utilized from time to time by the IRS for this purpose in cases where no deficiency or refund would result, but referred to in this section as Letter 3569) if—

(i) The donor requests Appeals consideration in writing within 30 calendar days after the mailing date of the Preliminary Determination Letter, or by such later date as determined pursuant to IRS procedures, and the matter is not resolved by Appeals;

(ii) The donor does not request Appeals consideration within the time provided in paragraph (b)(1)(i) of this section; or

(iii) The IRS does not issue a Preliminary Determination Letter in circumstances described in paragraph (d)(3)(ii) of this section.

(2) *Notice of determination of value.* The Letter 3569 will notify the donor of the adjustment(s) proposed by the IRS, and will advise the donor that the donor may contest the determination made by the IRS by filing a petition with the Tax Court before the 91st day after the date on which the Letter 3569 was mailed to the donor by the IRS.

(3) *Tax Court petition.* If the donor does not file a timely petition with the Tax Court, the IRS determination as set forth in the Letter 3569 will be considered the final determination of value, as defined in sections 2504(c) and 2001(f). If the donor files a timely petition with the Tax Court, the Tax Court will determine whether the donor has exhausted available administrative remedies. Under section 7477, the Tax Court is not authorized to issue a declaratory judgment unless the Tax Court finds that the donor has exhausted all administrative remedies within the IRS. See paragraph (d)(3) of this section regarding the exhaustion of administrative remedies.

(c) *Adjustments subject to declaratory judgment procedure.* The declaratory judgment procedures set forth in this section apply to adjustments involving all issues relating to the transfer, including without limitation valuation issues and legal issues involving the interpretation and application of the gift tax law.

(d) *Requirements for declaratory judgment procedure.* The declaratory judgment procedure provided in this section is available to a donor with respect to a transfer only if the requirements of paragraphs (d)(1) through (4) of this section with regard to that transfer are satisfied.

(1) *Reporting.* The transfer is shown or disclosed on the return of tax imposed by chapter 12 for the calendar year during which the transfer was made or on a statement attached to such return. For purposes of this paragraph, the term return of tax imposed by chapter 12 means the last gift tax return (Form 709, ''United States Gift (and Generation-skipping Transfer) Tax Return,'' or such other form as may be utilized for this purpose from time to time by the IRS) for the calendar year filed on or before the due date of the return, including extensions granted if any, or, if a timely return is not filed, the first gift tax return for that calendar year filed after the due date. For purposes of satisfying this requirement, the transfer need not be reported in a manner that constitutes adequate disclosure within the meaning of § 301.6501(c)–1(e) or (f) (and thus for which, under §§ 20.2001–1(b) and 25.2504–2(b) of this chapter, the period will not expire during which the IRS may adjust the value of the gift). The issuance of a Letter 3569 with regard to a transfer disclosed on a return does not constitute a determination by the IRS that the transfer was adequately disclosed, or otherwise cause the period of limitations on assessment to commence to run with respect to that transfer. In addition, in the case of a transfer that is shown on the return, the IRS may in its discretion choose to defer until a later time making a determination with regard to such transfer. If the IRS exercises its

discretion to defer such determination in that case, the transfer will not be addressed in the Letter 3569 (if any) sent to the donor currently, and the donor is not yet eligible for a declaratory judgment with regard to that transfer under section 7477.

(2) *IRS determination and actual controversy.* The IRS makes a determination regarding the gift tax treatment of the transfer that results in an actual controversy. The IRS makes a determination that results in an actual controversy with respect to a transfer by mailing a Letter 3569 to the donor, thereby notifying the donor of the adjustment(s) proposed by the IRS with regard to that transfer and of the donor's rights under section 7477.

(3) *Exhaustion of administrative remedies*—(i) *In general—Appeals office consideration.* The Tax Court determines that the donor has exhausted all administrative remedies available within the IRS for resolving the controversy. For purposes of this section, the IRS will consider a donor to have exhausted all administrative remedies if, prior to filing a petition in Tax Court (except as provided in paragraph (d)(3)(ii) of this section), the donor, or a qualified representative of the donor described in § 601.502 of this chapter, timely requests consideration by Appeals and participates fully in the Appeals consideration process, including, without limitation, timely submitting all information related to the transfer that is requested by the IRS in connection with the Appeals consideration. A timely request for consideration by Appeals is a written request from the donor for Appeals consideration made within 30 days after the mailing date of the Preliminary Determination Letter, or by such later date for responding to the Preliminary Determination Letter as is agreed to between the donor and the IRS.

(ii) *No Preliminary Determination Letter issued.* If the IRS does not issue a Preliminary Determination Letter to the donor prior to the issuance of Letter 3569, the IRS nevertheless will consider the donor to have exhausted all administrative remedies within the IRS for purposes of section 7477 upon the issuance of the Letter 3569, provided that—

(A) The IRS decision not to issue the Preliminary Determination Letter was not due to actions or inactions of the donor (such as a failure to supply requested information or a current mailing address to the Area Director having jurisdiction over the tax matter); and

(B) The donor, or a qualified representative of the donor described in § 601.502 of this chapter, after the filing of a petition in Tax Court for a declaratory judgment pursuant to section 7477, fully participates (within the meaning of paragraph (d)(3)(i) of this section) in the Appeals office consideration when offered by the IRS while the case is in docketed status.

(iii) *Failure to agree to extension of time for assessment.* The donor has the right to agree (or to decline to agree) to an extension of the time under section 6501 within which gift tax with respect to the transfer at issue may be assessed. For purposes of section 7477, the donor's refusal to agree to such an extension will not be considered by the IRS to constitute a failure by the donor to exhaust all administrative remedies available to the donor within the IRS.

(4) *Timely petition in Tax Court.* The donor files a pleading with the Tax Court requesting a declaratory judgment under section 7477. This pleading must be filed with the Tax Court before the 91st day after the date of mailing of the Letter 3569 by the IRS to the donor. The pleading must be in the form of a petition subject to Tax Court Rule 211(d).

(e) *Examples.* The following examples illustrate the provisions of this section. These examples, however, do not address any other situations that might affect the Tax Court's jurisdiction over the proceeding. The examples read as follows:

Example 1. Exhaustion of administrative remedies. The donor (D) timely files a Form 709, ''United States Gift (and Generation-Skipping Transfer) Tax Return,'' on which D reports D's completed gift of closely held stock. After conducting an examination, the IRS concludes that the value of the stock on the date of the gift is greater than the value reported on the return. Because the amount of D's available applicable credit amount under section 2505 is sufficient to cover any resulting tax liability, no gift tax deficiency will result from the adjustment. D is unable to resolve the matter with the IRS examiner. The IRS sends a notice of preliminary determination of value (Preliminary Determination Letter) to D informing D of the proposed adjustment. D, within 30 calendar days after the mailing date of the letter, submits a written request for Appeals consideration. During the Appeals process, D provides to the Appeals office all additional information (if any) requested by Appeals relevant to the determination of the value of the stock in a timely fashion. The Appeals office and D are unable to reach an agreement regarding the value of the stock as of the date of the gift. The Appeals office sends D a notice of determination of value (Letter 3569). For purposes of section 7477, the IRS will consider D to have exhausted all available administrative remedies within the IRS, and thus will not contest the allegation in D's petition that D has exhausted all such administrative remedies.

Example 2. Exhaustion of administrative remedies. Assume the same facts as in *Example 1*, except that D does not timely request consideration by Appeals after receiving the Preliminary Determination Letter. A Letter 3569 is mailed to D more than 30 days after the mailing of the Preliminary Determination Letter and prior to the expiration of the period of limitations for assessment of gift tax. D timely files a petition in Tax Court pursuant to section 7477. After the case is docketed, D requests Appeals consideration. In this situation, because D did not respond timely to the Preliminary Determination Letter with a written request for Appeals consideration, the IRS will not consider D to have exhausted all administrative remedies available within the IRS for purposes of section 7477 prior to filing the petition in Tax Court, and thus may contest any allegation in D's petition that D has exhausted all such administrative remedies.

Example 3. Exhaustion of administrative remedies. D timely files a Form 709 on which D reports D's completed gifts of interests in a family limited partnership. After conducting an examination, the IRS proposes to adjust the value of the gift as reported on the return. No gift tax deficiency will result from the adjustments, however, because D has a sufficient amount of available applicable credit amount under section 2505. D declines to consent to extend the time for the assessment of gift tax with respect to the gifts at issue. Because of the pending expiration of the period of limitation on assessment with respect to the gifts, the IRS determines that there is not adequate time for Appeals consideration. Accordingly, the IRS mails to D a Letter 3569, even though a Preliminary Determination Letter had not first been issued to D. D timely files a petition in Tax Court pursuant to section 7477. After the case is docketed in Tax Court, D is offered the opportunity for Appeals to consider any dispute regarding the determination and participates fully in the Appeals consideration process. However, the Appeals office and D are unable to resolve the issue. The IRS will consider D to have exhausted all administrative remedies available within the IRS, and thus will not assert that D has not exhausted all such administrative remedies.

Example 4. Legal issue. In 2006, D transfers nonvested stock options to a trust for the benefit of D's child. D timely files a Form 709 reporting the transfer as a completed gift for Federal gift tax purposes and complies with the adequate disclosure requirements for purposes of triggering the commencement of the applicable statute of limitations. Pursuant to § 301.6501(c)–1(f)(5), adequate disclosure of a transfer that is reported as a completed gift on the Form 709 will commence the running of the period of limitations for assessment of gift tax on D, even if the transfer is ultimately determined to be an incomplete gift for purposes of § 25.2511–2 of this chapter. After conducting an examination, the IRS concurs with the reported valuation of the stock options, but concludes that the reported transfer is not a completed gift for Federal gift tax purposes. D is unable to resolve the matter with the IRS

examiner. Assuming that the IRS mails to D a Letter 3569 with regard to this transfer, and that D complies with the administrative procedures set forth in this section, including the exhaustion of all administrative remedies available within the IRS, then D may file a petition for declaratory judgment with the Tax Court pursuant to section 7477.

Example 5. Transfers in controversy. On April 16, 2007, D timely files a Form 709 on which D reports gifts made in 2006 of fractional interests in certain real property and of interests in a family limited partnership (FLP). However, although the gifts are disclosed on the return, the return does not contain information sufficient to constitute adequate disclosure under § 301.6501(c)–1(e) or (f) for purposes of the application of the statute of limitations on assessment of gift tax with respect to the reported gifts. The IRS conducts an examination and concludes that the value of both the interests in the real property and the FLP interests on the date(s) of the transfers are greater than the values reported on the return. No gift tax deficiency will result from the adjustments because D has a sufficient amount of remaining applicable credit amount under section 2505. However, D does not agree with the adjustments. The IRS sends a Preliminary Determination Letter to D informing D of the proposed adjustments in the value of the reported gifts. D, within 30 calendar days after the mailing date of the letter, submits a written request for Appeals consideration. The Appeals office and D are unable to reach an agreement regarding the value of any of the gifts. In the exercise of its discretion, the IRS decides to resolve currently only the value of the real property interests, and to defer the resolution of the value of the FLP interests. On May 28, 2009, the Appeals office sends D a Letter 3569 addressing only the value of the gifts of interests in the real property. Because none of the gifts reported on the return filed on April 16, 2007, were adequately disclosed for purposes of § 301.6501(c)–1(e) or (f), the period of limitations during which the IRS may adjust the value of those gifts has not begun to run. Accordingly, the Letter 3569 is timely mailed. If D timely files a petition in Tax Court pursuant to section 7477 with regard to the value of the interests in the real property, then, assuming the other requirements of section 7477 are satisfied with regard to those interests, the Tax Court's declaratory judgment, once it becomes final, will determine the value of the gifts of the interests in the real property. Because the IRS has not yet put the gift tax value of the interests in the FLP into controversy, the procedure under section 7477 is not available with regard to those gifts.

Par. 3. Section 301.7477–2 is added to read as follows:

§ 301.7477–2 Effective date.

Section 301.7477–1 applies to civil proceedings described in section 7477 filed in the United States Tax Court on or after the date these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–12894 Filed 6–6–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0898; FRL–8351–4]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances which were the subject of premanufacture notices (PMNs). The two substances are dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). This action would require persons who intend to manufacture, import, or process either of these two substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments must be received on or before July 9, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0898, 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2006–0898. 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–2006–0898. 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. 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 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, 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: Tracey Pennington, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *pennington.tracey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed rule. Potentially affected entities may include, but are not limited to:

Manufacturers, importers, or processors of one or both subject chemical substances (NAICS codes 325 and 324110), e.g., Chemical manufacturing and petroleum refineries.

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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after July 9, 2008 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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 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 is proposing significant new use rules (SNURs) under section 5(a)(2) of TSCA for two chemical substances which were the subject of premanufacture notices (PMNs). The two substances are dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). These SNURs would require persons who intend to manufacture, import, or process either of these two substances for an activity designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of September 19, 2007 (72 FR 53470) (FRL–8135–8), EPA issued direct final SNURs on these two substances in accordance with the procedures at 40 CFR 721.170(d)(4)(i)(A). EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by 40 CFR 721.170(d)(4)(i)(B), on November 19, 2007 (72 FR 64951) (FRL–8340–8), EPA withdrew the direct final SNURs on these two substances and is now proposing these SNURs. The record for the direct final SNURs for these substances was established as docket EPA–HQ–OPPT–2006–0898. That record includes information considered by the Agency in developing the direct final rules and the notices of intent to submit adverse comments.

The rationale for this proposed rule as well as requests for public comment on specific issues is included in Unit IV.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine

that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the significant new use activities described in the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy statement in support of the import certification appears at 40 CFR part 707, subpart B.

III. Substances Subject to this Rule

EPA is proposing to establish significant new use and recordkeeping requirements for two chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name if the specific name is claimed as CBI).
- CAS number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VI. for more information).
- CFR citation assigned in the regulatory text section of this proposed rule.

The specific activities designated as significant new uses are listed in 40 CFR part 721, subpart E.

PMN Numbers P–01–759 and P–05–555

Chemical name: Dodecandioic acid, 1, 12-dihydrazide.

CAS number: 4080–98–2.

Basis for action: The PMNs (submitted by two different chemical manufacturing companies) state that the generic (non–confidential) uses of the substance will be as a raw material for coating and sealants and as a curing agent, respectively. Based on the molecular structure of the PMN substance and test data on analogous substances, EPA believes the PMN substance may cause carcinogenicity, developmental toxicity, and irritation to mucous membranes. Also, based on test data on the PMN substance, it may cause dermal sensitization. As described in the companies' PMNs and accompanying Material Safety Data Sheets, workers will be warned that the substance may cause dermal sensitization and will wear gloves and National Institute for Occupational Safety and Health (NIOSH) approved respirators with an assigned protection factor (APF) of 50 or greater. Based on this expectation that adequate hazard communication and personal protective equipment will be used, EPA believes significant worker exposure is unlikely. Further, consumer use is not expected. EPA has determined, however, that potential use of the substance without workers wearing gloves and a respirator, and without an appropriate hazard communication program, may cause serious human health effects. Respirators must provide a NIOSH APF of at least 50. The following NIOSH-approved respirators meet the minimum requirement for § 721.63(a)(4): Air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters; powered air-purifying respirator equipped with a tight-fitting full facepiece and High Efficiency Particulate Air (HEPA) filters; supplied air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting full facepiece. Because the substance is a dermal sensitizer and irritates mucous membranes, half–face respirators do not provide adequate protection. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day oral toxicity test in rats (OPPTS 870.3100 test guideline) and a mammalian erythrocyte micronucleus test (OPPTS 870.5395 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10057.

PMN Number P–07–283

Chemical name: Thiophene, 2,5-dibromo-3-hexyl-.

CAS number: 116971–11–0.

Basis for action: The PMN states that the substance will be used as a reactive intermediate monomer for use in manufacturing a p-type organic semiconductor polymer. The polymer will be used in printed organic electronics applications. Based on structure activity relationship analyses for thiophenes, EPA is concerned that toxicity to aquatic organisms may occur at concentrations above 1 part per billion (ppb) of the PMN substance in surface waters. At the production volume stated for the company in the PMN, releases of the PMN substance are not expected to result in surface water concentrations above 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance, as described in the PMN, may present an unreasonable risk. EPA has determined, however, that potential increased production or importation volumes or other uses of the substance resulting in surface water concentrations above 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)); a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the

environmental effects of the PMN substance. The fish and daphnid tests should use flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.10088.

IV. Objectives and Rationale of the Rule

A. Rationale

During review of the PMNs submitted for these two chemical substances, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met, as discussed in Unit III.

1. *Rationale for the proposed SNUR for dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2).* The hazard communication terms of the SNUR being proposed today for dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2) differ from the terms in the direct final SNUR, based on submitted comments that clarified existing uses of the substance. The notice of intent to submit adverse comment states that hazard communication materials currently in use for this substance in the marketplace do not contain two of the health hazard statements included in the direct final SNUR. The two statements are, ''this substance may cause cancer'' and ''this substance may cause developmental toxicity.'' As EPA interprets its SNUR authority under section 5(a)(2) of TSCA, if an activity is already ongoing before EPA first publishes a **Federal Register** notice of intent to designate that activity as a significant new use, then EPA may not issue a SNUR designating that activity as a significant ''new'' use. Therefore, EPA is proposing a SNUR that would not designate as a ''significant new use'' the failure to identify cancer and developmental toxicity in workplace hazard communication materials accompanying this chemical substance (under 40 CFR 721.72). However, for the reasons described in this paragraph and in the direct final rule preamble, the Agency's concerns for these toxic endpoints remain. Therefore, the Agency encourages companies to voluntarily include these potential health concerns in their hazard communication materials for the substance. The workplace personal protective equipment requirements (under 40 CFR 721.63) and other requirements listed in the direct final rule would remain unchanged in today's proposed SNUR. The Agency requests comments on the approach being taken in the proposed SNUR for this substance.

2. *Rationale for the proposed SNUR for thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0).* The Agency is requesting comments on the proposed SNUR for this substance as well as two alternative approaches. A discussion of the rationale behind each option and specific issues on which the Agency is requesting comment follows. EPA requests that commenters making specific recommendations include supporting documentation where appropriate.

i. *Proposed SNUR - maximum surface water concentration of 1 ppb from manufacturing, processing, or use activities and annual company production limit of 500 kg.* The terms of the SNUR being proposed today for thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0) remain the same as in the direct final SNUR. See proposed § 721.10088 (a)(2)(i) and (a)(2)(ii). EPA is proposing to designate the surface water release and production volume limits as significant new uses for the reasons stated in Unit V., including concerns associated with potential changes in the extent to which these activities could increase the magnitude and duration of exposure of human beings or the environment to the chemical substance. Inclusion of a production volume limit gives the Agency an opportunity to review the substance again at a higher production volume.

ii. *Alternative A -maximum surface water concentration of 1 ppb from manufacture, processing, or use activities up to an annual production volume of 500 kg, and no release to surface water at annual company production volumes higher than 500 kg.* This option was suggested in the notice of intent to submit adverse comment on the direct final SNUR for this substance. The commenter also stated that they recognize the Agency's concern for water releases of the substance. While this option would be protective of the aquatic environment, the Agency requests comment on whether industry compliance would be impractical or confusing.

iii. *Alternative B - SNUR for no release to surface water.* If the substance is not currently being released to water during manufacturing, processing, or use activities, the Agency could consider finalizing a SNUR designating any release to water during those activities as a significant new use. This option would be sufficiently protective of the aquatic environment and is less complicated than Alternative A. To implement this option, EPA would need to be satisfied that there are no ongoing releases to water, taking into account 40 CFR 721.90 (a)(1), (b)(1), and (c)(1). EPA solicits comment on whether there are ongoing releases to water during manufacturing, processing, or use activities.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

V. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of the two chemical substances that are the subject of this proposed rule, EPA considered relevant information about the toxicity of the substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. In these cases, EPA did not find that the use scenarios described in the three PMNs triggered the determinations set forth

under section 5(e) of TSCA. EPA did, however, believe that certain changes from the use scenarios described in the PMNs could result in increased exposures, and constitute ''significant new uses.'' These so-called ''Non-5(e) SNURs'' (i.e., SNURs for chemicals that are not regulated by a section 5(e) Consent Order under § 721.160) are promulgated pursuant to 40 CFR 721.170. EPA has determined that every activity designated as a ''significant new use'' in all the non-5(e) SNURs issued under 40 CFR 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing. As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule, rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing activities with the chemical substances that would be regulated as a ''significant new use'' through this proposed rule, must cease any such activity as of the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25 and 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit III. lists recommended testing for the two chemical substances that are the subject of these proposed SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Many test guidelines are now available on the Internet at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

The recommended tests may not be the only means of assessing the potential toxicity, exposure, and risks of the chemical substances regulated under this rule. However, submitting SNUNs without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to notice submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50.

SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see 40 CFR 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances at the time of the direct final rule. The Agency's complete economic analysis is available in the public docket for the direct final rule (EPA–HQ–OPPT–2006–0898). The difference in hazard communication requirements in the direct final SNUR and this proposed rule (i.e., removal of the requirement for specific identification of cancer and developmental toxicity endpoints in workplace hazard communication materials) could slightly reduce estimated costs to regulated entities. The difference in a production volume trigger and type of release to water restriction in the direct final SNUR and this proposed rule will not impact the estimated costs to regulated entities.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' because it does not meet the criteria in section 3(f) of the Executive order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 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 that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per submission. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the proposed rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact would even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.) are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action would not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12988

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 30, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.10057 to subpart E to read as follows:

§ 721.10057 Dodecanedioic acid, 1, 12-dihydrazide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as dodecanedioic acid, 1, 12-dihydrazide (PMNs P–01–759 and P–05–555; CAS No. 4080–98–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (a)(6)(i), (a)(6)(ii), (b), and (c). Respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. The following NIOSH-approved respirators meet the minimum requirement for § 721.63(a)(4): Air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters; powered air-purifying respirator equipped with a tight-fitting full facepiece and High Efficiency Particulate Air (HEPA) filters; supplied air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting full facepiece. Because the substance is a dermal sensitizer and irritates mucous membranes, half-face respirators do not provide adequate protection.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), and (g)(2)(i).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), and (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.10088 to subpart E to read as follows:

§ 721.10088 Thiophene, 2,5-dibromo-3-hexyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as thiophene, 2,5-dibromo-3-hexyl- (PMN P–07–283; CAS No. 116971–11–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (500 kilograms).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. E8–12862 Filed 6–6–08; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 533 and 552

[GSAR Case 2007–G501; Docket 2008–0007; Sequence 1]

RIN 3090–AI49

General Services Acquisition Regulation; GSAR Case 2007–G501;Protests, Disputes, and Appeals

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to update language pertaining to protests, disputes, and appeals. This project is part of the GSAM Rewrite Project, in which all parts of the regulation are being reviewed and updated to include new statutes, legislation, and policies.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before August 8, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2007–G501 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2007–G501'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2007–G501. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2007–G501'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2007–G501 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy at (202) 208–6925, or by e-mail at *meredith.murphy@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2007–G501.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) proposes to amend the General Services Administration Acquisition Regulation (GSAR) to update the text addressing protests, disputes, and appeals. This rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 533, Protests, Disputes, and Appeals. GSAR Part 533 includes two subparts. GSAR Subpart 533.1, Protests, included only the prescription for a GSA-unique clause, 552.233–70, Protests Filed Directly with the General Services Administration. However, GSA proposes to delete this clause in its entirety because it repeated much of the FAR clause, and the remaining

information is available to contractors on the internet in GSAM Subpart 533.1.

GSAR Subpart 533.2, Disputes and Appeals, has three sections, including the prescription for a utility disputes clause. Editorial changes were made to GSAR 533.211, Contracting officer's decision, so as not to repeat the information that must be included, as prescribed in FAR 33.211, to clarify the GSA-unique requirements, and to recognize that the GSA Board of Contract Appeals'(GSBCA) duties are now vested in the Civilian Board of Contract Appeals (CSBA). No other changes were made to this subpart. In addition, the clause at GSAR 552.233–71, Disputes (Utility Contracts), and its prescription at GSAR 533.215, were deleted at the request of the GSA Public Buildings Service.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule will only impact an offeror that is submitting a protest or has a dispute with GSA. Further, GSA is proposing only minor changes in the regulations and procedures for pursuing either action. For these reasons, it is expected that the number of entities impacted by this rule will be minimal. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 533 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2007–G501), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 533 and 552

Government procurement.

Dated: May 30, 2008

David A. Drabkin,

Acting Chief Acquisition Officer & Senior Procurement Executive Office of the Chief Acquisition Officer.

Therefore, GSA proposes to amend 48 CFR parts 533 and 552 as set forth below:

1. The authority citation for 48 CFR parts 533 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1 [Removed]

2. Remove subpart 533.1, Protests.

3. Add section 533.209 to Subpart 533.2 to read as follows:

533.209 Suspected fraudulent claims.

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

4. Revise section 533.211 to read as follows:

533.211 Contracting officer's decision.

The contracting officer's written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor's notice of appeal to the Civilian Board of Contract Appeals (CBCA) should include a copy of the contracting officer's decision.

533.215 [Removed]

5. Remove section 533.215.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.233–70 and 552.233–71 [Removed]

6. Remove sections 552.233–70 and 552.233–71.

[FR Doc. E8–12572 Filed 6–6–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA–2008–0061]

RIN 2130–AB91

Railroad Rehabilitation and Improvement Financing Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century of 1998 (TEA–21) established the Rail Rehabilitation and Improvement Financing (RRIF) Program. The program authorizes the Secretary of Transportation to issue direct loans and loan guarantees to state and local governments, railroads, interstate compacts, and other specified organizations to finance the development of railroad infrastructure. The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005: a Legacy for Users (SAFETEA–LU) amended and expanded the program. SAFETEA–LU increased the principal amount of the RRIF program up to $35.0 billion, and of that amount, $7.0 billion is reserved for freight railroads other than Class I carriers. This NPRM proposes amending eligibility and application form and content criteria to ensure the long-term sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government.

DATES: Comments must be received on or before August 8, 2008.

ADDRESSES: Comments should reference Docket No. FRA–2008–0061 and may be submitted the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket ID, FRA–2008–0061, at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that FRA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov. Note:* Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act discussion in the Supplementary Information section of this NPRM.

FOR FURTHER INFORMATION CONTACT: John Kern, Attorney-Advisor, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*John.Kern@dot.gov* or 202–493–6044).

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through *http://www.regulations.gov*, which is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov*.

Background

Section 7203 of TEA–21, Public Law 105–178 (June 9, 1998), established the Railroad Rehabilitation and Improvement Financing (RRIF) Program. This program revised and replaced the pre-existing railroad financing program established under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976. In 2000, the FRA promulgated a rule implementing the RRIF program (65 FR 41838, July 6, 2000) found in 49 CFR Part 260 (''RRIF Rule''). In 2005, SAFETEA–LU further amended and expanded the RRIF program, establishing additional priorities, increasing the loan principal, and eliminating any requirement for collateral under the program.

The RRIF program authorizes the Secretary to provide direct loans and loan guarantees to state and local governments, interstate compacts consented to by Congress, government-sponsored authorities and corporations, railroads, joint ventures that include one railroad, and limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad. SAFETEA–LU did not amend the types of eligible projects, so they remain the same as under TEA–21: (1) Acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops); (2) refinancing outstanding debt incurred for these purposes; or (3) development or establishment of new intermodal or railroad facilities. Direct loans and loan guarantees issued under this section cannot be used for railroad operating expenses.

SAFETEA–LU increased the authorized, aggregate unpaid principal amount of obligations under direct loans and loan guarantees from $3.5 billion under TEA–21 to $35.0 billion. Of this amount, SAFETEA–LU increased the amount available solely for projects primarily benefiting freight railroads other than Class I carriers to $7.0 billion. Furthermore, SAFETEA–LU prescribed that the Secretary shall not establish any limit on the proportion of the unused amount authorized that may be used for one loan or loan guarantee.

The Secretary has delegated her authority under the RRIF program to the FRA Administrator. TEA–21 required FRA to give priority consideration to projects that: (1) Enhance public safety; (2) enhance the environment; (3) promote economic development; (4) enable United States companies to be more competitive in international markets; (5) are endorsed by plans prepared under 23 U.S.C. 135 by the state or states in which they are located; or (6) preserve or enhance rail or intermodal service to small communities or rural areas. SAFETEA–LU amended these priority considerations to include projects that: (7) Enhance service and capacity in the national rail system or (8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

Pursuant to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*) and OMB Circular No. A–129, Policies for Federal Credit Programs and Non-Tax Receivables, the Federal government must manage the RRIF program to ensure that the goals of the program are met while minimizing the risk of borrower default. The Federal government is responsible for making estimates of the costs of direct loan and loan guarantees. The goal of the RRIF program is to address a perceived gap between the railroad industry's financial needs and the lack of private financial sources willing to provide the necessary long-term, low-capital loans. Additionally, a goal of the program shall be to assist small railroads that lack access to capital and financing for making capital improvements in support of the priority considerations listed in section 260.7. The program shall also strive to encourage the private sector to invest in railroads and to provide financing for the types of projects underwritten by the RRIF program. The proposed amendments will further these goals and priorities.

The NPRM proposes to amend the RRIF rule to incorporate a number of program features which FRA believes will improve the administration and effectiveness of the RRIF program. FRA's beliefs are based on its experience gained while administering the RRIF program and its knowledge of the railroad industry, as well as congressional findings and General Accountability Office recommendations, which will be discussed later in the preamble. The NPRM proposes substantive amendments to the existing rule that will ensure the long-term sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government.

Section-by-Section Discussion of the Proposed Changes

Section 260.21 Eligibility

The NPRM proposes to establish an equity contribution requirement for applicants who are larger than small entities. The FRA believes that by requiring borrowers to invest a certain percentage of non-RRIF funds to finance a project, this will ensure that borrowers are themselves financially invested in the project. Equity contribution requirements are a common practice among financial lenders. The FRA's intent is to reduce the risk of borrower default, and subsequent Government loss, by having an applicant contribute to the assets financed by the loan.

The NPRM proposes that an applicant be required to have and maintain a minimum equity contribution of the total costs of the project being financed by the federal assistance. Furthermore, the FRA proposes to establish a required equity contribution ratio that is a function of the creditworthiness of the applicant, the degree of leverage in the project represented by the amount of federal assistance requested, the size of the loan as compared with the overall financial resources of the applicant, and whether the applicant is requesting a direct loan or loan guarantee. Finally, the FRA proposes that direct loan and loan guarantee applications for less than $20 million will be exempt from the equity contribution requirement.

Applicants with a low credit rating, which the FRA proposes to define as below ''investment grade,'' represent a riskier investment for the federal government. Applicants requesting a large amount of financial assistance as compared with the overall financial resources of the applicant will also represent a greater risk to the federal government, since more of the federal government's resources will be dependent on the outcome of the project.

Additionally, the Department believes applicants whose debt (including the

federal assistance applied for) to equity ratio exceeds 1.0 also pose an increased risk to the federal government since borrowers whose debt exceeds equity generally have an increased risk of default. Finally, direct loans create more risk to the federal government than loan guarantees do, since loan guarantees have the added protection of having an independent financial lender assessing project risk. In cases where applicants and projects create an increased risk to the federal government, applicants will be required to have invested a greater proportion of the total project costs to offset the increased risk to the government.

Direct Loan Applicants

The NPRM proposes that all direct loan applicants with either a credit rating of less than investment grade or whose debt (including the federal financial assistance applied for) to equity ratio exceeds 1.0 will be required to have and always maintain an equity contribution of at least 20 percent of total project costs for direct loan applications for less than $250 million and an equity contribution of at least 30 percent of total project costs for direct loan applications exceeding $250 million.

The NPRM proposes that all direct loan applicants with a credit rating of no less than investment grade and whose debt, including the federal financial assistance applied for, to equity ratio does not exceed 1.0 will be required to have and to always maintain an equity contribution of at least 10 percent of total project costs for direct loan applications for less than $250 million and an equity contribution of at least 15 percent of total project costs for direct loan applications exceeding $250 million.

Loan Guarantee Applicants

The NPRM proposes that all loan guarantee applicants with either a credit rating of less than investment grade or whose debt, including the federal financial assistance applied for, to equity ratio exceeds 1.0 will be required to have and always maintain an equity contribution of at least 20 percent of total project costs for loan guarantee applications for less than $250 million and an equity contribution of at least 25 percent of total project costs for loan guarantee applications exceeding $250 million. The equity contribution required for applications of direct loans and loan guarantees of less than $250 million is the same because FRA believes that the greater risk presented by direct loans is only necessarily addressed in this program in the context of very large direct loan amounts. Additionally, the type of financial assistance requested is one of many factors that the FRA used to determine the appropriate level of equity contribution for each financial assistance amount category.

The NPRM proposes that all loan guarantee applicants with a credit rating of no less than investment grade and whose debt, including the federal financial assistance applied for, to equity ratio does not exceed 1.0 will be required to have and to always maintain an equity contribution of at least 10 percent of total project costs for loan guarantee applications for less than $250 million and an equity contribution of at least 12.5 percent of total project costs for loan guarantee applications exceeding $250 million.

The FRA requests comments on the equity contribution requirement and the amounts proposed.

Finally, the NPRM proposes a limitation on the cumulative outstanding balance to a single borrower. The SAFETEA–LU amendments to RRIF state that the Secretary shall not establish ''any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.'' However, FRA believes that placing a limit on the cumulative amount of direct loans and loan guarantees to any one borrower is within the FRA's authority since the proposed limit is an absolute limit and not based on a proportion of unused funds. 45 U.S.C. 822(d). As Congress could have chosen instead to explicitly prohibit all limitations, regardless of whether or not the limitation is based on the proportion of unused funds, FRA interprets the language as written to indicate that Congress did not intend to prohibit all limitations but only limitations based on the proportion of the unused amount authorized.

In an October 2006 report, the GAO recommended that the Department ''consider strategies to sustain the role of competitive market forces by creating a level playing field for all freight modes.'' [1] The GAO report found that over the past 30 years, the railroad industry has become more concentrated. The number of Class I railroad systems decreased from 30 railroads in 1976 to 7 railroads in operation today. Of those, four railroads account for over 89% of the industry's revenues.

FRA believes a sufficiently large direct loan or loan guarantee to one borrower could potentially further increase concentration in the railroad industry. A sufficiently large direct loan or loan guarantee to one railroad may have the potential to allow it to obtain a preferential standing in the marketplace over its competitors. The FRA believes that the RRIF program can be an effective means of updating and improving railroad infrastructure to meet modern needs. Congress also established that it is a priority of the program to focus on providing capital to smaller railroads by requiring that twenty percent of the program's total funding be set aside for these smaller railroads. Therefore, the FRA believes that limiting the cumulative amount that any one applicant may borrow is proper federal direct loan and loan guarantee policy and would be in keeping with Congressional intent to ensure that a few large projects do not dominate the entire funding for the program.

In order to ensure that the direct loans and loan guarantees are spread evenly throughout the railroad industry, the NPRM proposes limiting the amount of any cumulative outstanding balance to a single borrower. The NPRM proposes $500 million as an appropriate limit for any cumulative loan guarantee and direct loan for any single borrower and seeks comment on the suitability of this figure. In particular, commenters who believe this figure is insufficient for their project needs should comment on whether any greater amount would be more suitable.

Section 260.23 Form and Content of Application Generally

First, if the amount of financial assistance requested exceeds a defined threshold, the NPRM proposes adding a requirement for applicants to obtain a credit rating or assessment that takes into account the proposed project. This will result in better informed decisions by the government and ensure that the credit risk to the Government is minimized for the largest direct loan and loan guarantee requests. The NPRM proposes a threshold of $250 million as an appropriate amount and invites comments on the suitability of this figure.

Second, the NPRM proposes adding a requirement that applicants submit electronic copies of their audited financial statements. This requirement will reduce application review costs and credit risk for the Government and ensure more efficient processing of loan applications. As this requirement may be overly burdensome on small railroad operations, the NPRM proposes excluding applicants with annual

[1] GAO, *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed,* GAO–07–94, October 2006.

revenues of less than $20 million from this requirement, as well as applications for direct loans or loan guarantees for less than $20 million.

Pursuant to its authority under the Small Business Act to define ''small entities,'' FRA published a final statement of agency policy that formally establishes ''small entities'' as railroads that meet the line-haulage revenue requirements of a Class III railroad. *See* 68 FR 24891 (May 9, 2003), as codified at part 209, appendix C of this chapter. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR parts 1201). The NPRM proposes to use this definition for this rulemaking.

Third, the NPRM proposes adding a requirement for applicants to identify and quantify the public benefit to be attained by the financial assistance. A GAO report from 2003 discussing the financing limitations of freight transportation recommended the DOT promote the use of benefit analyses, including external benefits.[2] The report found that by evaluating the benefits of competing alternatives, applicants would have to apply systematic analytical methods as part of their investment decision-making process, leading to a better understanding of the tradeoffs among competing alternative solutions. Additionally, by determining clear and tangible benefits, applicants would be better able to garner support for projects from private firms. The proposed rule will reduce the credit risk to the Government by encouraging participation from private financial sources, reduce application review costs, and improve government decision-making through better information. Furthermore, the NPRM proposes giving priority consideration to applications that have the highest benefit to loan value in order to make economically efficient use of limited government resources and to further reduce the risk to the Government of default.

Rulemaking Analyses and Notices

Executive Order 12866 and U.S. DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). We have prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. FRA invites comments on this regulatory evaluation.

This regulation will affect only those entities that voluntarily elect to apply for a direct loan or loan guarantee and those who receive a direct loan or loan guarantee under the program. It will not impose any direct, involuntary, or un-reimbursed costs on those entities not applying for the program. The only costs imposed on the applicants are the costs associated with completing an application. The costs associated with the proposed rule would also not differ materially from the current applications costs. The proposed rule codifies and regularizes many requirements already in effect. Although we have not provided a detailed cost of the application, many of these costs would be incurred with or without the rule. FRA specifically solicits comment on the total and incremental application costs of this proposed rule.

FRA has also concluded that the railroad rehabilitation and improvement loan program could generate both direct and indirect benefits. By codifying existing application review practices, the proposed rule will result in a more efficient and consistent use of government resources. Additionally, the proposed rule will provide for greater governmental transparency in codifying how applications will be reviewed. Furthermore, applicants will have the benefit of knowing their applications contain all the information necessary for review. The regulatory evaluation contains a more detailed discussion of the costs and benefits of the proposed rule.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth criteria for project applications in the RRIF program, which will result in only minimal additional cost to program applicants. This rule would also 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires a review of rules to assess their impact on small entities. FRA does not expect the proposed rule to have a significant economic impact on a substantial number of small entities. For this proposed rule, the relevant definition of small entities is based on the applicant's annual revenue. The Small Business Administration (SBA) has provided FRA with the authority to establish a definition for small entities. FRA has published a final policy that formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad, which is currently annual operating revenues of $20 million or less. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier.

FRA has not conducted a regulatory flexibility assessment of this proposed rule's impact on small entities. Small entities are largely exempt from the new application and equity contribution requirements in order to avoid a scenario where additional costs imposed could have significant economic impact on a substantial number of small entities. Additionally, FRA notes that this is a voluntary loan program, and the proposed rule will not have any effect on small entities that do not apply for direct loans or loan guarantees. FRA invites comment on the economic effect of the proposed rule on small entities. However, FRA believes the proposed rule will benefit small entities by providing them with greater access to capital and capital markets. FRA has, therefore, concluded that there are no substantial economic impacts for small entities of government, business, or other organizations.

FRA requests public comments that will clarify what the impacts will be for the affected small entities. FRA especially encourages political subdivisions that may be considered to be small entities to participate in the comment process and submit written comments to the docket.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year,

[2] GAO, *Freight Transportation: Strategies Needed to Address Planning and Financing Limitations,* GAO–04–165, December 2003.

and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector.

This loan program is not an ''unfunded mandate.'' This NPRM will not result in the expenditure by state, local, or tribal governments, in the aggregate, of $132,000,000 (adjusted annually for inflation) or more in any one year, and thus preparation of such a statement is not required.

Executive Order 13132 (Federalism)

The FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This NPRM will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on state and local governments. There will be minor costs associated with the submission of applications, but they are discretionary and will only be incurred should a state or local government wish to apply for funding. Otherwise, this NPRM directs how Federal funds will go to the states, and thus, there are no federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and state and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. In accordance with the requirements of the Paperwork Reduction Act, agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. FRA is requesting comment on a proposed information collection. FRA is also giving notice that the proposed collection of information has been submitted to OMB for review and approval.

Section 260.23 of the NPRM contains additional information requirements that would apply to railroads, states or political subdivisions of states that file applications for Federal funding for railroad rehabilitation and improvement projects.

This NPRM proposes to include requirements for applicants for loans and loan guarantees to provide certain information with their application in order to assess their financial health. Specifically, in Sections 260.23(4)(p)-(r), FRA proposes to require: Credit ratings or assessments for loan and guarantee applications for more than $250 million; electronic copies of audited financial statements to be submitted with applications from other than small entities for loans or guarantees of more than $20 million; and, that applicants must identify and quantify the public benefit that would accrue from the completion of the proposed project. FRA believes that any burden on applicants from formally incorporating these proposed requirements would be negligible because there are exceptions made for small loan and guarantee amounts as well as for small entities in general. For all other scenarios, the documentation requested would be required for any sort of financing that an applicant would seek, be it public or private, in order to assess the risk of granting financing. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: Whether these information collection requirements are necessary for FRA to properly perform its functions, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

National Environmental Policy Act

The FRA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related directives (*see* FRA Policy Statement on Procedures for Considering Environmental Impacts, 64 FR 28545). FRA has concluded that the issuance of this NPRM, which proposes to amend regulations governing the provisions of loan guarantees and direct loans for railroad rehabilitation and improvement projects, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement.

Executive Order 13211 (Energy Effects)

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. The FRA has evaluated this NPRM in accordance with Executive Order 13211. The FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a ''significant energy action'' within the meaning of the Executive Order.

List of Subjects in 49 CFR Part 260

Loan programs—Transportation; Railroads.

The Proposed Rule

For the reasons set forth in the preamble, and under the authority of 45 U.S.C. 822, FRA proposes to amend Part 260 of chapter II, subtitle B of title 49, Code of Federal Regulations, as set forth below:

PART 260—[AMENDED]

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

2. Revise section 260.21 to read as follows:

§ 260.21 Eligibility.

(a) The Administrator may make a direct loan to an Applicant, or guarantee the payment of the principal balance and any interest of an obligation of an Applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such direct loan or obligation shall be, or have been, used by the Applicant for the eligible purposes listed in § 260.5(a)(1), (2), and (3).

(b) Except for railroads that are small entities as provided in part 209, appendix C of this chapter and are seeking loans not in excess of $20 million, an Applicant applying for financial assistance must make an equity contribution to the costs of the project being financed, in part, by the federal assistance, based on the creditworthiness of the Applicant and the degree of leverage in the project represented by the federal assistance.

(c) An Applicant for a direct loan that is greater than $20 million but less than $250 million shall have and always maintain an equity contribution of at least 20 percent of total project costs. An Applicant for a direct loan that is greater than $250 million shall have and always maintain an equity contribution of at least 30 percent of total project costs.

(d) An Applicant for a loan guarantee that is greater than $20 million but less than $250 million shall have and always maintain an equity contribution of at least 20 percent of total project costs. An Applicant for a loan guarantee that is greater than $250 million shall have and always maintain an equity contribution of at least 25 percent of total project costs.

(e) An Applicant for a direct loan or loan guarantee with a credit rating of no less than investment grade and whose debt to equity ratio that does not exceed 1.0, shall be required to have and always maintain an equity contribution of half of the amounts prescribed in paragraphs (c) or (d), respectively.

(f) The cumulative outstanding balance of loans and loan guarantees to a single borrower shall not exceed $500 million.

3. Section 260.23 is amended by adding new paragraphs (p), (q), and (r) to read as follows:

§ 260.23 Form and content of application generally.

* * * * *

(p) A credit rating or assessment if the application for financial assistance is in excess of $250 million.

(q) Electronic copies of their audited financial statements, unless the Applicant has revenues of less than $20 million or the application for financial assistance is less than $20 million.

(r) Identification and quantification of the public benefit to be obtained by the financial assistance requested, including, but not limited to, the priorities listed in 49 U.S.C. 822(c). Priority consideration will be given to those applications that have the highest benefit to loan value, consistent with the provisions of 49 U.S.C. 822.

Issued in Washington, DC on June 3, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. E8–12811 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 385

[Docket No. FMCSA–2007–27659]

RIN 2126–AB02

Commercial Driver's License Testing and Commercial Learner's Permit Standards; Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to several requests, the Federal Motor Carrier Safety Administration (FMCSA) extends until July 9, 2008, the comment period for the notice of proposed rulemaking (NPRM) that was published on April 9, 2008.

DATES: Please submit comments regarding the NPRM to the docket by July 9, 2008.

ADDRESSES: Comments must be identified by Docket ID Number FMCSA–2007–27659, and submitted by one of the following methods:

- *Electronically:* Through the Federal Docket Management System (FDMS), at *http://www.regulations.gov*; and follow the instructions for submitting comments.
- *Mail/Courier:* U.S. Department of Transportation, Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.
- *Docket:* For access to the docket to read comments received and background material, go to the Federal Docket Management System (FDMS) at *http://www.regulations.gov*, and search for docket ID Number FMCSA–2007–27659. Comments may also be inspected at the U.S. Department of Transportation, Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Privacy Act:* Regardless of the method used for submitting comments, all comments or material will be posted without change to the FDMS, including personal information. Anyone can search the electronic form of all of our dockets in FDMS by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19476) or you may visit *http://DocketsInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or e-mail *robert.redmond@dot.gov*. Office hours are from 8 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: On April 9, 2008 (73 FR 19282), FMCSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** concerning proposed requirements related to commercial driver's license testing and commercial learner's permit standards. We provided the public with a 60-day comment period that expires on June 9, 2008. Several commenters have submitted requests for an extension of 30 days beyond June 9, which are in the docket. Accordingly, FMCSA extends the comment period for an additional 30 days, which now expires on July 9, 2008.

Issued on: June 4, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–12876 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 080320453–8705–01]

RIN 0648–XG60

Endangered and Threatened Species; Proposed Rule to Remove the Caribbean Monk Seal from the Federal List of Endangered and Threatened Wildlife

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

ACTION: Proposed rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), have reviewed the status of the Caribbean monk seal (*Monachus tropicalis*) and conclude that the species is extinct. As a result, based on the best available information, we propose to delist the Caribbean monk seal under the Endangered Species Act (ESA).

DATES: Comments on this proposed rule must be received by 5 p.m., Eastern Time, on August 8, 2008. Requests for public hearing must be made in writing and received by July 24, 2008.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 0648–XG60, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701.

Facsimile (fax): 727–824–5309.

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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule and status review are also available electronically at the NMFS website at *http://sero.nmfs.noaa.gov/pr/protres.htm*.

FOR FURTHER INFORMATION CONTACT: Kyle Baker, NMFS, Southeast Regional Office at the address above, at 727–824–5312; or Marta Nammack, NMFS, Office of Protected Resources at 301–713–1401. Reference materials regarding these determinations are available upon request or on the Internet at *http://sero.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. NMFS lists threatened and endangered species under its jurisdiction in 50 CFR parts 223 and 224. The U.S. Fish and Wildlife Service (USFWS) maintains the official lists of threatened and endangered species, which are published at 50 CFR 17.11 (for animals) and 17.12 (for plants). NMFS and USFWS regulations published at 50 CFR, part 424, specify the procedures and requirements for adding or removing species from the list of endangered and threatened species.

We are additionally required by ESA section 4(c)(2) and 50 CFR 424.12 to review each species on the list every 5 years (''5–year review'') to determine whether a species' classification on the list of threatened or endangered species is accurate. We evaluate whether the species continues to meet the definition of a threatened or endangered species, and we evaluate the five factors under ESA section 4(a)(1) to specify the ongoing reasons for the species' status:

(1) The present or threatened destruction, modification or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. A species may be delisted pursuant to section 424.11(d) if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, was in error.

We initiated a 5–year review for the Caribbean monk seal on November 29, 2006 (71 FR 39327), to ensure that the listing classification of the species endangered is accurate. We completed the 5–year review on March 7, 2008. The 5–year review synthesized the best available scientific and commercial data on the status of the species and concluded that the Caribbean monk seal is extinct. Therefore, we propose to delist the Caribbean monk seal. Below, we present a summary of the data on which this proposal is based, including a review of the taxonomy, biology, life history, and historic distribution of the Caribbean monk seal; previous statutory and regulatory actions associated with this species; and an analysis of the best available information on the Caribbean monk seals' status.

Taxonomic Classification and Phylogeny

The Caribbean monk seal, also known as the Caribbean seal, the West Indian seal, and the West Indian monk seal, was described from the scientific literature in 1849 from a specimen taken in Jamaica (Gray, 1849). Early references to this species referred to these animals as sea wolves, hair seals, or simply seals. Although the species had several common names, it is taxonomically described according to the following:

Kingdom: Animalia
Phylum: Chordata
Class: Mammalia
Subclass: Eutheria
Order: Carnivora
Suborder: Pinnipedia
Family: Phocidae
Subfamily Monachinae
Genus: *Monachus*
Species: *tropicalis*

The genus Monachus includes 3 allopatric species: *M. tropicalis* (Caribbean monk seals), *M. schauinslandi* (Hawaiian monk seals), and *M. monachus* (Mediterranean monk seals). A thorough description of the Caribbean monk seal was completed by Adam (2004). Caribbean monk seals are more closely related to Mediterranean monk seals than to Hawaiian monk seals (Wyss, 1988). However, the phylogenetic relationship among species of monk seals remains in dispute (Lavigne, 1998). No genetic studies of Caribbean monk seals have been conducted.

Biology

The Caribbean monk seal had a typical seal-like appearance, with a well-developed blubber layer, flipper-like limbs, a short tail, and a smooth body contour. The head was large and prominent, its eyes were large and light reddish-brown in color (Ward, 1887), and external pinnae were absent. Pups were born black in color and remained that way for about 1 year (Allen, 1887a). Adult pelage was variably dark dorsally (brown to black) and graded into a lighter yellowish-white countershade ventrally. Ventral fur ranged from pale yellow to yellowish-gray or yellowish-brown and was sometimes mottled with

darker patches. The front and sides of the muzzle and the edge of the full and fleshy lips were yellowish-white.

Caribbean monk seals were sexually dimorphic females were smaller than males (Allen, 1887b). However, the size difference was slight and could not be used to distinguish between the sexes. The two sexes were also alike in color and form (Allen, 1887b). Females had 2 pairs of mammae (Ward, 1887). Measurements of adults of both sexes generally ranged from 2.0–2.5 m (Allen, 1887b; Allen, 1887c; Ward, 1887).

Caribbean monk seal vocalizations have been described as roaring, pig-like snorting, moaning, dog-like barks, growls, and snarls (Gosse, 1851; Hill, 1843; Nesbitt, 1836; Townsend, 1909). Pup vocalizations have been reported as a long, drawn out, guttural ''ah'' with a series of vocal hitches during enunciation (Ward, 1887). Underwater vocalizations of Caribbean monk seals have not been described and are unknown.

Both Mediterranean and Hawaiian monk seals are known to consume a variety of fish, cephalopods, and crustaceans (Marchessaux, 1989; Goodman-Lowe, 1998), and it has been speculated that Caribbean monk seals had a similar diet (Nesbitt, 1836; Gosse, 1851; Ward, 1887). The three species of *Monachus* have no obvious functional dental or osteological features to suggest that their feeding habits are significantly different from each other (Adam and Berta, 2002).

The incidence of disease in the wild has not been reported, but an occurrence of a condition that may have been cataracts has been noted (Gaumer, 1917; Ward, 1887). The nasal mite *Halarachne americana* was recovered in great numbers and in all stages of its life cycle from the respiratory passages of a single captive specimen. The mite, which is only known from Caribbean monk seals and has not been identified from any other species or habitats since that time, also may now be extinct (Adam, 2004). Caribbean monk seals were reported to have heavy parasitic helminth loads (Adam and Garcia, 2003; Ward, 1887), but a detailed description and species identification was not decribed.

Life History

Most observations of life history and behavior of Caribbean monk seals were based on short-term observations of seals in isolated colonies following heavy exploitation of the species. Due to the decline of this species after the arrival of the Europeans in the wider Caribbean region and its rarity by the time the species was first described in the scientific literature, remarkably little is known about its life history. Prior to its depletion, Caribbean monk seals hauled out in groups of up to 500 individuals (Nesbitt, 1836). Accounts of Caribbean monk seals were usually from isolated islands, keys, and atolls surrounded by shallow, reef-protected waters, and only occasionally from mainland beaches. Haul out sites were usually sandy beaches that remain exposed at high tide (Gaumer, 1917; and Hill, 1843; as summarized in Adam, 2004; Kerr, 1824; Ward, 1887), but also included near shore rocks and rocky islets (Allen, 1880; as cited in Adam and Garcia, 2003). Haul out sites typically had sparse or no vegetation and no fresh water (Ward, 1887). Adam and Garcia (2003) and Ward (1887) reported that the seals usually hauled out on beaches to rest in the early morning, though sometimes they would haul out and rest overnight.

Very little is known about the effects of over-exploitation on sex ratios of the species. The male:female ratio of specimens collected during a 1900 expedition in Mexico was 24:76, but by then the species was already severely depleted. Because such data are limited to a single sample size from one colony, it is not possible to determine whether that reported sex ratio is representative, reflective of previous hunting on the sex ratio of the population, or due to some other unknown factor. Therefore, the relevance of those data to life history characteristics should be interpreted with caution.

Observations of feeding seals have not been reported, and there are no reports of prey items from the few examinations of stomach contents cited in the available literature. Pregnant females were known only from the Triangle Keys off Mexico, where a newborn suckling pup and five females with fetuses were collected in early December 1886 (Ward, 1887) and a single pregnant seal was killed in late June 1900 (original unpublished field notes of W.E. Nelson as cited in Adam and Garcia, 2003). Adam and Garcia (2003) speculate that Caribbean monk seals had low pupping synchrony due to the limited seasonal variations in climate and prey abundance. An annual birth rate of 15 percent has been calculated, but this is likely an underestimate (Rice, 1973). Rice (1973) concluded that females rarely bore young in successive years and likely produced a pup every other year; however, research on Hawaiian monk seals (Johanos *et al.*, 1994) and Mediterranean monk seals (Johnson *et al.*, 2006) has demonstrated that pupping in successive years is common for those species. Weaning reportedly began 2 weeks after parturition; however, this also may be an underestimate based on weaning behavior in Hawaiian and Mediterranean monk seals. Pups apparently developed quickly (Nesbitt, 1836). Subadult seals were speculated to have foraged nocturnally in shallow, nearshore waters to avoid direct competition with adults, which fed at dawn and dusk (Adam and Garcia, 2003). Caribbean monk seals were estimated to have a life span of 20–30 years (Adam 2004), but long-term studies of the species in the wild were not conducted. However, this estimate is consistent with that of the Hawaiian monk seals, which is thought to have a life span of approximately 25–30 years.

Distribution

The historic distribution of Caribbean monk seals has been estimated from historical sightings, archeological records, fossil evidence, and geographical features bearing names suggestive of their presence (Adam and Garcia, 2003; Adam, 2004). The species' northernmost record is from a fossil recovered near Charleston, South Carolina. There is evidence that Caribbean monk seals used mainland beaches of North or Central America as haul-out sites in great numbers. Most sightings records were from isolated islands, cays, and reefs in the eastern Gulf of Mexico (Ray, 1961; Timm *et al.*, 1997) and western Caribbean Sea. The only evidence Caribbean monk seals occurred in the Lesser Antilles is from archeological remains in the northern end of the chain (Wing, 1992) and a single sighting record (Timm *et al.*, 1997). A few sighting records, archeological finds, and suggestive place names extend the known range of Caribbean monk seals to include the northern coast of South America (Timm *et al.*, 1997; Debrot, 2000).

Previous Regulatory and Statutory Actions for the Caribbean Monk Seal

The Caribbean monk seal was listed as endangered in 1967 under the Endangered Species Preservation Act of 1966 (32 FR 4001; March 11, 1967) and then again in 1979 following its re-assessment under the ESA (44 FR 21288; April 10, 1979). The first Caribbean monk seal 5–year review was published on November 9, 1984 (49 FR 44774). At the time of that review, no sightings or evidence of Caribbean monk seals were documented since the last confirmed sighting at Seranilla Bank, between Jamaica and the Yucatan Peninsula, in 1952. Therefore, that 5–year review concluded that the best

available information indicated the Caribbean monk seal may be extinct.

Following the 1984 status review, the U.S. Marine Mammal Commission contracted a study to interview local fishermen, residents, and sailors along the north coast of Haiti. Although there were two reported seal sightings obtained during the survey, there was no tangible evidence to confirm whether those sightings involved Caribbean monk seals or some other species. Based upon a credible account of a sighting, however, some isolated animals were believed to potentially remain in some remote regions off the northern coast of Haiti (Woods and Hermanson, 1987). A subsequent survey of fishermen in waters of Haiti and Jamaica also generated a few oral accounts of seal sightings, but again, there was no corroborating proof that the sightings involved seals, much less Caribbean monk seals (Boyd and Stanfield, 1998). We decided not to delist the species in 1999, however, because the question of the possible existence of a remnant population in the wild remained as a result of these surveys.

Since the time of these additional surveys, there has been no new information to support the continued existence of Caribbean monk seals. A review of sightings and stranding data provided evidence of several positively identified arctic phocids (true seals, or earless seals) in tropical and sub-tropical waters of the Western North Atlantic from 1917 through 1996 (Mignucci-Giannoni and Odell, 2001). Due to confirmed sightings of arctic species in the Caribbean region outside their normal ranges, mostly hooded seals (Cystophora cristata), and lack of any Caribbean monk seal sightings since 1952, the authors concluded that the unidentified sightings in the period reviewed were not Caribbean monk seals (Mignucci-Giannoni and Odell, 2001). We recently analyzed data between 1996 and 2007 and determined 22 additional sightings of hooded seals have been confirmed in southeast U.S. waters in that time period, of which 7 occurred in the Caribbean Sea (Southeast U.S. Marine Mammal Stranding Database, 2007). No confirmed sightings of Caribbean monk seals have been reported since 1952.

Detailed Information on Sightings of the Caribbean Monk Seal

Since passage of the ESA, several efforts have been made to investigate unconfirmed reports of the species in or near the Caribbean Sea, Gulf of Mexico, the Southern Bahamas, and Atlantic coast of the Greater Antilles. There have been several reports of pinnipeds within the range of Caribbean monk seals since the last authoritative sighting at the Seranilla Banks in 1952. Unconfirmed sightings of pinnipeds up to that time resulted in speculation that the Caribbean monk seal still existed in a few, isolated colonies as late as the mid-to-late 1900s. The historical accounts of the species, unsuccessful expeditions to locate remnant colonies, and confirmed sightings of pinniped species other than Caribbean monk seal within the species' historical range now provide useful perspective on the species' decline. The following provides a brief historical account of sightings and survey efforts for the species.

1494: The first sightings records of Caribbean monk seals were made during the second voyage of Columbus, when eight individuals were killed for their meat (Kerr, 1824).

1700s to 1900s: Caribbean monk seals were exploited intensively for their oil, and to a lesser extent for food, scientific study, and zoological collection following European colonization (Allen, 1887b; Elliot, 1884; Townsend, 1923; Moore, 1953, Ward, 1887).

1886: Caribbean monk seals were reported to occur in the Triangle Keys in the Gulf of Campeche, where 49 seals were killed during a scientific expedition (Ward, 1887).

1897: The New York Aquarium acquired two specimens captured from the Triangle Keys (Townsend, 1909).

1906: On February 25, 1906, fishermen killed a Caribbean monk seal five miles off Key West, Florida. The 1906 account was the first sighting of the species in Florida in approximately 30 years (Townsend, 1906).

1909: The New York Aquarium received four live Caribbean monk seals from a dealer in Progresso, Yucatan. At the time, the last known population of the Caribbean monk seal was restricted to islands and reefs off the Yucatan, Mexico (Townsend, 1909).

1922: A monk seal was killed by a fisherman near Key West, Florida, on March 15, 1922. This was the last confirmed sighting of the seal in the United States. Townsend noted a small breeding colony still remained in the Triangulos reef group (i.e., the Triangle Islands) in the Campeche Bank islands off Mexico (Townsend, 1923).

1932: Following interviews with men having seen seals in the lower Laguna Madre region of Texas, Gordon Gunter concluded that a few Caribbean monk seals were scattered along the Texas coast as late as 1932 (Gunter, 1947). It was later suggested that the sightings of seals along the Texas coast were probably feral California sea lions (Gunter, 1968).

1952: C.B. Lewis made the last authoritative sighting of Caribbean monk seals at a small seal colony off Seranilla Banks (Colombia) in 1952, located between Jamaica and the Yucatan peninsula (Rice, 1973).

1973: The International Union for the Conservation of Nature and Natural Resources (IUCN) distributed circulars in both English and Spanish throughout the Caribbean region in 1973, offering U.S. $500 for information on recent sightings of the species. No confirmed sightings were made (Boulva, 1979).

1973: The USFWS conducted aerial surveys off the Yucatan, south to Nicaragua, and east to Jamaica of all the areas where Rice suggested that Caribbean monk seals may still exist. The species was not sighted in the survey area (Kenyon, 1977).

1980: Canada's Department of Fisheries and Oceans, Arctic Biological Station, supported a search for evidence of Caribbean monk seals in remote islands of the southeastern Bahamas by vessel and interviews with local fishermen. The vessel survey produced no sightings of seals. Interviews with fishermen produced a few new accounts of seals in the area during the 1960s and 1970s, but the sightings could not be confirmed as Caribbean monk seals. (Sergeant *et al.*, 1980)

1984: From September 5–15, 1984, a survey was conducted across the Gulf of Mexico to Campeche, Mexico, aboard the Scripps Institution of Oceanography research vessel, Robert G. Sproul. The survey crew landed at three island groups off the north coast of the Yucatan Peninsula considered possible haul-out sites still used by monk seals: Islas Triangulos, Cayo Arenas and Arrecife Alacran. Another island, Cayo Arcas, was visited by helicopter on September 7, 1984. The survey yielded no seal sightings or evidence of their continued existence (LeBoeuf *et al.*, 1986).

1985: The U.S. Marine Mammal Commission contracted for a survey of local fishermen, coastal residents, and sailors in northern Haiti. Two of 77 people interviewed reported having seen a seal, one of which - a sighting at le Rat in the Baie de l'Acul in 1981 - was considered a reliable account. In neither case, however, was it possible to confirm the sighting as a Caribbean monk seal (Woods and Hermanson, 1987).

1996: The IUCN Seal Specialist Group listed the Caribbean monk seal as extinct on its Red List of threatened and endangered species (Seal Specialist Group, 1996).

1997: Based on interviews with 93 fishermen in northern Haiti and Jamaica during 1997, it was concluded that there

was a likelihood that Caribbean monk seals may still survive in this region of the West Indies. Fishermen were asked to select marine species known to them from randomly arranged pictures: 22.6 percent (n=21) selected monk seals of which 78 percent (n=16) had seen at least one in the past 1–2 years (Boyd and Stanfield, 1998).

2001: A review of seal sightings and marine mammal stranding data in the Southeast U.S. and Caribbean region documented evidence of several pinnipeds positively identified as arctic phocids between 1917 and 1996 that had strayed into the tropical and subtropical waters of the Western North Atlantic. Due to confirmed sightings of arctic species, mostly hooded seals (Cystophora cristata) in the Caribbean region outside their normal ranges, confirmed sightings and recaptures of feral California sea lions that had escaped from captivity, and lack of any confirmed Caribbean monk seal sightings since 1952, the authors concluded that unidentified sightings since 1952 were likely species other than Caribbean monk seals (Mignucci-Giannoni and Odell, 2001).

2007: Between 1996 and 2008, 22 additional, confirmed sightings of hooded seals have been reported from the tropical and subtropical waters of the Western North Atlantic, including seven from the Caribbean Sea (Southeast U.S. Marine Mammal Stranding Database data, 2007).

Although Caribbean monk seals could be cryptic while at sea and a low number of individuals in a population may lower the detectability of individuals, hauled out individuals at rest or females with pups would be conspicuous to an observer. The United Nations Environment Programme, Caribbean Environment Programme, was contacted in December 2007 regarding any new information on surveys or sightings of Caribbean monk seals that may have been missed by NMFS' review of sightings and stranding data; however, the inquiry resulted in no new information. With pervasive human presence in the wider Caribbean region and the necessity for seals to haul-out to rest and pup, it would be expected that any remaining individuals in the wild would have been sighted and confirmed over the past 50 years. Furthermore, there are few, if any, remaining areas where Caribbean monk seals were known to occur that have not been frequented by at least periodic human visits (e.g., fishing activities, recreational activities, and scientific expeditions). No Caribbean monk seal sightings have been reported from the numerous scientific surveys conducted in the former range of the species (e.g., avian nesting colonies, sea turtle nesting beaches, coral reef studies, and other biological and ecological research). Fishermen, shrimping boats, and abandoned camps have been ubiquitous throughout the species' known hauling grounds for decades (Kenyon, 1977; LeBoeuf *et al.*, 1986).

Because the range of Caribbean monk seal lies well outside the normal distribution of all other pinnipeds, sightings of seals are remarkable events in the wider Caribbean region. NMFS' analysis of stranding data shows that the occurrence of arctic phocids outside their normal ranges occurs with some regularity. Current technology allows for near real-time communication when such rare or unusual species are sighted. Better methods also exist to confirm species identification when such sightings are made (e.g., photographs and genetic analysis of tissue samples). Although some seal sightings inevitably are not identifiable to a particular species, all those that have been confirmed in recent decades within the known range of the Caribbean monk seal have proven to be other species, namely feral California sea lions (Rice 1973), manatees (Trichechus manatus), or hooded seals (Mignucci-Giannoni and Odell, 2001; NMFS Southeast U.S. Marine Mammal Stranding Database data, 2007). The occurrence of juvenile hooded seals in subtropical and tropical waters (outside the normal range of these seals) occurs with enough frequency to account for most recent pinniped sightings within the former range of the Caribbean monk seal (Mignucci-Giannoni and Haddow, 2002; Mignucci-Giannoni and Odell, 2001).

A sufficient amount of time has passed since the last sighting of this species to indicate clearly the status of this species. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the IUCN have set 50 years with no sightings as the cut-off for species extinction (IUCN, 1982). In 1949, the International Conference on the Protection of Nature (United Nations Scientific Conference on the Conservation and Utilization of Resources) included the Caribbean monk seal in a list of 14 mammals whose survival was considered to be a matter of international concern requiring immediate protection (Westermann, 1953). However, the last confirmed sighting of the species occurred in 1952, limiting any opportunity for conservation efforts of any remaining animals in the wild. It has been over 50 years since the last confirmed sighting of Caribbean monk seals in the wild despite multiple survey efforts to locate the species. Solow (1993) used survey data of Caribbean monk seals to demonstrate statistically that the likelihood of extinction is high based on the lack of sightings of this species. The IUCN concluded the Caribbean monk seal was extinct in 1996 (Seal Specialist Group, 1996), but the species remained listed under the ESA in the United States based on the results of survey data conducted after the 1984 status review indicating a possibility that some Caribbean monk seals persisted for a few years after their last confirmed sighting in 1952 at Seranilla Bank.

Although there were no sightings, it is possible that the Caribbean monk seal persisted for a short period in the years following the last confirmed sighting in 1952 at Seranilla Bank. If so, with an estimated life span of 20–30 years, some newborn individuals may have possibly persisted in the wild between the 1950s and early 1980s. If any remnant population did survive, it seems likely they consisted of scattered individuals, with no remaining colonies large enough to be viable in the wild. Considering the absence of seals sightings since 1952, the fact that all confirmed seal sightings have been of other species, and the ubiquitous presence of humans throughout the species' range, the Caribbean monk seal appears to have been extirpated before any meaningful conservation and recovery efforts could be taken for the species.

Although documentation of harvest levels and practices that led to this species' population decline is nearly absent, it is evident from early reports that relatively large numbers of seals persisted in at least some areas as late as the early 1800s and that their precipitous decline in abundance was due to heavy exploitation by sealers and others. During the 1800s their distribution became increasingly fragmented. By the time scientific expeditions were organized in the late 1800s to document and study the species, their range was already drastically curtailed. Rice (1973) noted that the last confirmed sighting of this species was in 1952 at Seranilla Banks in the western Caribbean. The Caribbean monk seal population was already severely depleted, and likely extirpated throughout most, and possibly all, of its range prior to the passage of the ESA and Marine Mammal Protection Act.

Consideration of the Factors Listed under Section 4(a)(1) of the ESA

The two main factors leading to the listing of the Caribbean monk seal as endangered are the modification and curtailment of its habitat and range, and overutilization for commercial and educational purposes. Details about these factors and how they impacted the species are provided below, but because we have determined that this species is extinct, they no longer have any bearing on the status of the species.

Modification and Curtailment of its Habitat and Range

When hauled out on beaches, Caribbean monk seals were reported to have been sensitive to human disturbance (Allen, 1880; Gaumer, 1917; Ward, 1887). As with both Hawaiian and Mediterranean monk seals, Caribbean monk seals apparently became sensitized to human presence after exposure to hunting or other human activity. Thus, although many recent descriptions of monk seals state that they are highly sensitive to human disturbance, some accounts, including early accounts of the species (e.g., E.W. Nelson, as cited in Adam and Garcia, 2003), describe them as being very approachable when hauled out on beaches. When disturbed, Caribbean monk seals reportedly returned to the water where they remained until the people or vessels left the area (Adam and Garcia, 2003; Allen, 1880). As human settlements expanded in areas inhabited by this species and persistent hunting reinforced evasive seal behaviors, avoidance of human presence near populated shorelines and areas regularly visited by fishermen likely caused seals to abandon historic haul-out sites. Human encroachment also likely exacerbated stresses on the population as it declined. Although the species was reported as common in the early to mid 1700s, it was already considered rare by the mid 1880s (Allen, 1887b; Elliot, 1884; Gratacap, 1900).

Overutilization for Commercial and Educational Purposes

Caribbean monk seals were utilized as a source of meat by early mariners and heavily exploited as a source of oil following European colonization (Allen, 1880). Other human-caused factors, such as entanglement and drowning in fishing nets or slaughter by fishermen viewing the seals as competitors for fish, contributed to their decline (Rice, 1973). Caribbean monk seals were also killed for scientific collection and study, as well as for display in zoological gardens. Adam (2004) provides an excellent review of the historical exploitation of Caribbean monk seals. He reports the species was the most readily exploited source of oil in the tropical West Atlantic Ocean prior to the early 1800s, and that they were hunted to near extinction for their blubber until the early 1900s.

Blubber was processed and used for lubrication, coating the bottom of boats, and as lamp and cooking oil. Caribbean monk seal skins were sought to make trunk linings, articles of clothing (e.g., caps and belts), straps, and bags. In the early 1700s, a girdle fashioned from a Caribbean monk seal pelt was believed to relieve lower back pain. At least some sailors reportedly prized monk seal pelts believing that their hairs became erect during rough seas, but remained flat in calm seas. The Swiss naturalist Konrad Gesner reported accounts from seafarers in the Caribbean (near the island of Hispaniola) in the 1550s, writing: ''Its hair is reputed to be of such a wondrous nature that the skins or belts are worn by mariners. When thunderstorms, tempests and other inclement weather is nigh, the hair shall rise and bristle, but when it turns still and mild, it shall lay down smoothly'' (Gesner, 1558, as cited in Johnson, 2004).

Caribbean monk seals were taken for food by sailors stranded on the Arricifes Viboras (Cuba) in 1520, on the Islas de Lobos (Veracruz, Mexico) in 1524, Dry Tortugas (Florida) in 1742, and in the Triangle Keys (Mexico) in 1846. Guano gatherers visiting the Triangle Keys in 1856 reportedly made a bonfire of 100 barrels of Caribbean monk seal skins and skeletons left behind by sealers, suggesting that they were heavily exploited for their oil in this region. Fishermen sometimes hunted the seals for meat until about 1885. In at least one instance, two monk seals were killed simply ''for fun'' (Allen, 1880). Aside from heavy hunting pressure by humans, the only known natural predator reported is an unidentified species of shark (Fernandez de Oviedo, 1944).

As a result of this species' increasing rarity in the wild, live specimens were eagerly sought by zoological gardens following the discovery of remnant populations in the late 1800s. In 1897, two live specimens sold for $50.00 each, and dead or mounted specimens also were sold to museums. Two scientific expeditions to the Triangle Keys are believed to have contributed to the extirpation in that region. On 4 days in December 1886, 49 seals were killed in the Triangle Keys (Allen, 1887; Ward, 1887). Live specimens obtained by the New York Aquarium in 1897 and 1909 also were captured from the Triangle Keys (Townsend, 1909).

Listing Determination

Based upon the best available commercial and scientific information, we have determined that the Caribbean monk seal has become extinct. A sufficient period of time has passed since the last confirmed sighting of the species, and the best available information supports this finding. Therefore, we propose to remove the species from the endangered species list.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the NMFS (see **ADDRESSES**).

Peer Review

On July 1, 1994, we and the USFWS published a series of policies regarding delistings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under our peer review policy and the OMB Bulletin, independent peer review was obtained from three individual subject matter experts to ensure the best biological and commercial information was used to make the recommendation to delist the species due to extinction. Peer review was also obtained to ensure that reviews by recognized experts were incorporated into the 5–year review that supports this proposal to delist the Caribbean monk seal, and we incorporated the peer review comments prior to dissemination of this proposed rulemaking. The 5–year review upon which the information in this proposed rule is based was completed for the Caribbean monk seal on March 7, 2008, and is available on our website (see **ADDRESSES**).

Public Comments

To ensure that final action resulting from this proposed rule will be as accurate and effective as possible and be based upon the best available scientific

and commercial information, we solicit comment from the public, other governmental agencies, the scientific community, industry, and any other interested parties. Title 50, CFR 424.16(c)(3) requires the Secretary of Commerce to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to change the listed status of a species under the ESA. Requests for public hearing must be made in writing (see **DATES** and **ADDRESSES**). Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 657 F 2d 829 (6th Cir.1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (see also NOAA Administrative Order 216 6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E. O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the Caribbean monk seal formerly occurred, and each will be invited to comment.

List of Subjects in 50 CFR Part 224

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

Dated: June 3, 2008.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531 1543 and 16 U.S.C. 1361 *et seq.*

2. Amend § 224.101(b) by removing the term ''Caribbean monk seal (*Monachus tropicalis*);''.

[FR Doc. E8–12808 Filed 6–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070717348–7766–02]

RIN 0648–AV60

Magnuson-Stevens Act Provisions; Annual Catch Limits; National Standard Guidelines

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is necessary to provide guidance on how to comply with new annual catch limit (ACL) and accountability measure (AM) requirements for ending overfishing of fisheries managed by federal fishery management plans (FMPs). It also clarifies the relationship between ACLs, maximum sustainable yield (MSY), optimum yield (OY), and other applicable reference points. The intent of this action is to facilitate compliance with requirements of the Magnuson-Stevens Act to end and prevent overfishing, rebuild overfished stocks and achieve OY.

DATES: Comments must be received by September 8, 2008.

ADDRESSES: You may submit comments, identified by 0648-AV60, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov;*
- *Fax:* 301–713–1193, Attn: Mark Millikin;
- *Mail:* Mark R. Millikin, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Room 13357, Silver Spring, MD 20910 (mark outside of envelope ''Comments on Annual Catch Limits proposed rule'');

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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR)/Regulatory Flexibility Act Analysis (RFAA) for this proposed rule are available from Mark R. Millikin at the address listed above. The RIR/RFAA document is also available via the internet at *http://www.nmfs.noaa.gov/msa2007/catchlimits.htm.*

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, Senior Fishery Management Specialist, 301–713–2341.

SUPPLEMENTARY INFORMATION:

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I. Overview of Proposed Revisions

NMFS fulfills the requirements of section 301(b) of the Magnuson-Stevens Act—''The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans,'' with its national standard guidelines that appear at 50 CFR 600.310 through 50 CFR 600.355. NMFS is proposing revisions to the NS1 guidelines to address, among other things, new requirements for fisheries undergoing overfishing, to have ACLs and AMs to end overfishing by 2010, and all fisheries to have ACLs and AMs in place to prevent or end overfishing by 2011, and beyond. A stock or stock complex may not require an ACL and AMs if it qualifies for a statutory exception under the Magnuson-Stevens Act. Other proposed revisions to the NS1 guidelines include: (1) A description of the relationship between MSY, OY, overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs); (2) guidance on how to combine the use of ACLs and AMs for a stock to prevent overfishing when possible, and adjust ACTs or ACLs, or both, and AMs, if an ACL is exceeded; (3) allowing for inclusion of ecosystem component (EC) species in FMPs and, in such cases, guidance for how to classify which stocks are ''in the fishery'' and which species are ecosystem components; (4) replacing MSY control rules with ABC control rules and replacing OY control rules with ACT control rules; (5) new requirements for scientific and statistical committees (SSC); (6) changing the timeline to prepare new rebuilding plans; (7) revised guidance on how to establish rebuilding time targets; and (8) advice on action to take at the end of a rebuilding period if a stock is not yet rebuilt.

II. Acronyms

ABC—acceptable biological catch
ACL—annual catch limit
ACT—annual catch target
AM—accountability measures
ANPR—Advance Notice of Proposed Rulemaking
B_{msy}—MSY stock size
EC—ecosystem component species
EEZ—Exclusive Economic Zone
F_{msy}—MSY fishing mortality rate
FMP—fishery management plan
MFMT—maximum fishing mortality threshold
MSA—Magnuson-Stevens Act
MSRA—Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
MSST—minimum stock size threshold
MSY—maximum sustainable yield
NOI—Notice of Intent
NS1—National Standard 1
OFL—overfishing limit
OY—optimum yield
SDC—status determination criteria
SFA—Sustainable Fisheries Act
SSC—scientific and statistical committee
T_{max}—maximum time allowable for rebuilding a stock
T_{min}—minimum time for rebuilding a stock
T_{target}—target time for rebuilding a stock

III. Background

The MSA serves as the chief authority for fisheries management in the U.S. Exclusive Economic Zone (EEZ). Section 301(b) of the MSA requires that ''The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.'' Guidelines for the national standards are codified in subpart D of 50 CFR part 600. The guidelines for national standards were last revised through a final rule published in the **Federal Register** on May 1, 1998 (63 FR 24212), by adding revisions to the guidelines for National Standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits); and adding new guidelines for National Standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea).

The guidelines for NS1 were revised extensively in the final rule published on May 1, 1998, to bring them into conformance with revisions to the MSA, as amended in 1996 by the Sustainable Fisheries Act (SFA). In particular, the 1998 revisions to the NS1 guidelines addressed new requirements for FMPs brought about by SFA amendments to MSA section 304(e) (rebuilding overfished fisheries).

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which President Bush signed into law on January 12, 2007, included new requirements regarding preventing and ending overfishing and rebuilding fisheries. Therefore, NMFS is proposing revisions to the NS1 guidelines at 50 CFR 600.310, to integrate these new requirements with existing provisions related to overfishing, rebuilding overfished stocks, and achieving optimum yield.

IV. NMFS's Proposed Rule for Further Revisions to NS1 Guidelines in 2005

NMFS published an advance notice of proposed rulemaking (ANPR) in 2003 (68 FR 7492, February 14, 2003), and a proposed rule in 2005 (70 FR 36240, June 22, 2005), in the **Federal Register** to propose further revisions to the NS1 guidelines. NMFS sought to improve the utility of the 1998 guidelines in assisting the regional fishery management councils, and the Secretary of Commerce (Secretary) in the case of a Secretarial Amendment or a Secretarial FMP (denoted collectively hereafter as ''Councils,'' as 50 CFR 600.305(c)(11) provides that ''Council'' includes both the regional fishery management councils and the Secretary when preparing FMPs or amendments), when establishing or revising status determination criteria (SDC) for overfishing and overfished definitions for stocks, and constructing or revising rebuilding plans for overfished stocks.

Although NMFS received many public comments on the ANPR and the 2005 proposed rule, NMFS decided not to pursue publication of a final rule when it learned that Congress was preparing an amendment to the MSA that seemed likely to revise how to manage stocks undergoing overfishing and stocks that need a rebuilding plan. Congress's efforts culminated in passage of the 2006 MSRA.

V. NMFS's Initial Action on MSRA Requirements for ACLs

NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) and commencement of a scoping period for ACLs and AMs in the **Federal Register** on February 14, 2007 (72 FR 7016), with a comment period ending date of April 17, 2007. NMFS held nine scoping sessions, one associated with each of the eight Regional Fishery Management Councils' meetings and one at NMFS Headquarters in Silver Spring, MD. Comments that NMFS received are contained in ''Summary of Comments Received on NMFS Proposal to Develop Guidance on ACLs and AMs, July 2007,'' that is available at the NMFS Web site: *http://www.nmfs.noaa.gov/msa2007/catchlimits.htm.*

The NOI indicated that an environmental assessment or EIS would be prepared for this action. However, NMFS has decided that, for purposes of compliance with the National Environmental Policy Act, a categorical exclusion is appropriate for this action. The proposed action would provide general guidance on ACL and AM and other requirements, but there is considerable diversity in federally-managed fisheries and FMPs. Thus, any analysis of the environmental, economic, and social impacts of the NS1 guidelines would be highly speculative. Potential environmental, economic, and social impacts cannot be meaningfully analyzed until the Councils apply the guidelines to specific fisheries and FMPs. At that time, the Councils would prepare an EIS or EA, as appropriate.

VI. MSRA Ending Overfishing Requirements

Section 104(a)(10) of the MSRA established new requirements to end and prevent overfishing, including ACLs and AMs. Section 303(a)(15) was added to the MSA to read as follows: ''establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.'' ACLs and AMs are required by fishing year 2010 if overfishing is occurring in a fishery, and they are required for all other fisheries by fishing year 2011.

In practical terms, given the time it takes to prepare and implement an FMP amendment, if the status of one or more stocks in a fishery at the end of 2008 is ''subject to overfishing,'' Councils should submit ACL and AM mechanisms and actual ACLs for that fishery to be effective in fishing year 2010. If overfishing is determined to be occurring in a fishery in 2009, Councils should submit ACL and AM mechanisms and actual ACLs for that fishery to be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest. All fisheries must have ACL and AM mechanisms and actual ACLs by the fishing year 2011, and beyond. The Secretary should amend Secretarial FMPs, to comply with ACL and AM requirements on the same timetable. Section 305(c) of the MSA, which was unchanged by MSRA, also provides authority to the Secretary to promulgate emergency regulations or interim measures necessary to address an emergency or overfishing for any fishery without regard to whether an FMP exists for such fishery.

NMFS recognizes that the phrase, ''at a level such that overfishing does not occur'' in section 303(a)(15) of the MSA is subject to different interpretations, as reflected in the varying comments received during scoping. On the one hand, the phrase could be interpreted to mean that overfishing is strictly prohibited at any cost. On the other hand, section 303(a)(15) refers to a ''mechanism'' for setting ACLs, including AMs, which seems to imply a more dynamic process that allows for adjustment of management measures as a fishery is carried out. The only way to ensure absolutely no overfishing occurs is to stop fishing. As long as fishing occurs, there is a chance for occasional instances of overfishing due to scientific uncertainty of data, influence of non-fishing factors, and management uncertainty. Continued overfishing for a period of years (chronic overfishing), presents the greatest danger to the health of fish stocks, and often leads to stocks becoming overfished. NMFS has noted that overfished stocks with chronic overfishing seem to seldom rebuild, whereas overfished stocks that are rarely subject to overfishing have a better chance of rebuilding.

Taking the above considerations into account, NMFS believes that the ACL requirement should be interpreted to provide for some flexibility given scientific and management uncertainty and other factors, but at the same time, must address overfishing and facilitate rebuilding. Chronic overfishing can be prevented by ensuring that the combination of ACLs and AMs decrease the risk of future overfishing each successive time an ACL is exceeded. NMFS thus proposes a performance standard such that if catch of a stock exceeds its ACL more often than once in the last four years (*i.e.*, more often than 25 percent of the time), then the system of ACLs, ACTs and AMs should be re-evaluated to improve its performance and effectiveness (see § 600.310(g)(3) in this proposed action). NMFS believes that allowing a higher frequency of the ACL being exceeded would not safeguard enough against overfishing. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing.

VII. Reasons for Overfishing and Expectations for ACLs to Prevent/End Overfishing

The ''NMFS Fourth Quarterly Report for 2007 Status of U.S. Fisheries'' indicates that 41 stocks managed by federal FMPs were undergoing overfishing as of December 31, 2007. Stocks become listed as ''overfishing'' or remain in an overfishing status for a variety of reasons, including:

1. The goal of the FMP may be to end overfishing over several years by gradually reducing fishing mortality rates instead of ending overfishing immediately.
2. Management measures have proven ineffective at ending overfishing (e.g., lack of inseason closure authority for the fishery or management measures are aimed at achieving a target catch that is set too close to the catch amount that results in overfishing, or both).
3. Management measures to address overfishing have not been implemented yet.
4. Recent change in scientific advice (i.e., the Council has not had sufficient time to amend the FMP and no automatic measures exist in the FMP to make necessary adjustments to end overfishing in the subsequent fishing year).
5. Bycatch mortality in other fisheries has not been addressed adequately or is poorly known.
6. Data sufficient to verify whether or not overfishing is occurring are not available, so the existing overfishing determination is retained.
7. International fishing pressure is responsible for the large majority of overfishing.
8. Fishing pressure in state or territorial waters is responsible for the large majority of overfishing, federal action alone is not sufficient to end overfishing, and managers in the various jurisdictions are unable thus far to agree on a concerted approach for preventing overfishing.

NMFS believes that the ACL and AM requirements will address overfishing that results from reasons 1, 2, 3, and 4

above. Better scientific data, along with adequate ACLs and AMs, should enable Councils to prevent overfishing for reasons 5 and 6. Stocks that are undergoing overfishing for reason 7 would be exempt from the ACL requirement (see §§ 600.310(h)(2)(ii) and 600.310(k) of this proposed action for discussion of international fisheries). There may be circumstances where managers in various jurisdictions are unable to agree on an ACL and AMs that would end or prevent overfishing for a fishery described under reason 8. In such cases, these proposed guidelines would require an ACL for the overall fishery, but AMs would be implemented only for the portion of the fishery under federal management authority.

VIII. Definition, Interpretation, and Application of the Term ''Fishery'' and Its Relevance to ACLs

The MSA, as amended by MSRA, requires that a Council shall develop ACLs ''for each of its managed fisheries'' (see MSA section 302(h)(6)) and as noted earlier, that each FMP have a mechanism for specifying ACLs ''at a level such that overfishing does not occur in the fishery'' (see MSA section 303(a)(15)). Consistent with these sections of the MSA, the proposed NS1 guidelines provide that ACLs and AMs are needed for each ''fishery'' under federal FMP management, unless covered by a statutory exception.

The MSA defines ''fishery'' broadly, and this definition did not change with the passage of the MSRA. A ''fishery'' is ''one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics,'' and ''any fishing of such stocks'' (see MSA section 3(13) and 50 CFR 600.10). The term ''fishery'' can mean different things in different contexts. For example, when dealing with biological concepts such as determining a status of overfishing or overfished, the NS1 guidelines generally apply at the ''stock or stock complex'' level (See, e.g., 50 CFR 600.310(c)(1), (d) (defining MSY and ''overfish'' with regard to ''stock or stock complex'') and § 600.305(c)(12) (explaining that ''stock or stock complex'' is used as a synonym for ''fishery'' in NS guidelines). In other instances, such as managing a fishery for OY, the term ''fishery'' is viewed more broadly (see 50 CFR 600.310(f) (referring to OY at the ''fishery'' and not the ''stock or stock complex'' level)).

Given the broad definition of ''fishery,'' the Councils have had, and continue to have, considerable discretion in defining the ''fishery'' under FMPs. Some FMPs include only one or a few stocks whereas others include several or hundreds of species. Looking at existing FMPs, the primary reasons why stocks are included in FMPs are because people seek to harvest them for sale or personal use (i.e., the fish are the target of fishing activity), or they are caught incidentally in the pursuit of harvesting one or more other stocks and could experience overfishing or become overfished without conservation and management measures. These reasons are consistent with the stated purposes of the MSA, which includes the preparation and implementation of FMPs ''which will achieve and maintain, on a continuing basis, the optimum yield from each fishery'' (see MSA section 2(b)(4)). OY is defined with regard to ''the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems'' (see MSA section 3(33)).

While the focus of FMPs has been stocks managed for OY, in recent years, some FMPs have included other stocks in an effort to incorporate ecosystem approaches to management. Congress acknowledged this increased attention to ecosystem approaches in the ''Findings'' section of the Act (see MSA section 2(a)(11) (acknowledging that a number of Councils have demonstrated significant progress in integrating ecosystem considerations under existing authorities of the MSA)). In addition, MSRA added a new section 303(b)(12) that provides that an FMP may ''include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations.''

NMFS wants to encourage ecosystem approaches to fishery management and believes that clarification of what constitutes the ''fishery'' would be helpful. As such, NMFS is proposing guidance pertaining to ''stocks in the fishery'' and ''ecosystem component (EC) species,'' which are described in detail below. The intent of this guidance is to articulate approaches taken under existing FMPs and to provide a framework for thinking about future FMPs and FMP amendments. The Councils would have the discretion to determine, on a case-by-case basis, whether changes in their stock classifications under current FMPs are needed.

A. Stocks in the Fishery

As a default, all stocks currently identified in an FMP are considered ''stocks in the fishery.'' ''Stocks in the fishery'' would include target stocks (i.e., stocks that fishers seek to catch for sale or personal use, including ''economic discards'' as defined under MSA section 3(9)), non-target stocks that are retained for sale or personal use, and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best scientific information available, without conservation and management measures (see Figure 1 and § 600.310(d)(2) of this proposed action). Stocks and stock complexes in the fishery should have quantitative SDC, MSY, ABC, ACL, and ACT (collectively called ''reference points'' throughout this section) and AMs (see Table 1 for reference points needed for different types of stocks, and see § 600.310(b)(2)(iv) of this proposed action), although some stocks in the fishery may not require ACLs and AMs if they are covered by a statutory exception (see § 600.310(h)(2) of this proposed action). Hereafter, in these guidelines, ''stock'' or ''stock(s) and stock complex(es)'' refer to ''stocks in the fishery.''

B. Ecosystem Component Species

Beyond the ''stocks in the fishery,'' a Council may, but is not required to, include EC species in an FMP. Such species would include non-target fish species that are not considered part of the ''fishery'' but rather species with which the fishery may occasionally interact (i.e., catch) (see § 600.310(d)(5) of this proposed action). A Council may choose to include EC species for purposes of incorporating ecosystem approaches to fishery management, data collection, etc. Identification of EC species must be done through an FMP amendment process (see § 600.310(d) of this proposed action). Such species are appropriate to consider when addressing specification of OY and conservation and management measures for the fishery (see MSA sections 3(33) (referring to taking into account the marine ecosystems in OY definition), and 3(5) (referring to avoiding irreversible or long-term effects on fishery resources and the marine environment and ensuring multiplicity of options)). Because EC species are not considered to be ''in the fishery,'' specification of reference points, ACLs, and AMs are not required (see Table 1). However, a Council should consider

measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. NMFS is especially interested in the public's comments on the appropriate criteria for classification of EC species.

C. Stocks Identified in More Than One FMP

If a stock is identified as part of more than one ''fishery,'' Councils should choose which FMP will be the ''primary FMP'' in which management objectives, SDC, and other reference points for the stock are established. In most cases, the primary FMP for a stock will be the one in which the stock is identified as a target stock. Other FMPs in which the stock is identified as part of a fishery should contain management measures consistent with the primary FMP for the stock.

Figure 1. Proposed Classification of stocks in an FMP

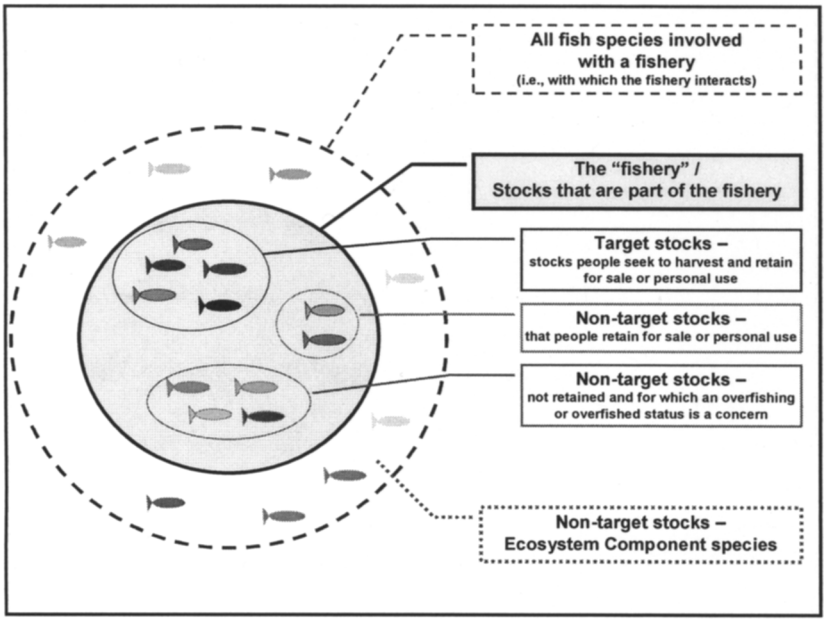


TABLE 1.—REFERENCE POINTS, ACCOUNTABILITY MEASURES, AND CONTROL RULES THAT WOULD BE REQUIRED OR RECOMMENDED

Reference points, accountability measures, and control rules	Stocks and stock complexes in a fishery (excluding those with an approximate 1 year life cycle and those managed under international fishery agreements)	Stocks and stock complexes in a fishery that have a life cycle of approximately 1 year	Stocks and stock complexes in a fishery managed under an international fishery agreement [3]	Ecosystem component species [4]
MSY [1]	✓	✓	✓	N/A
SDC [1] (e.g. MFMT [2], MSST [2])	✓	✓	✓	N/A
OY [1]	At the stock, stock complex, or fishery level.	At the stock, stock complex, or fishery level.	R	N/A
OFL [2]	R	R	R	N/A
ABC [1]	✓	✓	R	N/A
ACL [1]	✓	Only if "subject to overfishing"	R	N/A
AMs [1]	✓	Only if "subject to overfishing"	R	N/A
ACT [2]	✓	Only if "subject to overfishing"	R	N/A
ABC control rule [2]	✓	✓	R	N/A
ACT control rule [2]	✓	R	R	N/A

[1] MSA requirement.
[2] For consistency with the NS1 Guidelines.
[3] If the stock is in a U.S. FMP and managed under an international fishery agreement to which the U.S. is party.
[4] Not required by MSA, but an option provided in the NS1 Guidelines.
Legend:
✓ = Yes, this is applicable.
ABC = Acceptable Biological Catch.
ACL = Annual Catch Limit.
AM = Accountability Measures.
MFMT = Maximum Fishing Mortality Threshold.
MSST = Minimum Stock Size Threshold.

MSY = Maximum Sustainable Yield.
N/A = Not Applicable.
OFL = Overfishing Limit.
OY = Optimum Yield.
R = Recommended.
SDC = Status Determination Criteria.

D. Stock Complexes

''Stock complex'' means a group of stocks in an FMP that are sufficiently similar in geographic distribution, life history, and vulnerability to the fishery that the impacts of management actions on the stocks in the complex is similar (see § 600.310(d)(8) of this proposed action). Stock complexes may be comprised of: (1) One or more indicator stocks, each of which has SDC and ACLs, and several other stocks; (2) several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or (3) one or more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

For stock complexes, the SDC measured on a stock complex-wide basis or for an indicator stock should satisfy the MSA's requirements to prevent overfishing and achieve OY for a fishery. Vulnerability of stocks to the fishery should be evaluated when determining if: (1) A particular stock complex should be established or reorganized; (2) a particular stock should be a member of a stock complex; or (3) a stock complex should be reorganized. Indicator stocks are stocks selected as a representative for a stock complex because they have known determinations regarding SDC, and known values for MSY and OY, and can form the basis for an MSY and OY for the combinations of stocks in a complex. Although it is common for the indicator stock for a stock complex to be the most abundant stock, if an indicator stock is less vulnerable than other stocks in the complex, the management measures should be more conservative to protect the more vulnerable stocks from overfishing.

IX. Statutory Exceptions to Requirements for ACLs and AMs and Flexibility in Application of NS1 Guidelines

The MSRA provides two statutory exceptions to the ACL and AM requirements under MSA section 303(a)(15) (see MSRA section 104(b) (adding two exceptions under a MSA section 303 note); see also § 600.310(h)(2) of this proposed action). First, MSA section 303(a)(15) ''shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species'' (see MSRA section 104(b)(2)). NMFS interprets ''fishery for species'' to be a stock. In addition, NMFS interprets ''a life cycle of approximately 1 year'' to mean that the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year, and that the individual has only one breeding season in its lifetime. While stocks that qualify for the 1-year life cycle exception would not need to have ACLs and AMs, such stocks should still have SDC, MSY, OY, ABC, and an ABC control rule.

Second, MSA section 303(a)(15) shall take effect in 2010 and 2011, as discussed earlier, ''unless otherwise provided for under an international agreement in which the United States participates'' (see MSRA section 104(b)(1)). It is not clear to what the text ''unless otherwise provided for'' is referring. NMFS has considered several possible interpretations of this text in light of other provisions in MSRA, including the new international overfishing provisions in MSA section 304(i). Prior to MSRA, fisheries managed under international agreements in which the United States participates (referred to in this action as ''international fisheries'') were subject to MSA section 304(e) requirements regarding overfishing and rebuilding. However, in many of these fisheries, the United States could not unilaterally end overfishing or rebuild the stocks. New MSA section 304(i) and other MSRA provisions acknowledge the increasing problem of international overfishing and the challenges of establishing conservation and management measures at the international level. Given Congress's recognition of the increasing problem of international overfishing and the complexities of international negotiation, NMFS believes that the ACL exception should apply to fisheries that are subject to management under international agreements in which the United States participates. Applying ACLs or AMs only to the U.S. portion of the catch would not effect rebuilding or end overfishing, would potentially disadvantage U.S. fishermen with respect to foreign fishermen, and could weaken U.S. negotiating positions at international fora in which it participates.

Apart from the statutory exceptions, NMFS recognizes that there are limited circumstances that do not fit the standard approaches to specification of reference points and management measures set forth in the proposed revisions to the NS1 guidelines. These include, among other things, conservation and management of ESA-listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). For fisheries where ESA-listed species are incidentally caught, the ESA recovery plan would be a significant driver for setting management objectives, including ACLs, for the fishery. For aquaculture, once managers address status of broodstock taken from the wild (i.e., whether overfishing is occurring and/or whether the stock is in need of rebuilding), then the levels of harvests from an aquaculture facility would not necessarily need to focus on ending or preventing overfishing or rebuilding stocks. In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act other than those set forth in these guidelines. Councils should document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

For a fishery in a federal FMP that has a large majority of harvest in state or territorial waters, the fishery should have ACL that takes into account the overall status of the stock, whether in state or federal waters or beyond. However, NMFS recognizes that AMs could only be applied to the portion of the fishery under federal jurisdiction. Given the jurisdictional issue, one approach proposed is that the overall ACL could be divided into a federal portion (federal-ACL) and a state portion (state-ACL). AMs would then be triggered when the federal-ACL was reached or projected to be reached (see further explanation in ''Accountability Measures'' section below).

X. MSRA Requirements for SSCs Related to ACLs

The MSRA added new requirements for SSCs in the MSA. New section

302(g)(1)(B) of the MSA states that an SSC for each Regional Fishery Management Council ''shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.'' New section 302(g)(1)(E) provides that ''The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery.'' In addition, new section 302(h)(6) provides that each Regional Fishery Management Council is required to ''develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).''

NMFS recognizes that there is variability in the peer review processes and involvement of SSCs amongst the various Councils. In addition, the above statutory sections could be subject to different interpretations. While MSA section 302(h)(6) refers generally to ''fishing level recommendations,'' section 302(g)(1)(B) refers to recommendations for ABC and MSY, among other things, and section 302(g)(1)(E) refers generally to ''scientific information.'' Further, the text provides for advice from the SSC but also refers to peer review processes, leaving open a question about the role and relationship between the two. NMFS believes that clear processes for implementing these provisions are important in order to ensure that Councils get the information needed to establish ACL mechanisms, prevent confusion in the decision making process, and ensure general consistency in approaches taken.

For purposes of setting ACLs, a critical piece of scientific advice that Councils will need will be the ABC. Taking this into account, and considering the new requirements in light of existing SSC, Council, and peer review processes, NMFS proposes that the Councils establish a process that could be included in their Statement of Organization, Practices and Procedures (see § 600.115) which will: Establish an ABC control rule, identify the body that will apply the ABC control rule (i.e., calculates the ABC), identify the review process that will verify the resulting ABC, and confirm that the SSC recommends the ABC to the Council. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For fisheries managed under international agreements in which the United States participates (referred to in this action as ''international fisheries''), stock assessments are conducted through international scientific bodies that may include U.S. and non-U.S. scientists. While the United States promotes fishery conservation and management principles as embodied in the MSA (see, e.g., MSA section 102(c)), it cannot guarantee that international actions will be consistent with the Act or NS1 guidelines. Thus, an ABC as defined in these guidelines would not be required for international fisheries.

For stock and stock complexes required to have an ABC, NMFS recommends that each Council should establish an ABC control rule (see § 600.310(f)(4) of this proposed action) based on scientific advice from its SSC. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under MSA section 302(g)(1)(E). Stock assessment scientists, a plan development team, or other designated body would then apply the ABC control rule. If a peer review process is established it should investigate the technical merits of stock assessments and other scientific information used by the SSC. For example, a peer review process (e.g., Stock Assessment Review Panel) could validate the ABC calculation and then pass their results to the SSC. Ultimately, the SSC should make the formal ABC recommendation to the Council. For Council-managed fisheries, the peer review process is not a substitute for the SSC, and should work in conjunction with the SSC.

XI. MSY, OY, and SDC: A Review

MSY, OY, and SDC are concepts described in the current NS1 guidelines, and MSRA did not effect changes to the MSA that would require changes to these concepts. The following sections provide a review of MSY, OY, and SDC and an explanation of the relationship between them and the proposed guidance on ACLs and other requirements.

MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions and fishery technological characteristics. Any estimate of MSY depends on the population dynamics of the stock and the characteristics of the fisheries (e.g. gear selectivity). MSY stock size (B_{msy}) is the long-term average size of the stock or stock complex, measured in terms of spawning biomass, or other appropriate measure of the stock's reproductive potential, that would be achieved by fishing at F_{msy}. OY is the amount of fish that will provide the greatest overall benefit to the Nation, while preventing overfishing, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. OY is prescribed on the basis of the MSY from the fishery, as reduced by relevant economic, social or ecological factors. In the case of an overfished fishery, OY provides for rebuilding to a level consistent with producing MSY in such a fishery. In NS1, use of the phrase, ''achieving, on a continuing basis, the optimum yield from each fishery'' means producing, from each stock, stock complex or fishery a long-term series of catches such that the average catch is equal to OY, overfishing is prevented, the long term average biomass is near or above B_{msy}, and overfished stocks are rebuilt in as short a time as possible as specified in MSA section 304(e)(4). OY might be established at the stock or stock complex level, or for a fishery comprised of stocks, many of which have their own ACL and ACT (e.g., groundfish of the Gulf of Alaska and groundfish of the Bering Sea and Aleutian Islands).

Section 3(34) of the MSA states that ''overfishing'' and ''overfished'' mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. To reduce confusion and conform to usage of those terms in other fisheries worldwide, in the current NS1 guidelines, NMFS interpreted these terms so that ''overfished'' pertains to the biomass of the stock or stock complex, and ''overfishing'' pertains to a rate or level of removal of fish from the stock or stock complex. The current NS1 guidelines also provide for SDC, which are quantifiable factors for determining whether a stock or stock complex is overfished or if overfishing is occurring. An overfished definition consists of a measure of stock abundance called the minimum stock size threshold (MSST), below which a stock's or stock complex's capacity to produce MSY on a continuing basis is jeopardized. Overfishing of a stock or stock complex occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality, called the

maximum fishing mortality threshold (MFMT), above which the stock's or stock complex's capacity to produce MSY on a continuing basis is jeopardized or annual catch exceeds a stock's or stock complex's OFL. MSRA made no changes to the MSA that would necessitate different interpretations of these terms or different approaches to these concepts.

XII. Description of the Relationship of OFL to MSY and ACT to OY

National Standard 1 establishes the relationship between conservation and management measures, preventing overfishing, and achieving OY from each stock, stock complex or fishery. The following sections describe in detail NMFS' proposed guidance on ACLs and other new requirements. Among other things, the proposed guidance introduces new terms—overfishing limit (OFL) and annual catch target (ACT)—which are not set forth in the MSA but which NMFS believes would be helpful to implement the statutory requirements. As an overview, OFL is an annual amount of catch that corresponds to the estimate of MFMT applied to a stock or complex's abundance; MSY is the long-term average of such catches. The current NS1 guidelines define overfishing with regard to MFMT, which is a rate of fishing. The use of OFL would provide another method for measuring overfishing by allowing the comparison of a stock or stock complexes' annual catch to its OFL; if catch exceeds OFL, overfishing is occurring. It is recommended that ABC would be set below OFL to take into account the scientific uncertainty in the estimate of OFL.

ACL would be the limit that triggers AMs, and ACT would be the management target for the fishery. Management measures for a fishery should, on an annual basis, achieve the ACT and prevent the ACL from being exceeded. The long-term objective is to achieve OY through annual achievement of ACT.

XIII. Definition Framework for OFL, ABC, ACL, and ACT

The MSRA does not define ACLs, AMs, and ABC, and there are many different ways in which these terms can be defined. The voluminous comments that NMFS received during scoping reflects the wide range of possible interpretations and approaches. For example, some commenters felt that ACL should be considered a target catch level and others felt it should be a limit that should not be approached or reached. Many commenters suggested, in general, that a buffer be implemented between management targets and limits in order to prevent overfishing and account for uncertainty. Over the past year, NMFS spent considerable time reviewing different interpretations of the ACL requirement in light of MSA sections 303(a)(15), 302(h)(6), and 302(g) and other sections of the MSA, and taking into consideration the current NS1 guidelines, previously proposed changes to those guidelines, existing FMPs and FMP amendments, scientific and management roles in the decision making process, and public comment. Based on this review, NMFS proposes the following definitions for ACL, AM, and ABC, and also for ACT and OFL:

1. Overfishing limit (OFL) means ''the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish.'' See § 600.310(e)(2)(i)(D) of this proposed action.

2. Acceptable biological catch (ABC) means ''a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and should be specified based on the ABC control rule.'' See § 600.310 (f)(2)(ii) of this proposed action.

3. Annual catch limit (ACL) means ''the level of annual catch of a stock or stock complex that serves as the basis for invoking accountability measures.'' See § 600.310(f)(2)(iv) of this proposed action.

4. Annual catch target (ACT) means ''an amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one should have a corresponding sector-ACT.'' See §§ 600.310(f)(2)(v) and (f)(6) of this proposed action.

5. Accountability measures (AMs) means ''management controls that prevent ACLs or sector-ACLs from being exceeded (inseason AMs), where possible, and correct or mitigate overages if they occur.'' See § 600.310(g) of this proposed action.

As proposed in this action, the relationship between the above terms would be OFL≥ABC≥ACL≥ACT (see Figure 2). Because a primary goal of the MSA, and management responsibility of NMFS and the Councils, is to end and prevent overfishing, rather than account for it after it occurs, NMFS believes that a good approach to management is to have OFL>ABC and ACL>ACT. The ABC is lower than the OFL to address scientific uncertainty in the estimate of OFL, and ACT is lower than the ACL to address uncertainty in the accounting for catch and in the degree to which management measures can control catch to the target level.

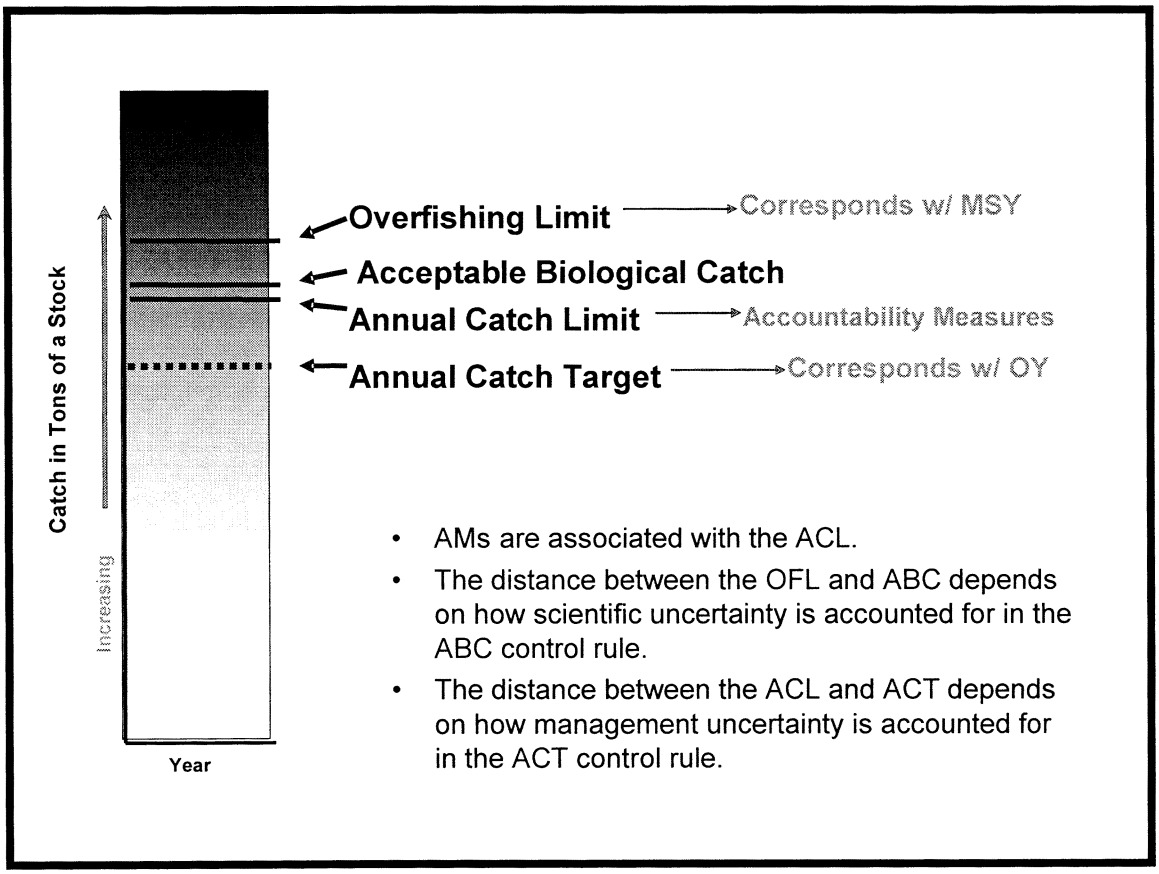
OFL is an annual amount of catch that corresponds to the estimate of MFMT applied to a stock or complex's abundance, and MSY is the long-term average of such catches. NMFS proposes that OFL be the upper bound of ABC, but that ABC should usually be reduced from the OFL to account for scientific uncertainty in the estimate of OFL. For overfished stocks, ABC must also be set to reflect the annual catch that is consistent with the rebuilding plan for that stock. Therefore, if a stock is being managed under a rebuilding program, its ABC should be lower during some or all stages of rebuilding than when the stock is rebuilt. The ABC will be set on the basis of the ABC control rule.

The proposed guidelines would have the Councils set the ACL as a level of catch specified for a stock or stock complex each year that cannot exceed its ABC. If a stock or stock complex's catch exceeds its ACL, AMs will be invoked as specified in the FMP. The ACL may typically be equal to the ABC and setting the ACL provides an opportunity to divide the total ACL into sector-specific ACLs. As noted above, the purpose of the ACT is to address management uncertainty. The ACT would be the target catch of a stock or stock complex that a fishery is managed to attain and should generally be less than the stock or stock complex's ACL. ''Catch'' includes fish that are retained for any purpose, as well as mortality of fish that are discarded (see § 600.310(f)(2)(i) of this proposed action). Therefore, for fisheries where bycatch estimates are not available in a timely enough manner to manage annual catch, targets may be specified for landings, so long as an estimate of bycatch is accounted for such that total of landings and bycatch will not exceed the stock's or stock complex's ACL. For a stock with sufficient inseason data monitoring, the fishery for that stock would be closed in time to prevent the ACL from being exceeded.

NMFS notes that when it published an initial notice about ACLs, ACT was not a parameter used when exploring the concept of how to make ACLs and AMs operational. At that time, NMFS suggested an initial approach of OFL>ABC≥ACL with ACL as the target catch that management measures should try to attain. Under that approach, if catch of a stock reached the OFL, its

fishery would be closed. During the scoping period, NMFS received some public comments expressing concern about the use of an ACL as a management target as opposed to a ''limit.'' Also, the framework contained in this proposed rule provides for better separation between scientific uncertainty in estimating OFL (i.e., a recommendation that ABC be lower than OFL), and management uncertainty and OY factors indicating that an ACT be lower than the ACL.

Figure 2: Relationship between OFL, ABC, ACL and ACT (see discussion of the ABC and ACT control rules below).



XIV. Control Rules

Control rules are harvest strategies that specify how a stock's or stock complex's catch will be modified in response to one or more factors, particularly estimated stock size. The current NS1 guidelines include MSY control rules which are ''limit'' control rules and OY control rules which are ''target'' control rules. For any stock, the limit control rule results in a higher amount than the target control rule for a given stock abundance. Because of the new MSA requirement for annual catch limits to end and prevent overfishing for stocks in a fishery, NMFS proposes that MSY control rules be replaced by ABC control rules and become the new limit control rule, and OY control rules be replaced by ACT control rules and become the new target control rule. This would align the control rules more directly with the new requirement to specify an ABC and an ACL for stocks in the fishery (see earlier discussion in the preamble for the relationship between OFL and MSY, and between ACT and OY).

ABC and ACT control rules should be developed for each stock when possible. For stock complexes, ABC and ACT control rules should be developed for each indicator stock or for the stock complex as a whole. ACTs should be set with the intention that they typically will be achieved. A stock's or stock complex's ACT control rule should result in lower target catches than the ABC control rule would, for all levels of a stock's or stock complex's abundance.

In the proposed revisions to NS1 guidelines, an ABC control rule is a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL. An ACT control rule is an approach to setting the ACT for each stock and stock complex such that the risk of exceeding ACL due to management uncertainty (ability to control catch and variability in catch data) is an acceptably low level. Both control rules are designed to reduce the risk that overfishing will occur.

For rebuilding stocks, the ABC, ACL, and ACT should be set at lower levels than for rebuilt stocks because two

objectives are combined. First, overfishing should not occur; and second, rebuilding at a rate commensurate with the stock's rebuilding plan should occur. This means that, for a rebuilding stock, a lower target fishing mortality rate may be needed to accomplish rebuilding, in addition to avoiding overfishing (i.e., ACL and ACT are lower than they would be if the stock was rebuilt).

XV. Sector ACLs, ACTs, and AMs

A Council may decide, but is not required, to divide the ACL into sector-ACLs. ''Sector'' for purposes of the NS1 guidelines means a distinct user group to which separate management strategies and catch quotas apply. Examples of sectors could include the commercial sector, recreational sector, or various gear groups within a fishery. It is up to each Council to decide how to designate sectors, if any. If sector-ACLs are established, sector-AMs and sector-ACTs must be developed for each sector-ACL. In cases where states cooperatively manage a stock, it is possible that a sector ACL could be further subdivided in order to establish ''subsector'' ACLs and ACTs for various states to align with current management of catch limits or quotas in the state fisheries. The system of ACLs and AMs must be effective and equitable and protect the stock as a whole from overfishing. The sum of a stock's sector-ACLs must not exceed the stock's ACL. If sector-ACLs and sector-AMs are established, additional AMs at the stock level would also be appropriate. A sector must be closed inseason if timely catch data indicates its ACL has been reached. If a sector does not have timely inseason fisheries data, or has a history of annual overages, then a Council should establish a large enough difference between a sector's ACT and ACL to improve the probability that the sector-ACL and the stock's ACL are not exceeded.

XVI. Accountability Measures

AMs are management controls implemented for stocks such that exceeding the ACL or sector-ACL is prevented, where possible, and corrected or mitigated if it occurs (see § 600.310(g) of this proposed action). AMs include: (1) Those that are applied inseason and designed to prevent the ACL from being reached; (2) measures applied after the fishing year that are designed to address the operational issue that caused the ACL overage, ensuring it does not happen in subsequent fishing years, and, as necessary, address any biological harm to the stock; and (3) those based on multi-year average data which are still reviewed and applied annually (see discussion below). AMs should address and minimize both the frequency of overages and the magnitude of an overage. AMs should be designed so that if an ACL is exceeded, specific adjustments are effective in the next fishing year, or as soon as possible, with explanation of why more timely adjustment is not possible.

If timely inseason fishery catch data are available for a stock, Councils should ensure their FMPs contain inseason closure authority as an AM to prevent a stock's ACL from being exceeded. Where fishery catch data are not timely enough to implement inseason AMs, the ACT should be adjusted downward from the ACL to account for the increased management uncertainty and the delayed ability to implement AMs.

A ''multiyear plan'' as referenced in section 303(a)(15) of the MSA is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than one year. Because ''multiyear plans'' establish ACLs and ACTs for more than one year at a time, they should include AMs that provide if an ACL is exceeded in one year, then a subsequent year's harvest specification (including ACLs and ACTs) could be revised (see § 600.310(f)(5)(i) of this proposed action).

Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, a Council could base AMs on comparison of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period (see § 600.310(g)(4) of this proposed action). As a performance standard, if the average catch exceeds the average ACL more than once in the last four years, then the ACL, ACT and AM system should be re-evaluated to improve its performance. The initial ACL and management measures should incorporate information from previous years so that AMs based on average ACLs can be applied from the first year.

If a stock is in a rebuilding plan and its ACL is exceeded, the AMs should include overage adjustments that reduce the ACL in the next fishing year by the full amount of the overage, unless the best scientific information available shows that a reduced overage adjustment is sufficent, or no adjustment is needed to mitigate the effects of the overage. This AM is important to increase the likelihood that the stock will continue to rebuild.

As discussed earlier, stocks and stock complexes in federal FMPs that have a large majority of harvest in state or territorial waters should have an ACL that takes into consideration the overall status of the stock. However, federal management would be limited to that portion of the fishery under federal jurisdiction. Options for AMs that a Council could consider for stocks or stock complexes caught mostly in state or territorial waters would include, but are not limited to: (1) Close the EEZ when the federal portion of the ACL is reached, or (2) close the EEZ when the overall stock or stock complex's ACL is reached. The AMs should ensure that federal managers are doing as much as possible to end and prevent overfishing. When stocks are co-managed by federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies, to prevent overfishing of shared stocks and ensure their sustainability.

XVII. Summary of Items To Include in FMPs

This section provides a summary of items that Councils should include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the proposed NS1 guidelines. Some items are specific to new MSRA provisions. Others were required prior to MSRA, but are included here so as to be comprehensive. Councils may review their FMPs to decide if all stocks are ''in the fishery'' or whether some fit the category of ''ecosystem component species'' and amend their FMP as appropriate. If they do not establish EC species through an FMP amendment, then all stocks in an FMP are presumed to be ''in the fishery.'' For all stocks and stock complexes that are in the fishery, the Councils should evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing (see § 600.310(c) of this proposed action): (1) MSY and SDC, (2) OY at the stock, stock complex or fishery level, (3) ABC control rule, (4) ACLs and mechanisms for setting ACLs and possible sector-specific ACLs in relationship to the ABC, (5) ACT control rule, (6) AMs and AM mechanisms, and (7) stocks and stock complexes that have statutory exceptions from ACLs or fall under limited circumstances which require different approaches to meet the ACL requirements (e.g., ESA-listed

stocks and harvests from aquaculture facilities).

The Councils should evaluate the extent to which their FMPs comply with requirements to define MSY and OY for stocks in the fishery, and the reasons that OY is reduced from MSY (see § 600.310(e)(3)(iv) of this proposed action). An overall objective of management of federal fisheries under the MSA is to conserve fishery resources so as to prevent overfishing and achieve OY (see sections 2(a)(6) and 2(b)(4) of the MSA). OY is based on MSY for a fishery, as reduced for economic, social, or ecological reasons (see section 3(33)(B) of the MSA). Therefore, it is important that all FMPs have MSY and OY prescribed correctly.

FMPs should contain a description of fisheries data for the stocks, stock complexes, and ecosystem component species. The sources of fishing mortality, such as commercial catch (both landed and discarded), recreational catch, and bycatch in other fisheries should be listed in the FMP for each fishery, along with a description of the data collection and estimation methods used to quantify total catch mortality in each fishery. The description of the data collection methods used to monitor the fishery should include information on the frequency that those data are collected and updated and the scope of sampling coverage for the fishery. In addition, the FMP should describe how those data are used to determine the relationship between total catch at a given point in time and the ACL for a stock or stock complex.

FMPs should explain issues related to shared jurisdiction of stocks (if any), and the degree to which ACLs and AMs established by the Councils will ensure that overfishing does not occur on the stock as a whole.

NMFS is aware that existing FMPs may use terms that are similar to, associated with, or may be equivalent to ABC, ACL, ACT, and AM in many fisheries for which annual specifications are set for different stocks or stock complexes. NMFS' preference is that, as Councils revise their FMPs, they use the same terms as set forth in the NS1 guidelines as finalized. However, given the longstanding use of terms under certain FMPs, if changing terminology could cause confusion, Councils could opt to retain existing terminology and explain in a proposed rule how the terminology and approaches in the FMPs are consistent with those set forth in the NS1 guidelines.

Councils should amend their FMPs to provide explicit narrative of how the FMP objectives and annual management measures will work with ACLs and AMs. All stocks and stock complexes should have an annual or multiyear specification process for stocks managed in a fishery. An annual or multiyear specification process for setting or adjusting ACLs provides a timely, consistent method that the public and stakeholders can understand, and that provides an opportunity for public comment. Such a process could also provide a method for assigning an ACL, ACT, and AM to a ''stock having a life cycle of approximately one year'' that is undergoing overfishing.

XVIII. Change in Timetable When Establishing a Rebuilding Plan

The MSA provides that the Secretary shall annually identify stocks and stock complexes that are overfished or approaching a condition of being overfished; notify the appropriate Council at any time when a stock or stock complex is determined to be overfished; and notify the appropriate Council when adequate progress is not being made under existing FMPs, FMP amendments, or regulations (see MSA sections 304(e)(1), (2), and (7)). MSRA did not change these identification and notification provisions but revised the timing of Council actions. Currently, the Councils have 1 year to prepare an FMP, an FMP amendment, or proposed regulations (see MSA sections 304(e)(3) and 304 note (Effective Date for Subsection (c)). Beginning July 12, 2009, the Councils have 2 years from the date of an identification or notification to prepare and implement an FMP, an FMP amendment, or proposed regulations ''to end overfishing immediately in the fishery and to rebuild affected stocks * * * or to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition'' (see MSA section 304(e)(3), as revised by MSRA section 104(c)). To facilitate timely implementation of actions under revised section 304(e)(3), the Councils should submit an FMP, an FMP amendment, or proposed regulations within 15 months of an identification or notification under this section. This will provide the Secretary with 9 months to implement the measures, if approved (see § 600.310(j)(2)(ii) of this proposed action).

While MSA section 304(e)(3) provides for two years for a Council to prepare and implement an FMP, FMP amendment, or proposed regulations, as discussed earlier, MSA section 303(a)(15) has a separate requirement for FMPs and ACLs that is effective in fishing year 2010 for fisheries determined to be subject to overfishing and in fishing year 2011 for all other fisheries. Thus, as of 2010 and beyond, for a stock and stock complex determined to be overfished and experiencing overfishing, a Council needs to take measures consistent with MSA section 303(a)(15) that address overfishing while the rebuilding plan is under development.

XIX. Establishing the Length of Time for a Rebuilding Plan

NMFS proposes clarifying guidance for calculating the target time to rebuild (T_{target}) in rebuilding plans for stocks (see § 600.310(j)(3)(i)(E) of this proposed action), based on experiences with FMPs since the last NS1 guideline revisions. The purpose of this clarification is to emphasize that the rebuilding time must be ''as short as possible,'' taking several factors into account (see MSA section 304(e)(4)(A)(i)). Establishing the T_{target} should be based on the minimum time for rebuilding a stock (T_{min}), and factors described in § 600.310(j)(3) of this proposed action with priority given to rebuilding in as short a time as possible. T_{target} shall not exceed the maximum time allowable for rebuilding (T_{max}) and should generally be less than T_{max}.

XX. Action When a Stock's Rebuilding Plan Ends and the Stock Is Not Rebuilt

Many rebuilding plans for overfished stocks under section 304(e) of the MSA were initiated in 1998, or later, and some of those plans are reaching the end of their rebuilding periods such that a stock is no longer overfished, but not rebuilt. NMFS does not have explicit guidance in the NS1 guidelines to describe what a Council should do under such circumstances. Therefore, NMFS proposes that if a stock reaches the end of its rebuilding plan period and it is not yet determined to be rebuilt, then the rebuilding F should not be increased until the stock has been demonstrated to be rebuilt (see § 600.310(j)(3)(ii) of this proposed action). If the rebuilding plan was based on a T_{target} that was less than T_{max}, and the stock is not rebuilt by T_{target}, rebuilding measures should be revised if necessary, such that the stock will be rebuilt by T_{max}. If the stock has not rebuilt by T_{max}, and the rebuilding F is greater than 75 percent of MFMT, then the rebuilding F should be reduced to no more than 75 percent of MFMT until the stock has been demonstrated to be rebuilt.

XXI. Changes to the Definitions of Some Components of MSY

NMFS is proposing changes to the definitions of some components of MSY. The purposes of these changes are to improve some portions of the MSY related definitions and to further clarify how MSY is estimated. The definition of MSY in the NS1 guidelines would remain the same for the most part but the phrase ''and fishery technological characteristics (e.g., gear selectivity) and the distribution of catch among fleets'' would be added to the end of the definition (see § 600.310(e)(1)(i)(A) of this proposed action). The purpose of this change is to acknowledge that MSY also depends upon gear selectivity (age at entry) and the catch performance of the fishery, which can depend on the relative proportion of catch between different fleets with differing fishing characteristics. The definition of MSY stock size would be changed in two places. Currently, the guidelines state that ''MSY stock size means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units that would be achieved under a MSY control rule in which the fishing mortality rate is constant.'' In the proposed guidelines (see § 600.310(e)(1)(i)(C) of the proposed action), NMFS clarifies that ''other appropriate units'' means an ''appropriate measure of the stock's reproductive potential.'' NMFS also replaces the statement that ''the fishing mortality rate is constant'' with ''Fmsy.'' NMFS also added a definition for MSY fishing mortality rate (Fmsy) (see § 600.310(e)(1)(i)(B) of the proposed action), which was lacking in the current guidelines. MSY fishing mortality ''is the fishing mortality rate that, if applied over the long term, would result in MSY.''

XXII. Social, Economic and Ecological Factors as They Relate to OY

NMFS proposes additional guidance to better describe social and ecological factors, and minor revisions to the economic factors as they relate to setting OY for a stock (see § 600.310(e)(3)(iv) of this proposed action). The revisions to the social factors describe fishery-related indicators and non-fishery related indicators that should be considered when OY needs to be reduced for a stock or stock complex.

XXIII. Scope of This Proposed Action

NMFS received voluminous comments during its scoping comment period for ACLs and AMs, including proposals to strengthen guidance on ecosystem considerations when setting ACLs and AMs. While NMFS has carefully considered all comments received, it will not be able to include all proposed NS1 revisions in this action. These proposed revisions to the NS1 guidelines will address primarily the need to have ACL and AM mechanisms and ACLs and AMs in place such that ACLs end overfishing in 2010, for stocks undergoing overfishing, and prevent overfishing for all other stocks beginning in 2011.

NMFS intends to withdraw most of the proposed revisions to the NS1 guidelines that were published in 2005 in a separate withdrawal of a proposed rule action. A few of the topics from the 2005 rule are considered in this action, such as: (1) Establishing the length of time for a rebuilding plan; (2) action to take when a stock is not determined to be rebuilt at the end of its rebuilding plan; and (3) the definition of several components of MSY. Other proposed revisions considered in the 2005 proposed NS1 guidelines and suggested during the comment period for this action will be considered by NMFS for possible inclusion in subsequent revisions to the NS1 guidelines.

XXIV. Republishing Codified Text in Its Entirety

For clarity and convenience of the reader, this proposed rule would revise § 600.310 in its entirety. The following describes the changes to § 600.310 that are being proposed.

In the proposed revisions to § 600.310, paragraph (b)—*General*, would be revised to contain a general outline of information provided by the NS1 guidelines. Current paragraph (b) only contains a brief summary of the relationship between MSY and OY.

Current paragraph (c)—*MSY* is revised and redesignated paragraph (e)(1).

Current paragraph (d)(1)—*Definitions,* is revised and redesignated paragraph (e)(2)(i).

Current paragraph (d)(2)—*Specification of status determination criteria,* is revised and redesignated paragraph (e)(2)(ii).

Current paragraph (d)(3)—*Relationship of status determination criteria to other national standards* is revised, redesignated paragraph (l) and renamed, ''*Relationship of National Standard 1 to other national standards.*''

Current paragraph (d)(6)—*Exceptions,* is revised, redesignated paragraph (m), and renamed, ''*Exceptions to requirements to prevent overfishing.*''

Current paragraph (e)—*Ending overfishing and rebuilding overfished stocks,* is revised and redesignated paragraph (j)—*Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery.*

Current paragraph (f)—*OY* is redesignated paragraph (e)(3).

Revised paragraphs with much different content include: Paragraph (c)—*Summary of Items to Include in FMPs Related to NS1,* paragraph (d)—*Classifying stocks in an FMP,* and paragraph (f)—*Acceptable Biological Catch, Annual Catch Limits, and Annual Catch Targets.*

New paragraphs that contain new content not covered in the current NS1 guidelines include: (g) *Accountability measures,* (h) *Establishing ACL and AM mechanisms in FMPs,* (i) *Fisheries data,* and (k) *International overfishing.*

XXV. Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be significant for purposes of Executive Order 12866. NOAA has prepared a regulatory impact review of this rulemaking, which is available at: *http://www.nmfs.noaa.gov/msa2007/catchlimits.htm.* This analysis discusses various policy options that NOAA considered in preparation of this proposed rule, given NOAA's interpretation of the statutory terms in the MSRA, such as the appropriate meaning of the word ''limit'' in ''Annual Catch Limit,'' and NOAA's belief that it has become necessary for Councils to consider separately the uncertainties in fishery management and the scientific uncertainties in stock evaluation in order to effectively set fishery management policies and ensure fulfillment of the goals to end overfishing and rebuild overfished stocks.

NOAA invites the public to comment on this proposal, the supporting analysis, and its underlying interpretation of the analytical requirements of the MSRA. In particular, NOAA seeks comment on: The appropriate interplay of the OFL, ABC, ACL and ACT; whether the Council's experience with MSY and OY would readily translate into these new concepts; whether the ACT and ACT control rules, as proposed, would be effective tools in managing fisheries at risk; the degree to which Councils should have the flexibility to specify stringent AMs to prevent the ACL from

being exceeded in lieu of setting an ACT and ACT control rules; and the expected burden of these analytical requirements, both in terms of time and resources.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed revisions to the NS1 guidelines, if adopted, would not have any significant economic impact on a substantial number of small entities, as follows:

I certify that the attached proposed action issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will not have any significant economic impacts on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The proposed action would revise the National Standard 1 (NS1) guidelines at 50 CFR 600.310.

The proposed revisions to the NS1 guidelines provide guidance on how to address new overfishing and rebuilding and related requirements under MSA sections 303(a)(15), 304(e), and other sections. Pursuant to section 301(b) of the Act, the NS guidelines do not have the force and effect of law. Regional Fishery Management Councils (Councils) and the Secretary of Commerce would use the NS1 guidelines when developing or amending FMPs to implement annual catch limits (ACLs) and accountability measures (AMs) and to take necessary actions to rebuild overfished fisheries. ACL and AM requirements under section 303(a)(15) of the Magnuson-Stevens Act are effective in fishing year 2010, for stocks undergoing overfishing and in fishing year 2011, for all other fisheries. NMFS believes that revisions to the NS1 guidelines will assist the Councils and the Secretary in addressing new MSA requirements, ensure greater consistency in approaches to ending overfishing and rebuilding stocks, increase efficiency in reviewing actions and tracking annual management performance, and improve communication between NMFS and the Councils.

Because the NS1 guidelines are general guidance and there is considerable diversity in the different federally-managed fisheries, potential economic impacts of the guidelines are highly speculative. As the Councils and/or the Secretary apply these guidelines to specific fisheries, they will develop FMPs, FMP amendments, or other regulatory actions that will be accompanied by environmental, economic, and social analyses prepared pursuant to the Regulatory Flexibility Act, National Environmental Policy Act, and other statutes.

NMFS has identified a total of 59,823 commercial vessel permit holders and 18,486 headboat and charter boat vessel permits. A total of 26,074 recreational permits exist for Atlantic highly migratory species (HMS). Operator permits are estimated at 6,636 and dealer permits were estimated at 7,550. However, it is important to note that in most cases each vessel possesses permits for several fisheries (multiple vessel permits). As such, the total number of vessel permits (commercial, headboat and charter boat, and HMS recreational) grossly overestimate the actual number of vessels that are operating in these fisheries. All vessels included in the total vessel permits for each fishery are considered to be small entities for the purposes of the Regulatory Flexibility Act analysis. As a result, NMFS does not believe that these proposed revisions to the NS1 guidelines would place a substantial number of small entities at a disadvantage as compared to large entities or that it would reduce profit significantly. The NS1 guidelines would provide general guidance on ending and preventing overfishing and rebuilding fisheries, leaving considerable discretion to the Councils and the Secretary to consider alternative ways to accomplish these goals consistent with the NS, other provisions of the Magnuson-Stevens Act, and other applicable law. Therefore, an IRFA has not been prepared for this action.

These proposed revisions to the NS1 guidelines do not contain any new recordkeeping or reporting requirements subject to the Paperwork Reduction Act. When the Councils and the Secretary develop FMPs, FMP amendments, or other regulatory actions per the Magnuson-Stevens Act and NS1 guidelines, such actions may include new proposed collection-of-information requirements. In the event that new collection-of-information requirements are proposed, a specific analysis regarding the public's reporting burden would accompany such action. NMFS is not aware of any other relevant federal rules that may duplicate, overlap or conflict with the proposed rule.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 3, 2008.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

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

2. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

(b) *General.* (1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on:

(i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;

(iii) Preventing overfishing and achieving OY using a system of limits and targets, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (AM); and

(iv) Rebuilding stocks and stock complexes.

(2) *Overview of Magnuson-Stevens Act concepts and provisions related to NS1*—(i) *MSY.* The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate does not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex be rebuilt to a level that is capable of producing MSY; and OY not exceed MSY.

(ii) *OY.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving a fishery management plan's (FMP) objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii) and (iv) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) *ACLs and AMs.* Any FMP which is prepared by any Council shall establish a mechanism for specifying ACLs in the FMP (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability (Magnuson-Stevens Act section 303(a)(15)). Subject to certain exceptions and circumstances described in paragraph (h) of this section, this requirement takes effect in fishing year 2010, for fisheries determined subject to overfishing, and in fishing year 2011 for all other fisheries (Magnuson-Stevens Act section 303 note). ''Council'' includes the Regional Fishery Management Councils and the Secretary of Commerce, as appropriate (see § 600.305(c)(11)).

(iv) Reference points. SDC, MSY, acceptable biological catch (ABC), ACL, and annual catch target (ACT), which are described further in paragraphs (e)

and (f) of this section, are collectively referred to as ''reference points.''

(v) *Scientific advice.* The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions:

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B). The SSC may specify the type of information that should be included in the Stock Assessment and Fishery Evaluation (SAFE) report (see § 600.315).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Regional Fishery Management Council for scientific information used to advise the Regional Fishery Management Council about the conservation and management of the fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information used by the SSC. The peer review process is not a substitute for the SSC and should work in conjunction with the SSC.

(D) Each Regional Fishery Management Council shall develop ACLs for each of its managed fisheries that may not exceed the fishing level recommendations of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)).

(3) *Approach for setting limits and targets for consistency with NS1.* In general, when specifying limits and targets intended to avoid overfishing and achieve sustainable fisheries, Councils should take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines identify limit and target reference points which should be set lower as uncertainty increases such that there is a low risk that limits are exceeded as described in paragraphs (f)(4) and (f)(6) of this section.

(c) *Summary of items to include in FMPs related to NS1.* This section provides a summary of items that Councils should include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. As described in further detail in paragraphs (c)(1) through (7) of this section, Councils may review their FMPs to decide if all stocks are ''in the fishery'' or whether some fit the category of ''ecosystem component species'' and amend their FMPs as appropriate. If they do not establish ecosystem component species through an FMP amendment, then all stocks in an FMP are presumed to be ''in the fishery.'' Councils should also describe fisheries data for the stocks, stock complexes, and ecosystem component species in their FMPs. For all stocks and stock complexes that are ''in the fishery,'' the Councils should evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing:

(1) MSY and SDC (see paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (see paragraph (e)(3) of this section).

(3) ABC control rule (see paragraph (f)(4) of this section).

(4) ACLs and mechanisms for setting ACLs and possible sector-specific ACLs in relationship to the ABC (see paragraphs (f)(5) and (h) of this section).

(5) ACT control rule (see paragraph (f)(6) of this section).

(6) AMs and AM mechanisms (see paragraphs (g) and (h)(1) of this section).

(7) Stocks and stock complexes that have statutory exceptions from ACLs (see paragraph (h)(2) of this section) or which fall under limited circumstances which require different approaches to meet the ACL requirements (see paragraph (h)(3) of this section).

(d) *Classifying stocks in an FMP*—(1) *Introduction.* Magnuson-Stevens Act section 303(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. FMPs include target stocks and may also include non-target species or stocks. All stocks listed in an FMP or FMP amendment are considered to be ''in the fishery'' unless they are identified as ecosystem component (EC) species through an FMP amendment process.

(2) *Stocks in a fishery.* Stocks in a fishery include: Target stocks; non-target stocks that are retained for sale or personal use; and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best available information, without conservation and management measures. Stocks in a fishery may be grouped into stock complexes, as appropriate. Requirements for reference points and management measures for these stocks are described throughout these guidelines.

(3) ''Target stocks'' are stocks that fishers seek to catch for sale or personal use, including ''economic discards'' as defined under Magnuson-Stevens Act section 3(9).

(4) ''Non-target species'' and ''non-target stocks'' are fish caught incidentally during the pursuit of target stocks in a fishery, including ''regulatory discards'' as defined under Magnuson-Stevens Act section 3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

(5) ''Ecosystem component (EC) species'' are generally not retained for any purpose, although *de minimis* amounts might occasionally be retained. EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While EC species are not considered to be ''in the fishery,'' a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored on a regular basis, to the extent practicable, to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as ''in the fishery.''

(6) *Reclassification.* A Council should monitor the catch resulting from a fishery on a regular basis to determine if the stocks and species are appropriately classified in the FMP. If the criteria previously used to classify a stock or species is no longer valid, the Council should reclassify it through an FMP amendment, which documents rationale for the decision.

(7) *Stocks or species identified in more than one FMP.* If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, and other reference points for the stock are established. In most cases, the primary

FMP for a stock will be the one in which the stock is identified as a target stock. Other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP.

(8) *Stock complex.* ''Stock complex'' means a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another; where there is insufficient data to measure their status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. The vulnerability of stocks to the fishery should be evaluated when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex. Stock complexes may be comprised of: One or more indicator stocks, each of which has SDC and ACLs, and several other stocks; several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or one of more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

(9) *Indicator stocks.* An indicator stock is a stock that is used to help manage and evaluate stocks that are in a stock complex and do not have their own SDC. If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical status of each stock within the complex, due to similarity in vulnerability. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures need to be more conservative so that the more vulnerable members of the complex are not at risk from the fishery. More than one indicator stock can be selected to provide more information about the status of the complex. Although the indicator stock(s) are used to evaluate the status of the complex, individual stocks within complexes should be examined periodically using available quantitative or qualitative information to evaluate whether a stock has become overfished or may be subject to overfishing.

(e) *Features of MSY, SDC, and OY that should be identified in FMPs for all stocks and stock complexes in the fishery*—(1) *MSY.* Each FMP should include an estimate of MSY for the stocks and stock complexes in the fishery, as described in paragraph (d)(2) of this section).

(i) *Definitions.* (A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets.

(B) *MSY fishing mortality rate (F_{msy})* is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size (B_{msy})* means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at F_{msy}.

(ii) *MSY for stocks.* MSY should be estimated for each stock based on the best scientific information available (see § 600.315).

(iii) *MSY for stock complexes.* MSY should be estimated on a stock-by-stock basis whenever possible. However, where MSY cannot be estimated for each stock in a stock complex, then MSY may be estimated for one or more indicator stocks for the complex or for the complex as a whole. When indicator stocks are used, the stock complex's MSY could be listed as ''unknown,'' while noting that the complex is managed on the basis of one or more indicator stocks that do have known, stock-specific MSYs or suitable proxies as described in paragraph (e)(1)(iv) of this section. When indicator stocks are not used, MSY or a suitable proxy should be calculated for the stock complex as a whole.

(iv) *Specifying MSY.* Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available (see § 600.315), and should be re-estimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information. When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential, based on the best scientific information available, that can serve as reasonable proxies for MSY, F_{msy}, and B_{msy}, to the extent possible. As MSY values are estimates and will have some level of uncertainty associated with them, the degree of uncertainty in the estimates should be identified, when possible, through the stock assessment process and peer review (see § 600.335).

(2) *Status determination criteria*—(i) *Definitions*—(A) *Status determination criteria (SDC)* mean the quantifiable factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. Magnuson-Stevens Act (section 3(34)) defines both ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that ''overfished'' relates to biomass of a stock or stock complex, and ''overfishing'' pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* (to overfish) occurs whenever a stock or stock complex is subjected to a level of fishing mortality or annual total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) *Maximum fishing mortality threshold (MFMT)* means the level of fishing mortality (F), on an annual basis, above which overfishing is occurring.

(D) *Overfishing limit (OFL)* means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. MSY is the long-term average of such catches.

(E) *Overfished.* A stock or stock complex is considered ''overfished'' when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis.

(F) *Minimum stock size threshold (MSST)* means the level of biomass below which the stock or stock complex is considered to be overfished.

(G) *Approaching an overfished condition.* A stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) *Specification of SDC and overfishing and overfished determinations.* SDC must be expressed in a way that enables the Council to monitor each stock or stock complex in the FMP and determine annually, if possible, whether overfishing is occurring and whether the stock or stock complex is overfished. In

specifying SDC, a Council should provide an analysis of how the SDC were chosen and how they relate to reproductive potential. Each FMP must specify, to the extent possible, objective and measurable SDC as follows (see paragraphs (e)(2)(ii)(A) and (B) of this section):

(A) *SDC to determine overfishing status.* Each FMP should describe which of the following two methods will be used for each stock or stock complex to determine an overfishing status.

(*1*) *Fishing mortality rate exceeds MFMT.* Exceeding the MFMT for a period of 1 year or more constitutes overfishing. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential. The MFMT must not exceed F_{msy}.

(*2*) *Catch exceeds the OFL.* Should the annual catch exceed the annual OFL for 1 year or more, the stock or stock complex is considered subject to overfishing.

(B) *SDC to determine overfished status.* The MSST or reasonable proxy should be expressed in terms of spawning biomass or other measure of reproductive potential. To the extent possible, the MSST should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(*1*) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(iii) *Relationship of SDC to environmental change.* Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (also see paragraph (j)(3)(ii) of this section). SDC should not be respecified.

(B) If environmental changes affect the long-term reproductive potential of the stock or stock complex, one or more components of the SDC must be respecified. Once SDC have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(C) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling fishing mortality, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(iv) *Secretarial approval of SDC.* Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

(A) Has sufficient scientific merit;

(B) Contains the elements described in paragraph (e)(2)(ii) of this section;

(C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and

(D) Is operationally feasible.

(3) *Optimum yield*—(i) *Definitions*—(A) *Optimum yield (OY).* Magnuson-Stevens Act section 3(33) defines ''optimum,'' with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be established at the stock or stock complex level, or at the fishery level.

(B) In NS1, use of the phrase ''achieving, on a continuing basis, the optimum yield from each fishery'' means producing, from each stock, stock complex, or fishery: A long-term series of catches such that the average catch is equal to the OY, overfishing is prevented, the long term average biomass is near or above Bmsy, and overfished stocks and stock complexes are rebuilt consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General.* OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. The long-term objective is to achieve OY through annual achievement of ACT, which is described in paragraph (f) of this section. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, through an effective system of ACLs, ACTs, and AMs. These measures should allow for practical and effective implementation and enforcement of the management regime. The Secretary has an obligation to implement and enforce the FMP. If management measures prove unenforceable—or too restrictive, or not rigorous enough to prevent overfishing while achieving OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate NS1, because OY was not achieved on a continuing basis. An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act. A Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, then evaluate them to determine the OY. The choice of a particular OY must be carefully documented to show that the OY selected will produce the greatest benefit to the Nation and prevent overfishing.

(iii) *Determining the greatest benefit to the Nation.* In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY are:

(A) The benefits of food production are derived from providing seafood to consumers; maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies; and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(B) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving. Benefits also include the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(C) The benefits of protection afforded to marine ecosystems are those resulting

from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem, maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(iv) *Factors to consider in OY specification.* Because fisheries have limited capacities, any attempt to maximize the measures of benefits described in paragraph (e)(3)(iii) of this section will inevitably encounter practical constraints. OY cannot exceed MSY in any circumstance and must take into account the need to prevent overfishing and rebuild overfished stocks and stock complexes. OY can be reduced to a value less than MSY based on social, economic, and ecological factors. To the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of these factors is not possible, the FMP still must address these factors in its OY specification.

(A) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (e.g., involvement in fisheries and ability to adapt to change). Consideration may be given to fishery-related indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under Indian treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(B) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (see § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(C) *Ecological factors.* Examples include impacts on ecosystem component species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than B_{msy} to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(v) *Specification of OY.* The specification of OY must be consistent with preventing overfishing and should be reduced from MSY to account for scientific uncertainty in calculating MSY, and economic, social, and ecological factors such as those described in paragraph (e)(3)(iv) of this section. If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch to the ACT then OY could be set very close to MSY. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set farther from MSY. In order to achieve OY in the long term, catch targets (i.e., ACT) should be set below catch limits (i.e., ACLs) based on the degree of management control so that average catch (or average ACT) approximates OY (see paragraph (f)(6) of this section). If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 (preventing overfishing while achieving, on a continuing basis, OY) are met.

(A) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. As a long-term average, OY cannot exceed MSY.

(B) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of ACTs that vary with stock size or management precision. For example, an ACT control rule (described in paragraph (f)(6) of this section) might prescribe a smaller ACT if there is less management precision.

(C) All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities.

(D) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any total allowable level of foreign fishing (TALFF) and analyzing impacts of the management regime.

(E) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

(F) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stock complexes within the fishery. If OY is specified at a fishery level, the sum of the ACTs for the stocks and stock complexes in the fishery should approximate OY.

(G) There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(H) Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(vi) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

(A) *DAH.* Councils and/or the Secretary must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(B) *Domestic annual processing (DAP).* Each FMP must assess the capacity of U.S. processors. It must also

assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(C) *Joint venture processing (JVP).* When DAH exceeds DAP, the surplus is available for JVP.

(f) *Acceptable biological catch, annual catch limits, and annual catch targets.* The following features (see paragraphs (f)(1) through (f)(7) of this section) of acceptable biological catch, annual catch limits, and annual catch targets apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).

(1) *Introduction.* A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases. Paragraph (f) of this section describes a three-step approach for setting limits and targets so as to ensure a low risk of overfishing while achieving, on a continuing basis, OY: First, ABC is set below the OFL to account for scientific uncertainty in calculating the OFL; second, ACL is set at an amount not to exceed the ABC; and third, ACT is set at an amount not to exceed the ACL to account for management uncertainty in controlling a fishery's actual catch.

(2) *Definitions.* (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and should be specified based on the ABC control rule.

(iii) *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL.

(iv) *Annual catch limit (ACL)* is the level of annual catch of a stock or stock complex that serves as the basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector-ACLs (see paragraph (f)(5) of this section).

(v) *Annual catch target (ACT)* is an amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one should have a sector-ACT.

(vi) *ACT control rule* means a specified approach to setting the ACT for each stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.

(3) *Specification of ABC.* ABC may not exceed OFL (see paragraph (e)(2)(i)(D) of this section) and is recommended to be reduced from OFL to account for scientific uncertainty in the estimate of OFL. Councils should develop a process for receiving scientific information and advice used to establish ABC. This process should: Establish an ABC control rule, identify the body that will apply the ABC control rule (i.e., calculates the ABC), identify the review process that will verify the resulting ABC, and confirm that the SSC recommends the ABC to the Council. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required.

(i) *Expression of ABC.* ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks.* For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the target fishing mortality rates in the rebuilding plan.

(4) *ABC control rule.* For stocks and stock complexes required to have an ABC, each Council should establish an ABC control rule based on scientific advice from its SSC. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule should clearly articulate how far below the OFL, or OFL proxy, the ABC will be set based on the level of scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL. The ABC control rule should take into account uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(5) *Setting the annual catch limit*—(i) *General.* ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. A ''multiyear plan'' as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan should include ACLs and ACTs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. The AMs specified for a multiyear plan should provide that, if an ACL is exceeded for a year, then a subsequent year's harvest specification (including ACLs and ACTs) could be revised.

(ii) *Sector ACLs.* A Council may, but is not required to, divide an ACL into sector-ACLs. ''Sector,'' for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. Sector-AMs must be developed for each sector-ACL, and the sum of sector ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective and equitable and protect the stock or stock complex as a whole. If sector-ACLs and AMs are established, additional AMs at the stock or stock complex level would also be appropriate.

(iii) *ACLs for State-Federal Fisheries.* For stocks or stock complexes that have a large majority of harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a federal-ACL and state-ACL. However, NMFS recognizes that federal management would be limited to the portion of the fishery under federal authority (see paragraph (g)(5) of this section). When stocks are co-managed by federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management

strategies, and scientific capacity to support such strategies, to prevent overfishing of shared stocks and ensure their sustainability.

(6) *ACT control rule.* For stocks and stock complexes required to have an ACL, each Council should establish ACT control rules for setting the ACTs. The ACT control rule should clearly articulate how far below the ACL the target will be established based on the amount of management uncertainty associated with harvest of a stock or stock complex. For example, the ACT may need to be set further below the ACL in fisheries where inseason monitoring of catch data is unavailable or infeasible, or where AMs are established using a multi-year averaging approach (see paragraph (g)(4) of this section).

(i) *Determining management uncertainty.* Two sources of management uncertainty should be accounted for in establishing the ACT control rule: Uncertainty in the ability of managers to constrain catch to the ACT and uncertainty in quantifying the true catch amounts (i.e., estimation errors). To determine the level of management uncertainty in controlling catch, analyses should consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses should be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

(ii) *Establishing tiers and corresponding ACT control rules.* Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.

(7) *Relationships of OFL to MSY and ACT to OY.* The following (see paragraphs (f)(7)(i) and (ii) of this section) describes the relationships between terms used in ending and preventing overfishing and rebuilding overfished stocks and stock complexes.

(i) *Relationship of OFL to MSY.* OFL is the amount of catch for a particular year that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance, and MSY is the long-term average of such catches. ABC is recommended to be set below OFL to take into account the scientific uncertainty in the estimate of OFL.

(ii) *Relationship of ACT to OY.* Paragraphs (a) and (e)(3) of this section define and describe OY and the goal of preventing overfishing, while achieving on a continuing basis the OY from each stock, stock complex, or fishery. Management measures for a fishery should, on an annual basis, achieve the ACTs and prevent the ACLs from being exceeded. The long-term objective is to achieve OY through annual achievement of ACT.

(g) *Accountability measures.* The following features (see paragraphs (g)(1) through (5) of this section) of accountability measures apply to those stocks and stock complexes in the fishery.

(1) *Introduction.* AMs are management controls that prevent ACLs or sector-ACLs from being exceeded (inseason AMs), where possible, and correct or mitigate overages if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible.

(2) *Inseason AMs.* Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to, closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. Where timely catch data are available for a stock, FMPs should include inseason closure authority to close the fishery on or before the date when the ACL for a stock or stock complex is projected to be reached.

(3) *AMs for when the ACL is exceeded.* On an annual basis, the Council should determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs should be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things, modifications of inseason AMs or overage adjustments. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overages, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment is needed to mitigate the effects of the overages. If catch exceeds the ACL more than once in the last four years, the system of ACLs, ACTs and AMs should be re-evaluated to improve its performance and effectiveness.

(4) *AMs based on multi-year average data.* Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, AMs could be based on comparisons of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Evaluation of the moving average catch to the average ACL must be conducted annually. If the average catch exceeds the average ACL more than once in the last four years, then the ACL, ACT and AM system should be re-evaluated. The initial ACL and management measures should incorporate information from previous years so that AMs based on average ACLs can be applied from the first year.

(5) *AMs for State-Federal Fisheries.* For stocks or stock complexes that have a large majority of harvest in state or territorial waters, AMs should be developed for the portion of the fishery under federal authority and could include closing the EEZ when the federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(h) *Establishing ACL and AM mechanisms in FMPs.* FMPs or FMP amendments should establish ACL and AM mechanisms for all stocks and stock complexes in the fishery, unless paragraph (h)(2) of this section is applicable. If a complex has multiple indicator stocks, each indicator stock must have its own ACL; an additional ACL for the stock complex as a whole is optional. In cases where fisheries harvest multiple indicator stocks of a single species that cannot be distinguished at the time of capture, separate ACLs for the indicator stocks are not required and the ACL can be established for the complex as a whole.

(1) In establishing ACL and AM mechanisms, FMPs should describe:

(i) Timeframes for setting ACLs (e.g., annually or multi-year periods);

(ii) Sector-ACLs, if any (including set-asides for research or bycatch);

(iii) AMs and their relationship to ABC and ACT control rules, including how AMs are triggered and what sources of data will be used (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach);

(iv) Sector-AMs, if there are sector-ACLs; and

(v) Fisheries data described in paragraph (i) of this section.

(2) *Exceptions from ACL and AM requirements*—(i) *Life cycle.* Section 303(a)(15) of the Magnuson-Stevens Act ''shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species' (as described in Magnuson-Stevens Act section 303 note). This exception applies to a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its life time. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks should have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) *International fishery agreements.* Section 303(a)(15) of the Magnuson-Stevens Act applies ''unless otherwise provided for under an international agreement in which the United States participates'' (Magnuson-Stevens Act section 303 note). This exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party'' (see Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC and MSY.

(3) *Flexibility in application of NS1 guidelines.* There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of ESA-listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act than those set forth in these guidelines. Councils should document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data.* In their FMPs, Councils should describe general data collection methods, as well as any specific data collection methods used for all stocks, stock complexes, and ecosystem component species. FMPs should:

(1) List sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Describe the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Describe the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery.

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery*—(1) *Notification.* The Secretary will immediately notify a Council whenever it is determined that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(2) *Timing of actions*—(i) *If a stock or stock complex is undergoing overfishing.* FMPs or FMP amendments should establish ACL and AM mechanisms in 2010, for stocks and stock complexes determined to be subject to overfishing, and in 2011, for all other stocks and stock complexes (see paragraph (b)(2)(iii) of this section). To address practical implementation aspects of the FMP and FMP amendment process, paragraphs (j)(2)(i)(A) through (C) of this section clarifies the expected timing of actions.

(A) In addition to establishing ACL and AM mechanisms, the ACLs and AMs themselves should be specified in FMPs, FMP amendments, implementing regulations, or annual specifications beginning in 2010 or 2011, as appropriate.

(B) For stocks and stock complexes still determined to be subject to overfishing at the end of 2008, ACL and AM mechanisms and the ACLs and AMs themselves should be effective in fishing year 2010.

(C) For stocks and stock complexes determined to be subject to overfishing during 2009, ACL and AM mechanisms and ACLs and AMs themselves should be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest.

(ii) *If a stock or stock complex is overfished or approaching an overfished condition.* (A) For notifications that a stock or stock complex is overfished or approaching an overfished condition made before July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within one year of notification. If the stock or stock complex is overfished, the purpose of the action is to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e) of the Magnuson-Stevens Act. If the stock or stock complex is approaching an overfished condition, the purpose of the action is to prevent the biomass from declining below the MSST.

(B) For notifications that a stock or stock complex is overfished made after July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within two years of notification. Council actions should be submitted for Secretarial review within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved. If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnsuon-Stevens Act.

(C) For notifications that a stock or stock complex is approaching an overfished condition made after July 12, 2009, a Council should take immediate action to reduce the likelihood that the stock or stock complex will become overfished. Otherwise, the stock or stock complex would likely be overfished by the time the two-year timeline to implement management measures expired.

(3) *Overfished fishery.* (i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the

stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of T_{target} as follows:

(A) The ''minimum time for rebuilding a stock'' (T_{min}) means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term ''expected'' means to have at least a 50-percent probability of attaining the B_{msy}.

(B) For scenarios under paragraph (j)(2)(ii)(A) of this section, the starting year for the T_{min} calculation is the first year that a rebuilding plan is implemented. For scenarios under paragraph (j)(2)(ii)(B) of this section, the starting year for the T_{min} calculation is 2 years after notification that a stock or stock complex is overfished or the first year that a rebuilding plan is implemented, whichever is sooner.

(C) If T_{min} for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{msy} is 10 years.

(D) If T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{msy} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is the average length of time between when an individual is born and the birth of its offspring.

(E) T_{target} shall not exceed T_{max}, should generally be less than T_{max}, and should be calculated based on the factors described in this paragraph (j)(3) with a priority given to rebuilding in as short a time as possible.

(ii) If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuilt, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max}, and the stock or stock complex is not rebuilt by T_{target}, rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max}. If the stock or stock complex has not rebuilt by T_{max}, and the rebuilding F is greater than 75 percent of MFMT, then the rebuilding F should be reduced to no more than 75 percent of MFMT until the stock or stock complex has been demonstrated to be rebuilt.

(iii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(iv) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(4) *Emergency actions and interim measures.* The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing or promulgate regulations to address an emergency (Magnuson-Stevens Act section 304(e)(6) or 305(c)). In considering a Council request for action, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or stock complex and impacts on participants in the fishery.

(i) These measures may remain in effect for not more than 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

(ii) Often, these measures need to be implemented without prior notice and an opportunity for public comment, as it would be impracticable to provide for such processes given the need to act quickly and also contrary to the public interest to delay action. However, emergency regulations and interim measures that do not qualify for waivers or exceptions under the Administrative Procedure Act would need to follow proposed notice and comment rulemaking procedures.

(k) *International overfishing.* If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, should immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the Magnuson-Stevens Act and paragraph (j)(3)(iv) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) *Considerations for assessing ''relative impact.''* ''Relative impact'' under paragraphs (k)(1) and (2) of this section may include consideration of factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact should be based upon the best available scientific information.

(l) *Relationship of National Standard 1 to other national standards*—(1) *National Standard 2 (see § 600.315).* Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also see paragraph (e)(1)(iv) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information

available for fishery management decisions.

(2) *National Standard 3 (see § 600.320).* Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (e)(1)(iii) of this section). Also, scientific assessments should be based on the best information about the total range of the stock and potential biological structuring of the stock into biological sub-units, which may differ from the geographic units on which management is feasible.

(3) *National Standard 6 (see § 600.335).* Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) *National Standard 8 (see § 600.345).* Councils must take into account the importance of fishery resources to fishing communities when specifying OY and an ACT control rule. Also, see paragraph (e)(3)(iv)(A) of this section for more information on how factors that relate to fishing communities should be considered when reducing OY from MSY.

(5) *National Standard 9 (see § 600.350).* Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

(m) *Exceptions to requirements to prevent overfishing.* Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in long-term net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its Bmsy more than 50 percent of the time in the long term.

[FR Doc. 08–1328 Filed 6–4–08; 9:34am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 73, No. 111

Monday, June 9, 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 HEALTH AND HUMAN SERVICES

Office of Community Services

[CFDA#: 53.570]

Notice To Award a Program Expansion Supplement

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice To Award a Program Expansion Supplement.

Legislative Authority: Sections 678A(a)(1)(A) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services (HHS) to use a percentage of appropriated funds for training technical assistance, planning, evaluation, performance measurement, monitoring, assistance for States in carrying out corrective actions and the correction of programmatic deficiencies of eligible entities under the CSBG Act.

Amount of Award: $50,926.

Project Period: 9/30/2007–9/29/2008.

Summary

This notice announces that the Administration for Children and Families (ACF), Office of Community Services intends to award a single-source program expansion to Community Action Program Legal Services, Inc (CAPLAW) located in Boston, MA in the amount of $50,926. This award will enhance CAPLAW's ability to advise and educate Community Action Agencies on legal issues with regard to effective operation and management. State agencies administering the CSBG program would be provided legal advice. This is particularly critical at this time due to the increased emphasis by funding sources on compliance with federal grants requirements and to changes in laws applicable to Community Action Agencies and programs they administer. CAPLAW would use the increased funding to hire an additional full-time attorney and an additional part-time staff person to handle communications and other administration.

FOR FURTHER INFORMATION CONTACT: Dr. Yolanda J. Butler, Deputy Director, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone: 202–401–9333

Dated: June 2, 2008.

Josephine Robinson,

Director, Office of Community Services.

[FR Doc. E8–12806 Filed 6–6–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0013]

Notice of Determination of Pest-Free Areas Within the States of Ceará and Rio Grande do Norte, Brazil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are recognizing 7 municipalities in the State of Ceará and 13 municipalities in the State of Rio Grande do Norte as pest-free areas for the South American cucurbit fly. Based on our review of the documentation submitted by Brazil's national plant protection organization, which we made available to the public for review and comment through a previous notice, the Administrator has determined that those municipalities meet the criteria in our regulations for recognition as pest-free areas.

DATES: *Effective Date:* June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. Román, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56–5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standards for Phytosanitary Measures (ISPM) No. 4, ''Requirements for the Establishment of Pest-Free Areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

In accordance with that process, we published a notice [1] in the **Federal Register** on March 3, 2008 (73 FR 11382–11383, Docket No. APHIS–2008–0013), in which we announced the availability, for review and comment, of a commodity import evaluation document in which we examined the

[1] To view the notice, the pest risk analysis, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0013.*

survey protocols and other information provided by Brazil relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. We solicited comments on the notice for 60 days ending on May 2, 2008. We received five comments by that date, from a produce wholesaler, a fresh fruit importer, two melon producers/exporters, and the director of a Brazilian fruit fly rearing facility. All of the commenters supported the recognition of the 7 municipalities in the State of Ceará and 13 municipalities in the State of Rio Grande do Norte as pest-free areas for the South American cucurbit fly (*Anastrepha grandis*).

In accordance with § 319.56–5(c), we are announcing the Administrator's determination that the municipalities of Aracati, Icapuí, Itaiçaba, Jaguaruana, Limoeiro do Norte, Quixeré, and Russas in the State of Ceará and the municipalities of Açu, Afonso Bezerra, Alto do Rodrigues, Areia Branca, Baraúna, Camaubais, Grossos, Ipanguaçu, Mossoró, Porto do Mangue, Serra do Mel, Tibau, and Upanema in the State of Rio Grande do Norte meet the criteria of § 319.56–5(a) and (b) with respect to freedom from *A. grandis*. Accordingly, we are recognizing those municipalities as pest-free areas for *A. grandis* and have added them to the list of pest-free areas. You may view the list of pest-free areas on the Internet by going to *http://www.aphis.usda.gov/import_export/plants/manuals/ports/index.shtml* and selecting the link for designated pest-free areas under the heading ''Plant Importation Manuals.''

Done in Washington, DC, this 3rd day of June 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–12855 Filed 6–6–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Revolving Loan Fund Reporting and Compliance Requirements.

Form Number(s): ED–209 (replaces ED–209S and ED–209A), ED–209I.

OMB Approval Number: 0610–0095.

Type of Review: Regular submission.

Burden Hours: 3,679.

Number of Respondents: 584.

Average Hours Per Response: ED–209, 2 hours and 54 minutes; and ED–209I, 15 minutes.

Needs and Uses: The mission of the Economic Development Administration (EDA) is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. One of EDA's seven economic development programs is the Revolving Loan Fund (RLF) Program. EDA may award competitive grants to units of local government, state governments, institutions of higher education, public or private non-profit organizations, district organizations, and tribal governments to establish RLFs. Following grant award and fulfillment of EDA's pre-disbursement requirements, an RLF grantee may disburse grant funds to make loans at interest rates that are at or below current market rate to small businesses or to businesses that cannot otherwise borrow capital. As the loans are repaid, the grantee uses a portion of interest earned to pay for administrative expenses and adds remaining principal and interest repayments to the RLF's capital base to make new loans. The information contained in the ED–209, ED–209I, and RLF Plan, submitted by the grantee, will be used by EDA personnel to monitor the compliance of RLF grantees with legal and programmatic requirements, and to ensure that EDA exercises adequate fiduciary responsibility over its portfolio.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; state, local or tribal government.

Frequency: Semi-annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Roster, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 4, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–12801 Filed 6–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–832

Pure Magnesium from the People's Republic of China: 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 the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC'') covering the period May 1, 2006, through April 30, 2007. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2006, through April 30, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request*

Administrative Review, 72 FR 23796. On May 25, 2005, US Magnesium LLC (''US Magnesium'' or ''Petitioner'') requested that the Department conduct an administrative review of Tianjin Magnesium International, Co.'s (''TMI's'') exports of pure magnesium to the United States during the period May 1, 2006, through April 30, 2007. On May 30, 2007, TMI filed a request for review of its exports, and requested a one–year deferral[1] of initiation contending that because TMI began shipping late in the POR, consolidating its shipments with the next review would be more efficient than conducting two reviews. On May 31, 2007, Shanxi Datuhe Coke & Chemicals Co., Ltd. (''Datuhe'') requested that the Department conduct an administration review of its sales of pure magnesium to the United States during the POR. On June 20, 2007, TMI filed a letter stating the deferral should be granted as there was no objection by any party within the 15–day regulatory deadline. On June 28, 2007, Economic Consulting Services LLC (''ECS'') submitted a letter stating that, as the lead firm representing Petitioner, it had not been served with TMI's request for an administrative review and deferral of that review, and was not aware of this request until TMI's June 20, 2007, submission. ECS stated it has long been the lead representative for Petitioner and, because it was not notified of TMI's deferral request, asked that the Department: (1) reject TMI's request for the deferral as improperly served; or (2) grant US Magnesium an extension of time to file an objection to TMI's deferral request. On June 29, 2007, we initiated an administrative review of the order on pure magnesium with respect to Datuhe, but deferred initiating a review with respect to TMI because no party objected to TMI's deferral request within 15 days. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 35690. On July 6, 2007, TMI responded to ECS's request, stating that: (1) it properly served the *legal* representative of US Magnesium (*i.e.*, King & Spalding); as ECS is not the *legal* representative, it has no standing to make a valid claim regarding service; and (2) as the May 25, 2007, request for review was submitted by ECS, not a legal representative of the domestic party, the request should be removed from the record. On September 26, 2008, the Department issued a memorandum granting Petitioner an extension of time to file an objection to the request of TMI to defer the initiation of the administrative review with respect to TMI. *See* Memorandum to the File: ''Granting Petitioner an Extension of Time to File an Objection to Respondent's Deferral Request,'' dated September 26, 2007. On September 28, 2007, Petitioner objected to TMI's deferral request. On January 28, 2008, the Department published in the **Federal Register** a notice of initiation of the antidumping duty administrative review of pure magnesium from the PRC for the period May 1, 2006, through April 30, 2007, with respect to TMI. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 4831.

On September 4, 2007, the Department issued its antidumping duty questionnaire to Datuhe. On October 2, 2007, and October 25, 2007, Datuhe submitted its questionnaire responses. The Department issued a supplemental questionnaire to Datuhe on January 8, 2008, to which Datuhe responded on February 8, 2008. On May 9, 2008, the Department issued the second supplemental questionnaire to Datuhe and received a response on May 15, 2008.

On September 27, 2007, the Department issued its antidumping duty questionnaire to TMI. On November 8, 2007, and December 11, 2007, TMI submitted its questionnaire responses. The Department issued a supplemental questionnaire to TMI on January 31, 2008, to which TMI responded on March 6, 2008.

On January 18, 2008, the Department issued a request for interested parties to submit comments on surrogate country selection and surrogate values (''SV''). TMI and Datuhe submitted surrogate country comments on February 15, 2008. Additionally, Petitioner submitted surrogate country comments on February 15, 2008. TMI, Datuhe and Petitioner submitted surrogate value comments on March 3, 2007. In March and April 2008, TMI, Datuhe and Petitioner submitted additional and rebuttal surrogate value information.

On February 6, 2008, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review from January 31, 2008, until no later than April 30, 2008. *See Pure Magnesium from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 6931 (February 6, 2008). Additionally, on May 5, 2008, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review from April 30, 2008, until no later May 30, 2008. *See Pure Magnesium from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 24572 (May 5, 2008).

Period of Review

The POR is May 1, 2006, through April 30, 2007.

Scope of Order

Merchandise covered by this order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium) .

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium

[1] Under 19 CFR 351.213(c), ''the Secretary may defer the initiation of an administrative review, in whole or in part, for one year if: the review request is accompanied by a request to defer, and no party (i.e., exporter, producer, importer or domestic interested party) objects to the deferral.'' Additionally, 19 CFR 351.213(c)(2), states objections to deferrals must be submitted within 15 days after the end of the anniversary month.

anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Nonmarket–Economy-Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's Factors of Production (''FOP''). The Act further instructs that valuation of the FOPs shall be based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department. *See* Section 773(c)(1) of the Act. When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* Section 773(c)(4) of the Act. Further, the Department normally values all FOPs in a single surrogate country. *See* 19 CFR 351.308(c)(2). The sources of the surrogate values (''SV'') are discussed under the ''Normal Value'' section below and in the Memorandum to the File, ''Factors Valuations for the Preliminary Results of the Administrative Review,'' dated May 30, 2008 (''Factor Valuation Memorandum''), which is on file in the Central Records Unit (''CRU''), Room 1117 of the main Department building.

In examining which country to select as its primary surrogate for this proceeding, the Department first determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. *See* Memorandum to Robert Bolling, Program Manager, From Ron Lorentzen, Director, Office of Policy, ''Administrative Review of Pure Magnesium from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated December 20, 2007, which is on file in the CRU. Once the economically comparable countries have been identified, we select an appropriate surrogate country by determining whether one of these countries is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

On January 18, 2008, the Department issued a request for interested parties to submit comments on surrogate country selection. TMI submitted surrogate country comments on February 15, 2008. Datuhe also submitted surrogate country comments on February 15, 2008 (''Datuhe's Surrogate Country Letter''). Additionally, Petitioner submitted surrogate country comments on February 15, 2008 (''Petitioner's Surrogate Country Letter'').

TMI argues that India is the appropriate surrogate country for the PRC because India is comparable to the PRC in terms of overall economic development as is demonstrated by the Department's consistent use of India as a surrogate country in recent antidumping investigations and reviews involving the PRC. TMI also states India has been consistently found to be a ''significant producer'' of comparable merchandise, and the existence of a well–developed comparable industry in India producing comparable merchandise supports the selection and use of India as the appropriate surrogate country.

Datuhe asserts that India is the appropriate surrogate country for the PRC because India is comparable to the PRC in terms of economic development based on per–capita gross national income (''GNI''). Datuhe also stated that while India is not a significant producer of the identical merchandise, pure magnesium, neither are any of the other potential surrogates as identified by the Department. Datuhe continues by stating that India is a significant producer of aluminum, which it claims is comparable merchandise, based on the fact that both products: (a) are light metals; (b) are electricity–intensive; (c) are produced by similar processes; and (d) share some common end uses.[2] Datuhe points out that, by contrast, three of the other potential surrogate countries are not recognized as producers of aluminum and the fourth country, Indonesia, only produces a fraction of India's production. Finally, Datuhe claims that factors data from India are available, reliable, and contemporaneous.

Petitioner contends that the Department should select India as the surrogate country in this administrative review because India is at a level of economic development that is comparable to the PRC based on per–capita GNI and India is a significant producer of comparable merchandise. Petitioner states that among the five countries considered to be comparable to China in terms of economic development, the only possible producer of primary magnesium is Southern Magnesium & Chemicals Ltd (''Southern Magnesium''), which is located in India. However, Petitioner notes that Southern Magnesium has either downsized or ceased its magnesium production operations. Petitioner continues by stating that to the best of its knowledge, none of the other four countries identified by the Department are producers of magnesium. However, Petitioner notes that India is a significant producer of aluminum, and the Department previously has determined aluminum production to be ''most comparable'' to magnesium production.[3] Further, Petitioner claims that while Indonesia produced aluminum, the production level was far below that of India. The remaining potential surrogate countries (Philippines, Colombia, and Thailand) are not aluminum producers. Finally, Petitioner concludes that India is the best available surrogate country because of the availability and quality of data to value the FOPs.

After evaluating interested parties' comments, the Department determined that India is the appropriate surrogate country to use in this review pursuant to section 773(c)(4) of the Act based on the following facts: 1) India is at a level

[2] Datuhe's Surrogate Country Letter at 3.

[3] Petitioner's Surrogate Country Letter at 4.

of economic development comparable to that of the PRC; and 2) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.[4] We have obtained and relied upon publicly available information wherever possible.[5]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping review, interested parties may submit within 20 days after the date of publication of the preliminary results additional publicly available information to value the FOPs.[6]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the 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 further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

Both respondents stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese–owned companies. Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[7]

The evidence provided by the respondents supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[8] The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department conducted separate–rates analyses for Datuhe and TMI. The evidence placed on the record of this review by the respondents demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have determined that Datuhe and TMI have demonstrated their eligibility for a separate rate.

Normal Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at less than NV, we compared Export Price (''EP'') and Constructed *Export Price* (''CEP'') to NV, as described in the ''Export Price'' and ''*Normal Value*'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

We compared NV to individual EP transactions, in accordance with section 777A(d)(2) of the Act.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772 (c) and (d). In accordance with section 772(b) of the Act, we used CEP for Datuhe's sales because it sold subject merchandise to its affiliated company in the United States, which in turn sold subject

[4] *See* Letter from TMI dated March 17, 2008, Surrogate Value Data Submission at Exhibit SV-21G.

[5] *See* Factor Valuation Memorandum.

[6] In accordance with 19 CFR 351.301(c)(1), for the final results of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[7] *See Sparklers*, 56 FR at 20589.

[8] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

merchandise to unaffiliated U.S. customers.

We compared NV to individual EP and CEP transactions, in accordance with section 777A(d)(2) of the Act.

Datuthe

We calculated CEP for Datuhe based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, marine insurance, U.S. Customs duty, where applicable, U.S. inland freight from port to the warehouse and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 773(a) of the Act, we calculated Datuhe's credit expenses and inventory carrying costs based on the Federal Reserve short–term rate, where applicable. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. *See* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Hua Lu, Case Analyst, ''Analysis for the Preliminary Results of Pure Magnesium from the People's Republic of China: Shanxi Datuhe Coke & Chemicals Co., Ltd. (''Datuhe''),'' dated May 30, 2008.

TMI

For TMI's EP sales, we based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. Movement expenses included expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, and where applicable, international freight and marine insurance. No other adjustments to EP were reported or claimed. *See* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Hua Lu, Case Analyst, ''Analysis for the Preliminary Results of Pure Magnesium from the People's Republic of China: Tianjin Magnesium International, Co. (''TMI''),'' dated May 30, 2008.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill v. United States*, 268 F. 3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market–based prices to value certain FOPs).

With regard to both import–based surrogate values and market–economy import values, it is the Department's consistent practice that, where the facts developed in the United States or third country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry-specific export subsidies), it is reasonable for the Department to find that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Brake Rotors and China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, preliminarily finds it reasonable to infer that all exports to all markets from these countries may be subsidized. *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review*, 72 FR 42386 (August 2, 2007) (''Brake Rotors''), and accompanying Issues and Decision Memorandum at Comment 1. Accordingly, the Department has disregarded prices from Indonesia, South Korea and Thailand in calculating NV because the Department has reason to believe or suspect such prices may be subsidized.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by respondents for the POR. To calculate NV, the Department multiplied the reported per–unit factor consumption quantities by publicly available Indian SVs (except as noted below). In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the U.S. Court of appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all SVs used to value the respondents' reported FOPs, *see* Factor Valuation Memorandum.

The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the POR or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted–

average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight average the weighted–average market economy purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33–percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006). Also, where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. During the POR, neither Datuhe or TMI purchased any inputs from a market economy supplier.

The Department used contemporaneous import data from the World Trade Atlas (''WTA'') online, published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, to calculate SVs for the reported FOPs purchased from NME sources. Among the FOPs for which the Department calculated SVs using Indian Import Statistics are ferrosilicon, flux, fluorite and sulfur. However, for dolomite, in reviewing the record evidence, we have found that it is reasonable to conclude that WTA data represent prices of imported dolomite in the high–end value–added product range while the dolomite used to produce subject merchandise is the high–bulk, low value commodity. *See Pure Magnesium from the People's Republic of China: Final Results of 2004–2005 Antidumping Duty Administrative Review*, 71 FR 61019 (October 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1. Therefore, for the preliminary results, we have determined to average the dolomite values from Indian Iron & Steel and Tata Sponge Iron Ltd. to calculate the surrogate value for dolomite. Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. For a complete listing of all the inputs and the valuation for each mandatory respondent *see* Factor Value Memorandum.

Where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (''WPI'') available at the website of the Office of the Economic Adviser, Ministry of Commerce and Industry, Government of India, http://eaindustry.nic.in/. *See* Factor Valuation Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, http://ia.ita.doc.gov/wages/04wages/04wages–010907.html. The source of these wage–rate data is the Yearbook of Labour Statistics 2006, ILO (Geneva: 2006), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2004 and 2005. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Factor Valuation Memorandum.

To value electricity, the Department used data from the International Energy Agency (''IEA'') *Key World Energy Statistics* (2003 edition). Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. *See* Factor Valuation Memorandum.

The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POR, we adjusted the rate for inflation.

To calculate the value for domestic brokerage and handling, the Department used information available to it contained in the public version of two questionnaire responses placed on the record of separate proceedings. The first source was December 2003–November 2004 data contained in the public version of Essar Steel's February 28, 2005, questionnaire submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006)(unchanged in final results). This value was averaged with the February 2004–January 2005 data contained in the public version of Agro Dutch Industries Limited's (''Agro Dutch'') May 24, 2005, questionnaire response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department derived an average per–unit amount from each source and then adjusted each average rate for inflation using the WPI. The Department then averaged the two per–unit amounts to derive an overall average rate for the POR. *See* Factor Valuation Memorandum.

The Department used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck and rail freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See* Factor Valuation Memorandum.

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI Data''). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that: a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POR, the

Department adjusted the rate for inflation. *See* Factor Valuation Memorandum.

To value marine insurance, the Department obtained a generally publicly available price quote from http://www.rjgconsultants.com/insurance.html, a market–economy provider of marine insurance. *See* Factor Valuation Memorandum.

To value international freight, the Department obtained a generally publicly available price quote from http://www.maersksealand.com/HomePage/appmanager, a market–economy provider of international freight services. *See* Factor Valuation Memorandum.

To value factory overhead, depreciation, selling, general and administrative expenses (''SG&A'') and profit, the Department used a audited financial statement for the year ended March 31, 2007, for an Indian producer of aluminum, Sterlite Industries (India) Limited (''Sterlite''). We did not rely upon two companies' financial statements that were placed on the record, namely the financial statement of Hindalco Industries Limited (''Hindalco'') and National Aluminium Company Limited (''Nalco''), because Hindalco and Nalco's financial statements identify the receipt of ''export and other incentives'' or ''export incentives'' (*i.e.*, ''EPCG Scheme'' and ''DEPB Premium'') in ''Operating Revenues'' or ''Other Income.'' India's EPCG and DEPB Schemes have been found by the Department to each provide a countervailable subsidy. *See*, *e.g.*, *Certain Iron–Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592 (November 12, 1999) (unchanged in final results); *see also http://ia.ita.doc.gov/esel/eselframes.html* and *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at ''Benchmarks for Loans and Discount Rate.'' In *Crawfish from the PRC*, the Department noted that where it has reason to believe or suspect that a company may have received subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to value financial ratios. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) (''*Crawfish from the PRC*'')and accompanying Issues and Decision Memorandum at Comment 1. Given the record information regarding Hindalco's use of the EPCG program and Nalco's use of the DEPB program, and the fact that we have other acceptable financial statements to use as surrogates, consistent with the Department's decision in *Crawfish from the PRC*, we have not used Hindalco or Nalco's financial data in our surrogate ratio calculations. Additionally, we have not used Madras Aluminium Company Limited's (''Malco'') financial statement because Malco's financial statement only covers nine months of its fiscal year. See the Factor Valuation Memorandum for a full discussion of the calculation of Sterlite's ratios.

Further, the Department used Indian Import Statistics to value material inputs for packing which, for TMI, are steel bands and plastic bags. The Department used Indian Import Statistics data for the POR for packing materials. *See* Factor Valuation Memorandum.

TMI reported that it recovered cement clinker and waste magnesium from the production of pure magnesium for resale. The Department has preliminarily determined not to grant a by–product offset to either by–product because respondents' have not provided evidence that the by–products were sold or returned to production of the merchandise under consideration. Therefore, we are not granting TMI's by–product claim in our margin calculations.

At the Department's request, Datuhe reported the upsteam inputs used to produce certain self–produced intermediate inputs that it reported in its Section D submission, namely ferrosilicon, electricity, and coal gas. It is the Department's practice, consistent with section 773(c)(1)(B) of the Act, to value the FOPs that a respondent uses to produce the subject merchandise. In the instant case, however, because the Department has insufficient descriptions of certain inputs to ferrosilicon and electricity, namely ''coal rejects,'' ''coal middlings,'' ''coal slime,'' and ''coal gangue,'' and because there are no sources on the record to accurately value these inputs, the Department has determined that it would be more accurate to value the inputs of ferrosilicon and electricity as intermediate inputs using WTA and IEA data, respectively. *See, e.g.*, *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), accompanying Issues and Decision Memorandum at Comment 3.

With respect to coal gas, Datuhe claims in its March 3, 2008, response that the coal gas used in the production of pure magnesium is a waste product of Datuhe's production of non–subject merchandise (*i.e.*, coke), and, therefore, because Datuhe does not purchase this input the Department should not value it in its NV calculation. Section 773(c)(3) of the Act, however, requires the Department to value the quantities of all raw materials employed in producing subject merchandise. Therefore, the Department is required under the Act to value all inputs, including inputs obtained free of charge , such as coal gas in this case. *See Certain Preserved Mushrooms From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64936 (Nov. 6, 2006).

Further, Datuhe reported the FOPs used in the production of coke which generate the coal gas as a waste product, and submitted a calculated ''coke by–product'' adjustment to be deducted from the NV calculation. We note that coke is not, in fact, a by–product of coal gas production, but rather coal gas is a waste product of coke production. *See* Datuhe's May 15, 2008, supplemental questionnaire. Additionally, because coke production is not part of the production of the subject merchandise, the Department will not apply a by–product adjustment from the production of coke to the NV calculation of pure magnesium. Accordingly, the Department has preliminarily determined that valuing coal gas as an intermediate input in the production of the subject merchandise would result in the most accurate NV calculation.

In examining the WTA import data for the five countries on the Office of Policy's potential surrogate country list, we note that there are no imports of commercial quantities of coal gas for the POR or the years leading up to the POR. Similarly, there is no IEA data for these countries during the POR. Because the Department can find no usable data on the record to value coal gas, we have determined to use the methodology employed in certain cut–to-length carbon steel plate from Romania. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying *Issues and Decision Memorandum* at Comment 6. We have

compared the amount of British thermal units (''BTUs'') in coal gas (*i.e.*, 600) to that of natural gas (*i.e.*, 1150) to calculate the relative percentage of BTUs in coal gas. We have applied that percentage to the SV of natural gas. *See* Factor Valuation Memorandum. Because WTA provided no data for natural gas in India, we have used another country on the Office of Policy's potential surrogate country list: Thailand. We note that we have also used this methodology in other proceedings. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183 (May 3, 2001), and *Final Notice of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001). Additionally, we note that Datuhe provided a SV for coal gas, from the Centre for Monitoring Indian Economy (''CMIE''), an independent Indian economic think–tank which Datuhe claims was compiled from data provided by South Eastern Coalfields Limited. We have determined not to rely upon the CMIE value for coal gas for the preliminary results because (1) the value is not broad and representative; (2) it is specific to only one company; and (3) Datuhe only provided two pages of data; thus, the Department is not able to determine whether the data is complete.

Currency Conversion

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

Weighted–Average Dumping Margins

The preliminary weighted–average dumping margins are as follows:

PURE MAGNESIUM FROM THE PRC

Exporter	Weighted–Average Margin (percentage)
Shanxi Datuhe Coke & Chemicals Co. Ltd.	0.0
Tianjin Magnesium International, Co.	21.24

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Further, we request that parties submitting written comments provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer–specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer–specific assessment rate calculated in the final results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) for Datuhe and TMI, which each have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that received a separate rate in a prior segment of this proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the exporter–specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 108.26 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–12869 Filed 6–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment and Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment

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

ACTION: Extension of Comment Periods.

SUMMARY: On May 9, 2008, the Department (''the Department'') published notices in the **Federal Register** requesting comments regarding methodologies for proceedings that involve significant cost changes throughout the POI/POR that may require using shorter cost averaging periods (73 FR 26364), and proposed methodologies for identifying and analyzing targeted dumping in antidumping investigations (73 FR 26371). The Department is extending the comment periods, making the new deadlines for the submission of public comments June 23, 2008.

DATES: To be assured of consideration, written comments must be received no later than June 23, 2008.

ADDRESS: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: Import Administration, Office of Accounting, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Neal M. Halper, Director, Office of Accounting, Taija A. Slaughter, Lead Accountant, Office of Accounting, Anthony Hill, International Economist, Office of Policy, or Mike Rill, Director, Antidumping Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2989, (202) 482–3563, (202) 482–1843 or (202) 482–3058, respectively.

SUPPLEMENTARY INFORMATION:

Submission of Comments

The Department is extending the deadlines for submitting rebuttal comments by ten business days, to June 23, 2008. The Department will consider all comments received before the close of the comment periods. Consideration of comments received after the end of the comment periods cannot be assured.

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in its development of a methodology for when it is appropriate to deviate from the annual average cost reporting method to shorter cost averaging periods, or when considering proposed methodologies for identifying and analyzing targeted dumping in antidumping investigations. The Department requires that comments be submitted in written form. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: http:/ia.ita.doc.gov.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: webmaster–support@ita.doc.gov.

Dated: June 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–12987 Filed 6–6??–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

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, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2007) of the Department of Commerce (the Department) Regulations,

that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW:

Not later than the last day of June 2008[1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping Duty Proceedings	Period
THE PEOPLE'S REPUBLIC OF CHINA: Apple Juice Concentrate, Non–Frozen.	
A–570–855	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Artist Canvas.	
A–570–899	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates.	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Antidumping Duty Proceedings	Period
A–570 -898	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Color Television Receivers.	
A–570–884	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Folding Metal Tables and Chairs.	
A–570–877	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Furfuryl Alcohol.	
A–570–835	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Lawn and Garden Fence Posts.	
A–570–877	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Staple Fiber.	
A–570–905	12/26/06 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Silicon Metal.	
A–570–806	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Sparklers.	
A–570–804	6/1/07 - 5/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings.	
A–570–601	6/1/07 - 5/31/08
JAPAN: Carbon and Alloy Seamless Standard, Line Pressure.	
A–588–850 Pipe (Over 4 ½ Inches)	6/1/07 - 5/31/08
JAPAN: Carbon and Alloy Seamless Standard, Line Pressure.	
A–588–851 Pipe (Under 4 ½ Inches)	6/1/07 - 5/31/08
JAPAN: Hot–Rolled Carbon Steel Flat Products.	
A–588–846	6/1/07 - 5/31/08
SOUTH KOREA: Polyethylene Terephthalate (PET) Film.	
A–580–807	6/1/07 - 5/31/08
SPAIN: Chlorinated Isocyanurates.	
A–469–814	6/1/07 - 5/31/08
TAIWAN: Helical Spring Lock Washers.	
A–583–820	6/1/07 - 5/31/08
TAIWAN: Stainless Steel Butt–Weld Pipe Fittings.	
A–583–816	6/1/07 - 5/31/08
Countervailing Duty Proceedings.	
None.	
Suspension Agreements.	
RUSSIA: Ammonium Nitrate.	
A–821–811	6/1/07 - 5/31/08

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2008. If the Department does not receive, by the last day of June 2008, a request for review

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 3, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–12860 Filed 6–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Board of Patent Appeals and Interferences Actions

ACTION: New collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 8, 2008.

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

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–00xx Board of Patent Appeals and Interferences Actions comment'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan K. Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Kimberly Jordan, Chief Trial Administrator, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–9797; or by e-mail at *BPAI.Rules@uspto.gov* with ''Paperwork'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) established the Board of Patent Appeals and Interferences (BPAI or Board) under 35 U.S.C. 6(b). This statute directs BPAI to ''on written appeal of an applicant, review adverse decisions of examiners upon applications for patent and shall determine priority and patentability of invention in interferences.'' BPAI has the authority under 35 U.S.C. 134, 135, 306, and 315 to review ex parte and inter partes appeals and interferences. In addition, 35 U.S.C. 6 establishes the membership of BPAI as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges, one of which serves as the Chief Judge and another as the Vice Chief Judge. Each appeal and interference is decided by a merits panel of at least three members of the Board.

The Board's two main responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant, and the administration of interferences to ''determine priority'' (or decide who is the first inventor) whenever an applicant claims the same patentable invention that is already claimed by another applicant or patentee. In inter partes reexamination appeals, BPAI reviews decisions adverse to a patent owner or a third-party requestor.

The USPTO published a notice of proposed rule making, ''Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals (RIN 0651–AC12)'' in the **Federal Register** on July 30, 2007. The public comment period ended on September 28, 2007. In this proposed rule making, the USPTO proposed changes to information submitted to the agency by practitioners in order to process ex parte appeals before the BPAI.

The agency received comments from the public concerning the burden of these rules on the public, in particular the new requirements that allow the agency to structure the information being received. In order to ensure that the public has opportunity to comment on the burden impact of the proposed rule making, the USPTO is submitting a new information collection request to the OMB to review these changes as subject to the PRA and to incorporate the new information collection into the agency's information collection inventory.

The USPTO is asking that a new collection of information, entitled ''Board of Patent Appeals and Interferences Actions'' be established. This collection will contain the following items:

- Appeal Brief (41.37).
- Petition for Extension of Time for Filing Paper After Appeal Brief (41.3 and 41.20).
- Petition to Increase Page Limit (41.3 and 41.20).
- Reply Brief (41.41).
- Request for Rehearing Before the BPAI (41.52).

Additionally, there are two items related to BPAI activities that are currently covered in 0651–0031 Patent Processing (Updating). This collection is currently under review at OMB. It is the USPTO's intention to move these items out of 0651–0031 into this new collection once this collection is established and OMB's review of 0651–0031 is concluded. The following items will be moved out of 0651–0031:

- Notice of Appeal (41.31).
- Request for Oral Hearing Before the BPAI (41.47).

BPAI's opinions and decisions for publicly available files are published on the USPTO Web site.

There are no forms associated with these items. However, they are governed by rules in Part 41. Failure to comply with the appropriate rule may result in dismissal of the appeal or denial of entry of the paper.

II. Method of Collection

By mail, hand delivery, or fax when applicant files the briefs, petitions, and requests. These papers can also be filed as attachments through EFS-Web.

III. Data

OMB Number: 0651–00xx.

Form Number(s): No forms.

Type of Review: New information collection.

Affected Public: Primarily business or other for-profit organizations.

Estimated Number of Respondents: 31,828 responses per year. In the future, once this proposed collection and 0651–0031 are approved by OMB, the USPTO expects to move the notices of appeal and requests for oral hearing before the BPAI into this collection. The USPTO estimates that this will add a minimum of 28,595 responses to this collection.

Estimated Time Per Response: The USPTO estimates that it takes the public

approximately 5 to 30 hours to complete this information, depending on the brief, petition, or request. This includes the time to gather the necessary information, prepare the briefs, petitions, and requests, and submit them to the USPTO. The USPTO estimates that it takes the public approximately 12 minutes (0.20 hours) to complete the notices of appeal and requests for oral hearing before the BPAI.

Estimated Total Annual Respondent Burden Hours: 773,895 hours. The USPTO estimates that once the notices of appeal and requests for oral hearing before the BPAI are moved into this collection, a minimum of 5,719 hours per year will be added to the burden.

Estimated Total Annual Respondent Cost Burden: $239,907,450. The USPTO believes that associate attorneys will complete these briefs, petitions, and requests. The professional hourly rate for associate attorneys in private firms is $310. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $239,907,450 per year. Once the notices of appeal and requests for oral hearing before the BPAI are moved into this collection, the USPTO estimates that the annual respondent cost burden will increase by a minimum of $1,772,890. The USPTO believes that these items are also completed by associate attorneys.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Appeal Briefs	30	23,145	694,350
Petition for Extension of Time for Filing Paper After Brief	15	2,298	34,470
Petition to Increase Page Limit	15	1,315	19,725
Reply Briefs	5	4,947	24,735
Requests for Rehearing Before the BPAI	5	123	615
Total		31,828	773,895

The table below show the estimated annual responses and burden hours that the USPTO expects will be added to this collection once the notice of appeal and requests for oral hearing before the BPAI are transferred out of 0651–0031 into this collection. These estimates are based on current projections and are an increase over the estimates currently in 0651–0031 (17,250 responses, 3,450 burden hours, and $1,048,800 in respondent costs). The estimates below are not being reported in the burden for this proposed collection at this time. The USPTO has included the estimates to show the public what the minimum expected burden will be for this collection.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Notice of Appeal	12	27,630	5,526
Request for Oral Hearing Before the BPAI	12	965	193
Total		28,595	5,719

Estimated Total Annual Non-hour Respondent Cost Burden: $12,286,831. There are postage costs and filing fees associated with this information collection. This collection does not have any capital start-up, operation, maintenance, or recordkeeping costs.

Parties incur postage costs when submitting the various papers to the USPTO by mail through the United States Postal Service. The USPTO believes that these items will be mailed by Express Mail, using the Postal Service's flat rate envelope, which can accommodate varying submission weights. The cost of the flat rate envelope is $16.50. The USPTO believes that roughly half of the submissions will be filed in paper, with the rest filed as attachments through EFS-Web. Out of the total estimated 31,828 submissions, the USPTO estimates that the number of papers submitted to the USPTO by Express Mail is 15,983.

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a)×(b)
Appeal Briefs	11,573	$16.50	$190,955.00
Petitions for Extensions of Time for Filing Paper After Brief	1,167	16.50	19,256.00
Petitions to Increase Page Limit	668	16.50	11,022.00
Reply Briefs	2,513	16.50	41,465.00
Requests for Rehearing Before the BPAI	62	16.50	1,023.00
Total	15,983		263,721.00

Therefore, the USPTO estimates that the total postage costs for this collection will be $263,721.

There is also annual non-hour cost burden in the way of filing fees for the appeal briefs and the petitions. The reply briefs and the request for rehearing before the BPAI do not have filing fees associated with them. The USPTO estimates that the total non-hour cost burden associated with the filing

fees for this collection will be $12,023,110.

Item	Responses (yr) (a)	Filing fees (b)	Total non-hour cost burden (yr) (a) × (b)
Appeal Briefs	18,337	$510.00	$9,351,870.00
Appeal Briefs (small entity)	4,808	255.00	1,226,040.00
Petitions for Extension of Time for Filing Paper After Brief	2,298	400.00	919,200.00
Petitions to Increase Page Limit	1,315	400.00	526,000.00
Reply Briefs	4,947	0.00	0.00
Requests for Rehearing Before the BPAI	123	0.00	0.00
Totals	31,828		12,023,110.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of postage costs and filing fees is $12,286,831 per year.

The tables below show the estimated non-hour costs related to postage and filing fees that the USPTO expects will be added to this collection once the notices of appeal and requests for oral hearing before the BPAI are transferred out of 0651–0031 into this collection. These estimates are based on current projections and are an increase over the total non-hour cost estimates for postage and filing fees ($7,952,505) currently in 0651–0031 for these two items. The estimates shown below are not being reported in the burden for this proposed collection at this time. The USPTO has included the estimates to show the public what the minimum expected burden will be for this collection. The USPTO estimates that a minimum of $13,177,835 per year will be added to the total non-hour respondent cost burden.

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a) × (b)
Notices of Appeal	27,630	$0.58	$16,025.00
Requests for Oral Hearing Before the BPAI	925	0.58	560.00
Total	28,595		16,585.00

Item	Responses (yr) (a)	Filing fees (yr) (b)	Total non-hour cost burden (yr) (a) × (b)
Notices of Appeal	21,635	$500.00	$10,817,500.00
Notices of Appeal (small entity)	5,977	250.00	1,494,250.00
Requests for Oral Hearing Before the BPAI	734	1,000.00	734,000.00
Requests for Oral Hearing Before the BPAI (small entity)	231	500.00	115,500.00
Total	28,577		13,161,250.00

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–12820 Filed 6–6–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and

Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Talent Search (TS) and Educational Opportunity Centers (EOC) Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 596.

Burden Hours: 3,576.

Abstract: Talent Search and Equal Opportunity Centers grantees must submit this annual performance report. The Department uses the reports to evaluate the performance of grantees prior to awarding continuation funding and to assess grantees' prior experience at the end of the budget period. The Department will also aggregate the data across grantees to provide descriptive information on the programs and to analyze its outcomes in response to the Government Performance and Results Act.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3699. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–12822 Filed 6–6–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, 84.268, 84.375, and 84.376]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant, and National Science and Mathematics Access To Retain Talent Grant Programs

ACTION: Notice of deadline dates for receipt of applications, reports, and other records for the 2007–2008 award year.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2007–2008 award year. The Federal student aid programs include the Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant (ACG), and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A and B at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Table A provides information and deadline dates for application processing, including receipt of the Free Application for Federal Student Aid (FAFSA) and corrections to and signatures for the FAFSA, submission and receipt of SARS and ISIRS, and submission and receipt of verification documents.

The single date for the receipt of a FAFSA is June 30, 2008, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the submission and receipt of a signature page for the FAFSA (if required), corrections, changes of addresses or schools, or requests for a duplicate SAR is September 22, 2008. Verification documents must be submitted and received no later than the earlier of 120 days after the student's last date of enrollment or September 29, 2008.

SARS and ISIRS with an official expected family contribution for all Federal student aid programs except Parent PLUS must be submitted and received no later than the earlier of the student's last date of enrollment or September 29, 2008. A valid SAR or valid ISIR for a student not meeting the conditions for a late disbursement for purposes only of the Federal Pell Grant, ACG, or National SMART Grant programs must be submitted and received no later than the earlier of the student's last date of enrollment or September 29, 2008. A valid SAR or valid ISIR for a student meeting the conditions for a late disbursement under the Federal Pell Grant, ACG, or National SMART Grant programs must be submitted and received according to the deadline dates provided below.

Under the current provisions of 34 CFR 668.164(g)(4)(i), an institution may make a late disbursement for a student no later than 120 days after the date of the institution's determination that the student withdrew or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible. Under the current regulations, on an exception basis, we may approve a late disbursement after the 120-day period if the reason that the late disbursement was not made within that 120-day period was not the fault of the student. The valid SAR or valid ISIR for a student meeting the conditions for a late disbursement under the Federal Pell Grant, ACG, or National SMART Grant programs must be submitted and received no later than the earlier of the timeframes provided in 34 CFR 668.164(g)(4)(i) or September 29, 2008.

On November 1, 2007, we published final regulations in the **Federal Register** (72 FR 62014, 62029) that among other things amended 34 CFR 668.164(g)(4)(i) regarding late disbursements. Amended 34 CFR 668.164(g)(4)(i) is effective July 1, 2008, unless an institution chooses to implement this amended provision earlier than July 1, 2008. Amended 34 CFR 668.164(g)(4)(i) provides that an institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student withdrew or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible. The amended regulations do not provide for an extension to this 180-day period.

If an institution chooses to implement the amended provisions earlier than July 1, 2008, we are providing in Table A that an institution must receive a valid SAR or valid ISIR no later than 180 days after its determination of a student's withdrawal or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, but not later than September 29, 2008.

We will not accept a request for an extension of the 120-day period under the current regulations after June 30, 2008.

Table B—Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant, ACG, and National SMART Grant disbursement records to the Department's Common Origination and Disbursement (COD) System and deadline dates for requests for administrative relief if the institution cannot meet the established deadline for specified reasons.

In general, an institution must submit Federal Pell Grant, ACG, or National SMART Grant disbursement records no later than 30 days after making a Federal Pell Grant, ACG, or National SMART Grant disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant, ACG, or National SMART Grant disbursement. In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2007–2008 Funding Education Beyond High School.*
- *2007–2008 Counselors and Mentors Handbook.*
- *2007–2008 ISIR Guide.*
- *2007–2008 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant, ACG, and National SMART Grant programs is contained in the 2007–2008 *Common Origination and Disbursement (COD) Technical Reference.* You may access this reference by selecting ''Software Technical References'' under the heading ''Publications'' at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668, (2) Federal Pell Grant Program, 34 CFR part 690, and (3) Academic Competitiveness Grant and National Science and Mathematics Access To Retain Talent Grant Programs, 34 CFR part 691.

FOR FURTHER INFORMATION CONTACT: Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, Room 113E1, Washington, DC 20202–5345. *Telephone:* (202) 377–4030.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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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.

You may also view this document in PDF at the following site: *http://www.ifap.ed.gov.*

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.*

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: June 3, 2008.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

BILLING CODE 4000–01–P

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA) – "FAFSA on the Web" (original or renewal)	Electronically to the Department's Central Processing System (CPS)	June 30, 2008[1]
	Signature Page (if required)	To the address printed on the signature page	September 22, 2008
Student through an Institution	An electronic FAFSA (original or renewal)	Electronically to the Department's CPS	June 30, 2008[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form	June 30, 2008
Student	Electronic corrections to FAFSA using "Corrections on the Web"	Electronically to the Department's CPS	September 22, 2008[1]
	Paper signature (if required) for "Corrections on the Web"	To the address printed on the signature page	September 22, 2008
Student through an Institution	Electronic corrections to FAFSA	Electronically to the Department's CPS	September 22, 2008[1]
Student	Paper corrections to FAFSA using a SAR, including change of mailing and e-mail addresses or institutions	To the address printed on the SAR	September 22, 2008
Student	Change of mailing and e-mail addresses, change of institutions, or requests for a duplicate SAR	To the Federal Student Aid Information Center by calling 1-800-433-3243	September 22, 2008
Student	SAR with an official expected family contribution (EFC) calculated by the Department's CPS (except Parent PLUS)	To the institution	The earlier of: - the student's last date of enrollment; or - September 29, 2008[2]
Student through CPS	ISIR with an official EFC calculated by the Department's CPS (except Parent PLUS)	To the institution from the Department's CPS	The earlier of: - the student's last date of enrollment; or - September 29, 2008[2]

Student	Valid SAR (Pell, ACG, and National SMART Grant Only)	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: - the student's last date of enrollment; or - September 29, 2008[2] For a student meeting the conditions for a late disbursement under current regulations at 34 CFR 668.164(g)(4)(i), the earlier of: - the timeframes provided at 34 CFR 668.164(g)(4)(i); or - September 29, 2008[2] For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), as amended on November 1, 2007 (72 FR 62029), the earlier of: - 180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or - September 29, 2008[2]
Student through CPS	Valid ISIR (Pell, ACG, and National SMART Grant Only)	To the institution from the Department's CPS	
Student	Verification documents	To the institution	The earlier of:[3] - 120 days after the student's last date of enrollment; or - September 29, 2008[2]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant, ACG, and National SMART Grant, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs, the FFEL Program, and the Federal Direct Loan Program. Students completing verification and submitting a valid SAR or valid ISIR while no longer enrolled will be paid based on the higher of the two EFCs.

Table B. Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions			
Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient, ACG recipient, and National SMART Grant recipient at the institution.	To the Common Origination and Disbursement (COD) System using either: - the COD Web site at: www.cod.ed.gov; or - the Student Aid Internet Gateway (SAIG)	Earliest Disbursement Date: July 1, 2007 Earliest Submission Dates: An institution may submit actual or anticipated disbursement information as early as June 21, 2007[1], but actual disbursement information no earlier than: (a) Under the advance payment method: (1) 30 calendar days prior to the disbursement date of a Federal Pell Grant; or (2) 7 calendar days prior to the disbursement date of an ACG or National SMART Grant; (b) 7 calendar days prior to the disbursement date under the Just-in-Time or Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates: Except as provided below, an institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2008.[1] An institution may submit disbursement information after September 30, 2008, only: (a) for a downward adjustment of a previously reported award or disbursement; (b) based upon a program review or initial audit finding per 34 CFR 690.83 or 691.83; (c) for reporting a late disbursement under 34 CFR 668.164(g); or (d) for reporting disbursements previously

			blocked as a result of another institution failing to post a downward adjustment.
Institutions	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department	Via COD Web site at: www.cod.ed.gov	The earlier of: - a date designated by the Secretary after consultation with the institution; or - February 2, 2009
Institutions	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing and the institution is reporting a disbursement for the student within 30 days of the student's reenrollment but after September 30, 2008[2]	Via COD Web site at: www.cod.ed.gov	The earlier of: - 30 days after the student reenrolls; or - May 1, 2009

[1] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on September 30, 2008. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. E8–12865 Filed 6–6–08; 8:45 am]

BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–63–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Fitchburg Expansion Project

June 2, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Tennessee's proposed Fitchburg Expansion Project (Project). The Project would involve replacing approximately 5.1 miles of 6-inch-diameter pipeline with 12-inch-diameter pipeline on Tennessee's existing Line 268–100 (Fitchburg Lateral) in Worcester County, Massachusetts; installing a pig launcher facility at the beginning of the Fitchburg Lateral in Framingham, Middlesex County, Massachusetts; and installing a pig receiver at the terminus of the Fitchburg Lateral (Milepost 5.1) in Lunenburg, Worcester County. The purpose of the Fitchburg Expansion Project is to provide 12,300 dekatherms per day of firm transportation service for the Massachusetts Development Financial Agency.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. 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. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08–63–000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC on or before July 2, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–12848 Filed 6–6–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–67–000]

Maryland Public Service Commission, Complainant, v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

June 2, 2008.

Take notice that on May 30, 2008, the Maryland Public Service Commission, the Delaware Public Service Commission, the Pennsylvania Public Utility Commission, the New Jersey Board of Public Utilities, the Public Power Association of New Jersey, the Maryland Office of People's Counsel, the Office of the People's Counsel of the District of Columbia, the Southern Maryland Electric Cooperative, Inc., Blue Ridge Power Agency, Allegheny Electric Cooperative, Inc., Office of the

Ohio Consumers' Counsel, New Jersey Department of the Public Advocate, Division of Rate Counsel, the Pennsylvania Office of Consumer Advocate, PJM Industrial Customer Coalition, the American Forest and Paper Association, the Portland Cement Association, the Duquesne Light Company, and the United States Department of Defense and other affected Federal Executive Agencies (collectively, the RPM Buyers) filed a formal complaint against PJM Interconnection L.L.C. (PJM) pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 835.206. The RPM Buyers allege that the PJM's implementation of the Reliability Pricing Model during the transition period is unjust and unreasonable because it has produced excessive capacity prices, has failed to prevent suppliers from exercising market power, and has not produced benefits commensurate with its costs.

The Maryland Commission certifies that copies of the complaint were served on the contacts for PJM as listed in the Commission's Corporate Officials.

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 Respondent's answer, 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 June 23, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–12849 Filed 6–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–771–000]

North Allegheny Wind, LLC; Notice of Issuance of Order

June 2, 2008.

North Allegheny Wind, LLC (Allegheny) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Allegheny also requested waivers of various Commission regulations. In particular, Allegheny requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Allegheny.

On May 13, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Allegheny, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is June 12, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Allegheny is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Allegheny, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Allegheny's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–12847 Filed 6–6–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–31–000]

Transcontinental Gas Pipe Line Corporation; Notice of Meeting

June 2, 2008.

At the request of U.S. Representative Jim Gerlach, representing the 6th Congressional District of Pennsylvania, staff of the Federal Energy Regulatory Commission will attend a meeting called by the Congressman to discuss constituents' concerns about the proposed Sentinel Expansion Project.

The meeting will be held on June 16, 2008, beginning at 6:30 p.m. (EDT) at: Great Valley High School, 225 North Phoenixville Pike, Malvern, PA 19355, (610) 889–1900.

For additional information regarding this meeting, please contact the Commission's Office of External Affairs at (202) 502–8004.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–12851 Filed 6–6–08; 8:45 am]

BILLING CODE 6717–01–P

EVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0312; FRL–8577–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Servicing of Motor Vehicle Air Conditioners, EPA ICR Number 1617.05, OMB Control Number 2060–0247

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0312 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA Docket Center, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2008–0312. 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–OAR–2008–0312. 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 FURTHER INFORMATION CONTACT: Karen Thundiyil, Stratospheric Protection Division, Office of Atmospheric Programs, (MC 6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9464; fax number: (202) 343–2163; e-mail address: *thundiyil.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0312, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25 people) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are new and used motor vehicle dealers, gasoline service

stations, general automotive repair shops, and automotive repair shops not elsewhere classified.

ICR numbers: EPA ICR No. 1617.05, OMB Control No. 2060–0247.

ICR status: This ICR is currently scheduled to expire on December 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 609 of the Clean Air Act Amendments of 1990 (Act) provides general guidelines for motor vehicle air conditioning (MVAC) refrigerant handling and MVAC servicing. It states that ''no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recovery and/or recovery and recycling equipment (hereafter referred to as ''refrigerant handling equipment'') and no such person may perform such service unless such person has been properly trained and certified.''

In 1992, EPA developed regulations under section 609 that were published in 57 FR 31242, and codified at 40 CFR Subpart B (§ 82.30 *et seq.*). The information required to be collected under the Section 609 regulations is currently approved for use through December 31, 2008. This supporting statement is submitted to justify an extension of the approval of use of this information. Pursuant to new requirements under the Paperwork Reduction Act, a notice was published in the **Federal Register** on October 4, 2005, announcing the intent to extend the renewal of this Information Collection Request and requesting comment on the renewal. Descriptions of the recordkeeping and reporting requirements mandated by section 609 and delineated in 40 CFR 82 subpart B are summarized below in this section.

Approved Refrigerant Handling Equipment: In accordance with Section 609(b)(2)(A), 40 CFR 82.36 requires that refrigerant handling equipment be certified by EPA or independent standards testing organizations. Certification standards are particular to the type of equipment and the refrigerant to be recovered, and must be consistent with the Society of Automotive Engineers (SAE) standards for MVAC equipment.

Approved independent standards testing organizations: Section 609(b)(2)(A) of the Act requires independent laboratory testing of refrigerant handling equipment to be certified by EPA. The Stratospheric Protection Division (SPD) requires independent laboratories to submit an application that documents: The organization's capacity to accurately test equipment compliance with applicable standards consistent with the SAE standards for handling refrigerant, an absence of conflict of interest or financial benefit based on test outcomes, and an agreement to allow EPA access to verify application information. Once an independent laboratory has been approved by EPA, the application is kept on file in the SPD. Two laboratories—Underwriters Laboratories Inc. and ETL Testing Laboratories—are currently approved to test refrigerant handling equipment. EPA does not anticipate that any organizations will apply to EPA in the future to become approved independent standards testing organizations. Therefore, annual hours and costs related to information submitted by these organizations have been eliminated.

Technician training and certification: According to Section 609(b)(4) of the Act, automotive technicians are required to be trained and certified in the proper use of approved refrigerant handling equipment. Programs that perform technician training and certification activities must apply to the SPD for approval by submitting verification that its program meets EPA standards. The information requested is used by the SPD to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians.

Due to rapid developments in technology, the Agency requires that each approved technician certification program conducts periodic reviews and updates of test material, submitting a written summary of the review and program changes to EPA every two years. After the test has been approved by EPA, a hard copy remains on file with SPD. Currently, 24 testing programs are approved by EPA to train technicians in the proper use of refrigerant handling equipment. Six of these programs are designed specifically for individual company's own employees.

Certification, reporting and recordkeeping: To facilitate enforcement under Section 609, EPA has developed several recordkeeping requirements. All required records must be retained on-site for a minimum of three years, unless otherwise indicated.

Section 609(c) of the Act states that by January 1, 1992, no person may service any motor vehicle air conditioner without being properly trained and certified, nor without using properly approved refrigerant handling equipment. To this end, 40 CFR 82.42(a) states that by January 1, 1993, each service provider must have submitted to EPA on a one-time basis a statement signed by the owner of the equipment or another responsible officer that provides the name of the equipment purchaser, the address of the service establishment where the equipment will be located, the manufacturer name, equipment model number, date of manufacture, and equipment serial number. The statement must also indicate that the equipment will be properly used in servicing motor vehicle air conditioners and that each individual authorized by the purchaser to perform service is property trained and certified. The information is used by the SPD to verify compliance with Section 609 of the Act.

Any person who owns approved refrigerant handling equipment must maintain records of the name and address of any facility to which refrigerant is sent. Additionally, any person who owns approved refrigerant handling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified technicians.

Finally, any person who sells or distributes a class I or class II refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a properly trained and certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only, and must indicate the purchaser's name and business address. When a certified technician purchases small containers of refrigerant for servicing motor vehicles, the seller must have a reasonable basis for believing the accuracy of the information presented by the purchaser. In all cases, the seller must display a sign where sales occur that states the certification requirements for purchasers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.13 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 the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 66,394.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 6,700 hours.

Estimated total annual costs: $262,980.47. This includes an estimated burden cost of $262,980.47 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 182 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. There are two reasons for this decrease in burden hours. In 2002, it was estimated that there would be 4,000 purchases of small containers of class I and class II refrigerant for resale only by uncertified purchasers. It is estimated that at the time (in 2002), there were an estimated 32 million R–12 MVACs on the road. Today, it is estimated that there are only 11 million R–12 MVACs on the road, or roughly 65% less than there were in 2002. Therefore, to account for the decreased market for small containers of CFC–12 refrigerant, this ICR estimates that the number of purchases for resale only by uncertified purchasers of small cans will be 65% less than in 2002, or 1,370 purchases.

The second reason the burden hours have decreased is that the substantially identical equipment approval process is no longer applicable. This portion of Section 609(b)(2)(B) of the Act and 40 CFR 82.36(b) allowed for equipment that was purchased before the proposal of the regulations to be approved by EPA if it was substantially identical to equipment that had been certified by the EPA or approved independent laboratory. The substantially identical equipment regulation only relates to CFC–12 recovery and recycling equipment initially purchased before September 4, 1991; CFC–12 recovery-only equipment initially purchased before April 22, 1992; HFC–134a recovery and recycling, or recovery-only equipment initially purchased before March 6, 1996; equipment that recovers but does not recycle any single, specific refrigerant other than CFC–12 or HFC–134a that was initially purchased before March 6, 1996; or equipment that recovers and recycles HFC–134a and CFC–12 refrigerant using common circuitry that was initially purchased before March 6, 1996. Because the average lifetime of such equipment is roughly 7 years, all such equipment is obsolete today. Therefore, documentation requirements related to this section have been removed from this ICR. In the previous ICR, 12 establishment burden hours and $1,200 annual costs were allocated to this activity.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 2, 2008.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E8–12853 Filed 6–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8575–9]

Coastal Elevations and Sea Level Rise Advisory Committee Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of the CESLAC is to provide advice on the conduct of a study titled Coastal Elevations and Sensitivity to Sea Level Rise to be conducted as part of the U.S. Climate Change Science Program (CCSP).

It is determined that CESLAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION CONTACT: Jack Fitzgerald (6207J), Climate Change Division, Office of Atmospheric Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9336; e-mail address: *Fitzgerald.jack@epa.gov*.

Dated: March 23, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–12599 Filed 6–6–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2008–0464, FRL–8577–3]

BCX Tank Superfund Site Jacksonville, Duval County, FL; Notice of De Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of De Minimis Settlement.

SUMMARY: Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a De Minimis settlement for reimbursement of past response costs concerning the BCX Tank Superfund Site located in Jacksonville, Duval County, Florida for publication.

DATES: The Agency will consider public comments on the settlement until July 9, 2008. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by

Docket ID No. EPA–RO4–SFUND–2008–0464 or Site name BCX Tank Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Painter.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Painter.

Mail: Ms. Paula V. Painter, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2008–0464. 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.*

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 U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Painter within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: May 28, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8–12846 Filed 6–6–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0273; FRL–8368–4]

Natural Rubber Latex Adhesives; Disposition of TSCA Section 21 Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 6, 2008, EPA received a petition from Michael J. Dochniak under section 21 of the Toxic Substances Control Act (TSCA) ''to establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* [italics added] natural rubber latex adhesives having a total protein content greater than 200 micrograms per [gram] dry weight of latex based on the American Society for Testing and Materials method ASTM D1076–06 (Category 4).'' The petition states: ''Implementation of an EPA regulation that guides adhesive manufacturer's [sic] to use *Hevea [b]rasiliensis* [italics added] natural-rubber-latex that satisfy[ies] ASTM D1076–06 (Category 4) may affect the incidence and prevalence of latex allergy and allergy-induced autism in neonates.'' For the reasons set forth in this notice, EPA has denied the petitioner's request.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Linter, 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 Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 564–8086; e-mail address: *brown.gerry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce *Hevea brasiliensis* (*Hevea*) natural rubber latex (NRL) adhesives. Potentially interested entities may include, but are not limited to:

- Adhesive manufacturing, NAICS code 325520.
- Other chemical and allied products merchant wholesalers, NAICS code 424690.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may be interested in this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might be of interest to certain entities. If you have any questions regarding this action, 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–2008–0273. 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., 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. 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.

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*. You may also access docket ID number EPA–HQ–OPPT–2008–0273 at *http://www.regulations.gov*.

II. Background

A. What Action is Requested Under this TSCA Section 21 Petition?

On March 6, 2008, EPA received a petition from Mr. Michael J. Dochniak under section 21 of TSCA ''to establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* [italics added] natural rubber latex adhesives having a total protein content greater than 200 micrograms per [gram] dry weight of latex based on the American Society for Testing and Materials method ASTM D1076–06 (Category 4).'' The petition states: ''Implementation of an EPA regulation that guides adhesive manufacturer's [sic] to use *Hevea [b]brasiliensis* [italics added] natural-rubber-latex that satisfy[ies] ASTM D1076–06 (Category 4) may affect the incidence and prevalence of latex allergy and allergy-induced autism in neonates'' (Ref. 1).

NRL is a naturally occurring polyisoprene elastomer obtained almost exclusively from the *Hevea* tree indigenous to South America but now grown for commercial purposes principally in Asia and Africa. NRL adhesives comprise a very small portion of the adhesives industry. They are grouped by the U.S. Census under the ''natural base glues and adhesives'' product category, which comprises the smallest share (< 3%) of the U.S. adhesive manufacturing industry. Adhesives manufacturers produce a wide range of products, including adhesives, caulks, lubricants, and sealants, and adhesives are used in a wide variety of industries. The U.S. adhesive industry is dominated by synthetic adhesives like acrylics, epoxide resins, vinyls, and synthetic rubbers such as polychloroprene and styrene-butadiene, the most common substitute for natural rubber adhesives. Most synthetic adhesives are derived from coal, natural gas, oil, or petroleum (Ref. 2).

ASTM D1076–06, Standard Specification for Rubber-Concentrated, Ammonia Preserved, Creamed, and Centrifuged Natural Latex, is a standard specification, not a method, although methods are referenced in the standard. ASTM International (ASTM), formerly the American Society for Testing and Materials, is a voluntary standards development organization, *http://www.astm.org/ABOUT/aboutASTM.html* (last visited April 28, 2008). ASTM D1076–06 covers requirements for four categories of ''first grade concentrated natural rubber latex'' (Ref. 3). Category 4, ''Centrifuged, or centrifuged and creamed, guayule latex, or other natural rubber latex, containing less than 200 µg total protein per gram dry weight of latex, with ammonia or other hydroxide, with other necessary preservatives and stabilizers,'' requires that the latex contain no more than 200 micrograms (µg) total protein per gram (dry weight) of latex utilizing ASTM Test Method D5712 and no detectable *Hevea* antigenic protein utilizing ASTM Test Method D6499–07 (Ref. 4). The latter test method, Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and Its Products, ''covers an immunological method to determine the amount of antigenic protein in natural rubber and its products'' (Ref. 4). According to ASTM, ''[a]lthough this method detects antigenic proteins, it should not be considered as a measure of allergenic proteins,'' because ''[c]orrelation of protein/antigen levels with the level of allergenic proteins has not been fully established'' (Ref. 4).

B. What Support Does the Petitioner Offer for this Request?

The petitioner provided the following exhibits to support his petition:

1. Exhibit A: Ylitalo, Leea. Natural Rubber Latex Allergy in Children. University of Tampere Medical School.
According to this study (abstract), the prevalence of NRL allergy in children admitted for inhalant or food testing (total number of children in the study, 3,269) was found to be 1%, based upon skin prick test analysis. EPA recognizes that latex protein can cause sensitization and allergic disease in certain children and adults, and epidemiological studies show varying rates of prevalence in adults and children.

2. Exhibit B: Blanco, Carlos, Latex-Fruit Syndrome, Current Allergy and Asthma Reports. 3:47–53. 2003.
This publication reviews evidence indicating that latex and food allergens cross react immunologically.

3. Exhibit C: Palomares, O. et al. 1,3 B-glucanases as candidates in latex-pollen-vegetable food cross-reactivity. Clinical and Experimental Allergy. 35:345. 2005.
This abstract also shows evidence of fruit, vegetables, and latex cross-reactivity.

4. Exhibit D: Latex in Food Packaging Risk. Available on-line at: *http://www.consumeraffairs.com/news04/2006/08/latex.html*.
This is a news article reporting that consumer groups were calling for warning labels on food packaging containing latex.

5. Exhibit E: Dochniak, M.J. Autism spectrum disorders-Exogenous protein insult *Medical Hypothesis* (2007), doi:10.1016/j.mehy.2007.01.060.
This is an article written by the petitioner hypothesizing that increased latex allergen exposure may have affected the incidence of allergy-induced autism. The article presents only a hypothesis that is unsupported by any scientific study or data.

6. Exhibit F: U.S. Patent #7,784,281 (Ichikawa, et al.).
This patent discusses a method for reducing the allergenic protein content in *Hevea* NRL using digestive enzymes.

7. Exhibit G: Hayes, B. H. et al. Evaluation of Percutaneous Penetration of Natural Rubber Latex Proteins. *Toxicological Sciences*. 56, 262–270. 2000.
According to this article, the skin can be a plausible route for latex sensitization and a major exposure route when it is damaged (e.g., cuts and abrasion). Other routes would include contact via mucosal surfaces and inhalation exposure.

8. Exhibit H: H. B. Fuller Co. website literature on Hevea brasiliensis water based adhesives. Available on-line at: *http://www.hbfuller.com/adhesives/technologies/water/000525.shtml#NR*.

9. Exhibit I: Henkel Consumer adhesive literature. Natural rubber latex adhesive.
Both Exhibit H and Exhibit I show that at least some manufacturers do not display latex allergy protein warnings on their packaging.

10. Exhibit J: Niggeman, B. et al. Development of latex allergy in children up to 5 years of age-a retrospective analysis of risk factors. *Pediatric Allergy [and] Immunology*. 9:36–39. 1998

(International Standard Serial Number (Library of Congress) (ISSN): 0905–6157).

According to this study (abstract), besides the number of operations and an atopic disposition, there were no other definite factors for developing sensitization or allergy to latex in children up to 5 years of age. In general, risk groups for latex allergy are atopics and people frequently in contact with latex gloves, such as the medical profession and patients needing multiple surgeries.

C. What Are the Legal Standards Regarding TSCA Section 21 Petitions and TSCA Section 6 Rules?

Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). The petition does not state under which provision of TSCA the request would be satisfied, and only TSCA section 6 appears to be applicable. Accordingly, EPA has relied on the standards in TSCA section 21 and section 6 to evaluate this petition.

In order to promulgate a rule under TSCA section 6, the Administrator must find that ''there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk of injury to health or the environment.'' 15 U.S.C. 2605(a). This finding cannot be made considering risk alone. In promulgating any rule under TSCA section 6(a), the statute requires that the Administrator consider:

- The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture.
- The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.
- The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.
- The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health. 15 U.S.C. 2605(c)(1).

Furthermore, the control measure adopted is to be the ''least burdensome requirement'' that adequately protects against the unreasonable risk. 15 U.S.C. 2605(a).

Section 21(b)(4)(B) of TSCA provides the standard for judicial review should EPA deny a request for rulemaking under TSCA section 6(a): ''If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that ... there is a reasonable basis to conclude that the issuance of such a rule ... is necessary to protect health or the environment against an unreasonable risk of injury,'' the court shall order the Administrator to initiate the requested action. 15 U.S.C. 2620(b)(4)(B).

III. Disposition of Petition

The petition does not set forth facts sufficient to establish that it is necessary to issue a rule prohibiting the use and distribution in commerce of *Hevea* NRL adhesives having greater than 200 µg total protein per gram of latex and no detectable *Hevea* antigenic protein. In particular, the petition does not set forth, as required by TSCA sections 6 and 21, facts sufficient to support a finding that *Hevea* NRL adhesives that do not meet the ASTM standard pose an unreasonable risk. The petition does not present facts establishing that latex adhesives containing any specific level of protein present an unreasonable risk. Nor does the petition set forth facts indicating that prohibiting *Hevea* NRL adhesives not meeting the ASTM standard would be effective in reducing the incidence of latex allergies, or that doing so would be the least burdensome requirement to protect against any unreasonable risk from latex.

While the petitioner provides some documentation to support the petition (see Unit II.B.), this documentation is minimal and insufficient to show a reasonable basis to find unreasonable risk. For example, while petition Exhibits A, G, and J seem to support the assertion that NRL latex sensitization and allergies occur in children, this information does not show that the NRL adhesives pose an unreasonable risk. Moreover, the petitioner only speculates that ''[i]mplementation of an EPA regulation that guides adhesive manufacturers to use *Hevea [b]rasiliensis* [italics added] natural-rubber-latex that satisfy ASTM D1076–06 (Category 4) may [emphasis added] affect the incidence and prevalence of latex allergy and allergy-induced-autism in neonates.'' The only exhibit that purports to show a link between *Hevea* NRL and infant autism is an article that was written by the petitioner and published in *Medical Hypotheses* (Ref. 5). The article presents only a hypothesis that is unsupported by any scientific study or data. Moreover, neither this article nor any other factual information provided in the petition address the contribution of adhesives to any risk that might exist.

NRL allergies have been the subject of considerable Federal Government evaluation. In March 2000, for example, the U.S. Consumer Product Safety Commission (CPSC) received a petition requesting that the CPSC issue a rule declaring that NRL and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act (FHSA) so that these products would require labeling. See the **Federal Register** issue of March 21, 2000 (65 FR 15133). The CPSC conducted an extensive review and issued a decision in June 2004 rejecting the petition (Ref. 6). Among other things, CPSC concluded that the incidence of NRL allergy in the general population was very low (below 1%), that many consumer products contain NRL, and that ''in spite of the prevalence of NRL in consumer products, there are few documented cases of reactions to NRL-containing consumer products,'' most of which involved medical devices[1] (The CPSC did not distinguish between *Hevea* and non-*Hevea* NRL, but nearly all commercial NRL is *Hevea*). The CPSC noted that the U.S. Food and Drug Administration (FDA) had issued rules requiring labeling for medical devices containing NRL, citing 21 CFR 801.437. FDA, however, has not limited protein content in, or prohibited, NRL (Ref. 7). See also the **Federal Register** issue of September 30, 1997 (62 FR 51021). In general, the CPSC concluded, most individuals only experience mild symptoms and ''most incidents of life-threatening NRL-induced anaphylaxis are associated with invasive surgical or other medical procedures, not with consumer products'' (Ref. 6). The CPSC determination suggests that the risks associated with NRL, principally *Hevea*

[1] A substantial proportion, if not most, products of concern containing *Hevea* NRL may not be subject to TSCA. Among other things, medical devices, food, food additives, food packaging, and cosmetics do not fall within EPA's authority under TSCA section 6. TSCA section 6 provides the authority to regulate chemical substances and mixtures. The term ''chemical substance,'' however, ''does not include - ... (vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.'' 15 U.S.C. 2602(2)(B)(vi).

NRL, are relatively insubstantial, and does not support a conclusion that any risk is unreasonable.

The petition provides little information on the factors that must be considered for a TSCA section 6 rulemaking. The petition does not explain why it specifically targets adhesives. The only documentation supporting the petition related to NRL adhesives was a product brochure and a Material Safety Data Sheet included as exhibits (petition Exhibits H and I) to show that two companies had not included antigenic protein warnings on their packaging. The petition does not discuss any special risks posed by NRL adhesives (in comparison to other NRL products or other adhesives), does not describe the contexts in which one might be exposed to NRL adhesives or why those exposures are of concern to the general population, and does not provide any other information on why adhesives are of particular concern.

The petition does not provide any factual information on the magnitude of exposure to *Hevea* NRL or *Hevea* NRL adhesives that do not meet the ASTM standard or on the benefits of *Hevea* NRL or *Hevea* NRL adhesives that do not meet the ASTM standard for various uses. Other than noting the existence of substitutes, the petitioner provides no factual information on the availability of substitutes. The petitioner provides no factual information on the reasonably ascertainable economic consequences of prohibiting the use and distribution in commerce of *Hevea* NRL adhesives not meeting the ASTM standard. In particular, the petition contains little information on the relative importance of *Hevea* NRL adhesives as a source of infant exposure.

As for the regulation that the petition seeks (i.e., to prohibit the use and distribution in commerce of *Hevea* NRL adhesives that do not meet the ASTM Standard D1076–06 (Category 4)), the petition does not provide any evidence that ASTM Standard D1076–06 represents a safe or otherwise appropriate level of allergen in NRL. The threshold amount of NRL allergen needed to sensitize a person, or to produce an allergic reaction, is not known and, as ASTM Test Method D6499–07 states, antigenic proteins should not be considered a measure of allergenic proteins because a correlation between antigenic protein levels and the level of allergenic proteins has not been fully established (Refs. 4, 8, 9, and 10). In addition, each NRL protein has different antigenic properties, and individuals do not react uniformly to each allergenic protein (Ref. 12). As the CPSC has pointed out, without knowing the threshold amount, it is not possible to differentiate between products that would cause sensitization or allergic reaction and products that would not (Ref. 6). Moreover, it would be difficult for *Hevea* NRL adhesives products to meet the ASTM standard because the referenced test method for detecting antigenic *Hevea* proteins is very sensitive and it is difficult to prepare *Hevea* NRL such that the level of antigenic protein would be low enough to be undetectable by the referenced method (Ref. 13). In addition, the petitioner has not provided evidence showing that prohibiting *Hevea* NRL that did not meet this standard would be the least burdensome requirement.

In addition, a regulation requiring reduced protein content in Hevea NRL adhesives is unlikely to significantly contribute to reducing Hevea NRL allergy in the general population. The groups considered most at risk for *Hevea* NRL allergy are atopic individuals (who have a genetic predisposition to allergies), individuals with certain food allergies, and medical professionals and patients who undergo multiple surgeries (who come into repeated contact with latex gloves or other latex medical equipment) (Refs. 8, 9, 11, and 12).

Another factor to consider for a TSCA section 6 rulemaking is the availability of substitutes. Petitioner has requested that EPA ban products that do not meet the ASTM standard. Although, for some products, there are substitutes to *Hevea* NRL that do meet the ASTM standard, the petition does not present facts establishing that substitutes of NRL meeting this standard are technically feasible to use with or as adhesives, that they are safer than *Hevea* NRL, or that the substitutes are effective or economical for use in or as adhesives. The petitioner mentions in the petition that procedures, such as aqueous washing or treatment with digestive enzymes can be used to reduce the antigenic protein content in *Hevea* NRL (see Exhibit F). This washing or treatment could be a substitute to *Hevea* NRL that does not meet the ASTM standard, but these methods can be expensive, may produce latex with inferior physical, chemical, or mechanical properties, or significant quantities of proteins may still remain in the latex (Ref. 14). As for other substitutes (that do not involve procedures for reducing protein content), sources other than *Hevea* trees can be used to make NRL. For example, NRL can be obtained from the guayule plant (*Parthenium argentatum*). Petitioner has provided no information on the cost or feasibility of producing guayule NRL. In addition, guayule NRL may not be a satisfactory substitute for *Hevea* NRL for purposes of reducing the incidences of allergic reactions. Although, the proteins present in guayule NRL may not cross-react with IgE antibodies from subjects allergic to NRL obtained from *Hevea* NRL, there is still some concern that the proteins present in guayule NRL could also sensitize some individuals and cause allergic reactions (Refs. 15 and 16). Finally, latex-free synthetic alternatives are also available, but these alternatives are more expensive and may not perform as well as *Hevea* NRL (Ref. 14). As evidence that substitutes may create their own risks, many synthetic elastomers contain traces of carcinogens, and the production of vinyl gloves, a major substitute for latex gloves, increases the risk of dioxin releases into the atmosphere (Ref. 2).

IV. Comments Received

EPA published a notice in the **Federal Register** announcing receipt of this TSCA section 21 petition and inviting public comment on or before May 12, 2008 (Ref. 17). EPA received seven timely comments. Of the seven comments received, two were from trade groups, three were from manufacturers, one was from ASTM International, and one from an individual.

One brief comment, from a manufacturer of latex and latex-free bandages, supported the petition ''because it would go a long way in preventing allergic reactions that have become more common among health care workers,'' but did not provide any additional information (Ref. 18).

Another comment, from a manufacturer of guayule natural rubber latex products, commented that it is presently not possible for *Hevea* NRL to meet the ASTM D1076–06 Category 4 standard, that only guayule can meet the standard, and that, even if the total protein present in *Hevea* NRL could be reduced to the level in the Category 4 standard, remaining proteins could still present a risk of allergic reaction to the final product. The commenter suggested that a ban is, therefore, not practical and that any proposed ban should, at least, be phased in to permit time for development of substitutes and/or only target adhesives to which children are exposed (Ref. 19).

The other five comments opposed the petitioned action and/or discussed the inappropriateness of the ASTM standard for addressing the concerns stated in the petition.

The comment from ASTM International (from the Chairman of the

subcommittee that maintains ASTM D1076–06), for example, noted that the Category 4 standard specified in the petition was added for NRL from botanical sources other than *Hevea* and that ASTM D1076–06 does not apply to ''compounded latex concentrates,'' such as adhesives (Ref. 20).

The Pressure Sensitive Tape Council noted many of the same issues discussed in this unit, including concerns similar to ASTM's regarding the appropriateness of the standard, the lack of facts supporting the petitioner's autism hypothesis, and the unexplained focus on *Hevea* NRL adhesives as opposed to the many other uses of *Hevea* NRL (gloves, sports equipment, carpet backing, balloons, rubber bands, handles on tools, and clothing elastics) (Ref. 21).

The Rubber Manufacturers Association (RMA) noted the lack of evidence of a link between *Hevea* NRL exposure and autism, commenting that in the long history of NRL harvest and use, and in the course of multiple government inquiries into latex allergy, no one had observed a link between NRL and autism. The RMA also commented that the petition did not cite any evidence that allergens in NRL adhesives are being transported to the human body and described differences in exposure potential between dipped latex products (such as medical gloves, balloons, and condoms) and dry rubber products (such as tires, hoses, belts, and balls). The RMA also commented that the primary route of consumer exposure to adhesives would be through medical bandages, which, as a medical device, would fall under the jurisdiction of FDA. Finally, the RMA criticized the use of some of the references in petitioner's *Medical Hypotheses* paper, commenting that several references did not in fact support the petitioner's hypothesis (Ref. 22).

V. References

1. Dochniak, Michael J. Citizen Petition under TSCA to prohibit the use of *Hevea-Brasiliensis* natural rubber latex adhesives in the United States, wherein said adhesives have a protein content greater than 200 micrograms per dry weight of latex. February 26, 2008.

2. EPA, OPPT, Economics, Exposure and Technology Division (EETD). Profile: Natural Rubber Latex Adhesives. May 7, 2008.

3. ASTM. ASTM D1076–06. Standard Specification for Rubber-Concentrated, Ammonia Preserved, Creamed, and Centrifuged Natural Latex. June 2006.

4. ASTM. Active Standard: D6499–07. Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and Its Products. Available on-line at: *http://enterprise.astm.org/REDLINE_PAGES/D6499.htm* (last visited May 13, 2008).

5. Dochniak, Michael J. Autism spectrum disorders-Exogenous protein insult, *Medical Hypotheses* (2007), doi:10.1016/j.mehy.2007.01.060.

6. CPSC. Letter from Todd Stevenson, Secretary, U.S. Consumer Product Safety Commission, to Debra Adkins, responding to her petition HP 00–2 requesting CPSC to issue a rule adding NRL to the list of strong sensitizers. June 4, 2004.

7. FDA. FDA Clears Glove Made from New Type of Latex. *FDA News*. April 23, 2008.

8. National Institute of Occupational Safety and Health (NIOSH), NIOSH Publication No. 97–135: Preventing Allergic Reactions to Natural Rubber Latex in the Workplace (June 1997).

9. Center for Food Safety and Applied Nutrition, Food Advisory Committee Meeting, Additives and Ingredients Subcommittee. Latex Glove Background Report. August 2003.

10. Northwestern University, Office for Research Safety, Laboratory Safety, Office of the Vice President for Research. Allergic Reactions to Latex Gloves. Available on-line at: *http://www.research.northwestern.edu/ors/labsafe/latex.htm* (last visited May 13, 2008).

11. CPSC. Memorandum from Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction, to Todd Stevenson, Secretary, re: Additional Information on Petition on the Natural Rubber Latex (HP 00–2). April 1, 2004.

12. CPSC. Briefing Package, Petition Requesting that Natural Rubber latex be declared a Strong Sensitizer (HP00–2). October 2003.

13. European Commission, Scientific Committee on Medicinal Products and Medical Devices. Opinion on natural rubber latex allergy. June 2000.

14. U.S. Patent #5,741,885.

15. Siler, D.J.; Cornish, K.; and Hamilton, R.G. Absence of cross-reactivity of IgE antibodies from subjects allergic to *Hevea brasiliensis* latex with a new source of natural rubber latex from guayule (*Parthenium argentatum*). *Journal of Allergy Clinical Immunology*. 98: 895–902. 1996.

16. U.S. Patent #6,054,525.

17. EPA. *Hevea brasiliensis* Natural Rubber Latex Adhesives; TSCA Section 21 Petition; Notice of Receipt. **Federal Register** (73 FR 22368, April 25, 2008) (FRL–8361–3). Available on-line at: *http://www.epa.gov/fedrgstr*.

18. Comment from Andover Healthcare, Inc. May 12, 2008.

19. Letter from the Yulex Corp. May 7, 2008.

20. Letter from ASTM International. May 7, 2008.

21. Letter from the Pressure Sensitive Tape Council. May 9, 2008.

22. Letter from the Rubber Manufacturers Association. May 12, 2008.

List of Subjects

Environmental protection, Antigenic proteins, Asperger syndrome, Autism, Health, *Hevea brasiliensis* natural rubber latex adhesives, Infants and children.

Dated: June 3, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–12850 Filed 6–6–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–1181]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau gives notice of Mr. George Marchelos' suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Enforcement Bureau gives notice that debarment proceedings are commencing against him. Mr. Marchelos, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Diana Lee.

DATES: Opposition requests must be received by July 9, 2008. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or July 9, 2008, whichever comes first. The Enforcement Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications

Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Enforcement Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 08–1181, which was mailed to Mr. Marchelos and released on May 19, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary Denigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The attached is the Suspension and Initiation of Debarment Letter to George Marchelos.

May 19, 2008

DA 08–1181

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (415–436–7706)

Mr. George Marchelos, c/o Geoffrey A. Hanson, Esq., Federal Public Defender, 19th Floor Federal Building—Box 36106, 450 Golden Gate Avenue, San Francisco, CA 94102.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1140

Dear Mr. Marchelos: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of wire fraud and aiding and abetting, in violation of 18 U.S.C. 1343 and 2, as well as collusion and aiding and abetting, in violation of 15 U.S.C. 1 and 2, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to wire fraud and collusion in connection with your participation in two schemes to defraud the E-Rate program.[4] Specifically, you admitted that, as a former consultant for two school districts in California and sales representative of Video Network Communications, Inc. (''VNCI''), you participated in schemes to defraud the E-rate program and bid rigging on E-rate projects for certain school districts in favor of other co-conspirators or defendants.[5]

Pursuant to section 54.8(a)(4) of the Commission's rules,[6] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[7] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[8]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[9] Such requests, however, will not ordinarily be granted.[10] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[11] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[12]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[13] Therefore, pursuant to section 54.8(a)(4) of

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction. *United States* v. *George Marchelos,* Criminal Docket No. 3:05–CR–00208–CRB–009, Judgment (N.D.Cal. filed and entered Apr. 10, 2008) (''*George Marchelos Judgment*''). *See United States* v. *Video Network Communications, Inc. et al.*, Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment at paras. 72–88 (N.D.Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005), *http://www.usdoj.gov/atr/cases/f213600/213626.htm* (accessed May 1, 2008) (''*VNCI Superseding Indictment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (Program Management Order) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[4] *See George Marchelos Judgment* at 1.

[5] *See VNCI Superseding Indictment* at paras. 6, 72–88. The following four individuals, who were also charged in the *VNCI Superseding Indictment,* have pled guilty or been found guilty and subsequently sentenced: Judy Green, Earl Nelson, William Holman, and Allan Green. We are sending separate notices of suspension and initiation of debarment proceedings to these individuals. VNCI is now defunct and charges against the company have been dropped.

[6] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, paras. 67–74.

[7] 47 CFR 54.8(a)(1), (d).

[8] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[9] 47 CFR 54.8(e)(4).

[10] *Id.*

[11] 47 CFR 54.8(e)(5).

[12] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[13] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[14] Absent extraordinary circumstances, the Bureau will debar you.[15] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[16] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[17]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[18] The Bureau may, if necessary to protect the public interest, extend the debarment period.[19]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via email to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

Sincerely yours,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail); Michael Wood, Antitrust Division, United States Department of Justice (via mail)

[FR Doc. E8–12832 Filed 6–6–08; 8:45 am]

BILLING CODE 6712–01–P

[14] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[15] *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

[16] *See id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[17] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[18] *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[19] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–1179]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau gives notice of Mr. Allan Green's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Enforcement Bureau gives notice that debarment proceedings are commencing against him. Mr. Green, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Diana Lee.

DATES: Opposition requests must be received by July 9, 2008. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or July 9, 2008, whichever comes first. The Enforcement Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Enforcement Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 08–1179, which was mailed to Mr. Green and released on May 19, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

Hillary Denigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The attached is the Suspension and Initiation of Debarment Letter to Allan Green.

May 19, 2008

DA 08–1179

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND E-MAIL

Mr. Allan Green, c/o Mark Rosenbush, Esq., Attorney at Law, 214 Duboce Avenue, San Francisco, CA 94103.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1141

Dear Mr. Green:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1]

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction of conspiracy to commit mail fraud. *See United States* v. *Allan Green*, Criminal Docket No. 3:05–CR–00208–CRB–009, Judgment (N.D.Cal. filed and entered Apr. 10, 2008) (''*Allan Green Judgment*''), Substitute Information (N.D.Cal. filed Apr. 9, 2007 and entered Apr. 10, 2007) (''*Allan Green Substitute Information*''). *See United States* v. *Video Network Communications,*

Continued

Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to conspiracy to commit mail fraud through your activities as a principal of ADJ Consultants, Inc. (''ADJ'') in relation to the Philadelphia Academy (''the Academy'') E-Rate project (the ''Project'').[4] Specifically, you admitted that you and others (collectively ''co-conspirators'') met with Academy employees, obtained their agreement to utilize ADJ services for the Project, and told Academy employees that co-conspirators would be able to obtain a grant to cover the Academy's share of the Project's costs.[5] You admitted that the co-conspirators further agreed and submitted to the Universal Service Administrative Company ''(USAC'') false and misleading documents indicating that the Academy had secured access to funding from an independent foundation and that the co-conspirators also misrepresented the share of the Project's costs that USAC would be paying.[6]

Pursuant to section 54.8(a)(4) of the Commission's rules,[7] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[8] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[9]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[10] Such requests, however, will not ordinarily be granted.[11] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[12] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[13]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[14] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC,

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Inc. et al., Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment (N.D.Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005); *http://www.usdoj.gov/atr/cases/f213600/213626.htm* (accessed May 1, 2008) (''*VNCI Superseding Indictment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''Second Report and Order'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order*, 18 FCC Rcd at 9225, para. 66; *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[4] *See Allan Green Substitute Information* at paras. 2, 6. The following four individuals, who were also charged in the *VNCI Superseding Indictment*, have pled guilty or been found guilty, and subsequently have been sentenced: Judy Green, George Marchelos, Earl Nelson, and William Holman. We are sending separate notices of suspension and initiation of debarment proceedings to these individuals. VNCI and ADJ are now defunct; charges against the companies have been dropped.

[5] *See Allan Green Substitute Information* at para. 5.

[6] *See id.*

[7] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, paras. 67–74.

[8] 47 CFR 54.8(a)(1), (d).

[9] *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[10] 47 CFR 54.8(e)(4).

[11] *Id.*

[12] 47 CFR 54.8(e)(5).

[13] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[15] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[16] *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

[17] *See id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[19] *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[20] *Id.*

20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro.
Chief.
Investigations and Hearings Division.
Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Michael Wood, Antitrust Division, United States Department of Justice (via mail)

[FR Doc. E8–12840 Filed 6–6–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–1180]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau gives notice of Mr. Earl Nelson's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Nelson, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Diana Lee.

DATES: Opposition requests must be received by July 9, 2008. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or July 9, 2008, whichever comes first. The Enforcement Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Enforcement Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 08–1180, which was mailed to Mr. Nelson and released on May 19, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary Denigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The attached is the Suspension and Initiation of Debarment Letter to Earl Nelson.

May 19, 2008.

DA 08–1180.

Via Certified Mail Return Receipt Requested and Facsimile (415–621–4111)

Mr. Earl Nelson, c/o Richard B. Mazer, Esq., Law Offices of Richard Mazer, 99 Divisadero Street, San Francisco, CA 94117, *richardbmazer@yahoo.com.*

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1138

Dear Mr. Nelson: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of collusion and aiding and abetting, in violation of 15 U.S.C. 1 and 18 U.S.C. 2, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to collusion and aiding and abetting a scheme to defraud the E-Rate program.[4] You admitted that, as a former branch manager of Inter-Tel Technologies, you entered into and engaged in a conspiracy with other defendants and co-conspirators to suppress and restrain competition by submitting collusive, noncompetitive, and rigged bids for an E-Rate project at the West Fresno Elementary School District in Fresno, California.[5]

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction of collusion and aiding and abetting. *United States* v. *Earl Nelson,* Criminal Docket No. 3:05–CR–00208–CRB–011, Judgment (N.D.Cal. filed and entered Mar. 21, 2008) (''*Earl Nelson Judgment*''). *See United States v. Video Network Communications, Inc. et al.*, Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment at paras. 79–80 (N.D.Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005); *http://www.usdoj.gov/atr/cases/f213600/213626.htm* (accessed May 1, 2008) (''*VNCI Superseding Indictment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[4] *VNCI Superseding Indictment at* paras. 79–80.

[5] *See id.* The Commission debarred Inter-Tel Technologies, Inc. in 2006 for the company's conviction for mail fraud and conspiracy to suppress and eliminate competition. *See Inter-Tel Technologies, Inc.,* Notice to Debarment, 21 FCC Rcd 7506 (2006); 71 FR 42397 (2006). The following four individuals, who were also charged in the *VNCI Superseding Indictment,* have pled guilty or been found guilty and subsequently sentenced: Judy Green, George Marchelos, William Holman, and Allan Green. We are sending separate notices of

Continued

Pursuant to section 54.8(a)(4) of the Commission's rules,[6] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[7] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[8]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[9] Such requests, however, will not ordinarily be granted.[10] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[11] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[12]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[13] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[14] Absent extraordinary circumstances, the Bureau will debar you.[15] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[16] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[17]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[18] The Bureau may, if necessary to protect the public interest, extend the debarment period.[19]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, D.C. 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,

Chief,

Investigations and Hearings Division,

Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail); Michael Wood, Antitrust Division, United States Department of Justice (vial mail).

[FR Doc. E8–12842 Filed 6–6–08; 8:45 am]

BILLING CODE 6712–01–P

suspension and initiation of debarment proceedings to these individuals.

[6] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, paras. 67–74.

[7] 47 CFR 54.8(a)(1), (d).

[8] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[9] 47 CFR 54.8(e)(4).

[10] *Id.*

[11] 47 CFR 54.8(e)(5).

[12] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[13] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[14] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[15] *Second Report and Order,* 18 FCC Rcd at 9227, para. 74.

[16] *See id.,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[17] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[18] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[19] *Id.*

FEDERAL MARITIME COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: June 11, 2008—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

(1) Docket No.04–09 *American Warehousing of New York, Inc.*, v *the Port Authority of New York and New Jersey*, and Docket No. 05–03 *American Warehousing of New York, Inc.*, v *the Port Authority of New York and New Jersey*.

(2) Designation of Commission Policy Official for the U.S. Committee on the Maritime Transportation System.

(3) Privacy Act System of Records.

Closed Session

(1) Direction to Staff Regarding Budget Hearing Committee Requests.

(2) FMC Agreement No. 201178—Los Angeles/Long Beach Port /Terminal Operator Administration and Implementation Agreement and FMC Agreement No. 201170—Los Angeles and Long Beach Port Infrastructure and Environmental Programs CWA.

(3) Export Cargo Issues Status Report.

(4) Docket No. 06–03 Premier Automotive Services, Inc. v Robert L. Flanagan and F. Brooks Royster, III.

(5) Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Assistant Secretary, (202) 523–5725.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 08–1333 Filed 6–5–08; 9:31 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0290]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluating the Title XX Adolescent Family Life (AFL) Program: Care Demonstration Projects—OMB No. 0990–0290—Revision—Office of Adolescent Pregnancy Programs (OAPP).

Abstract: The Office of Adolescent Pregnancy Programs (OAPP) is requesting approval from the Office of Management and Budget (OMB) to revise a currently approved collection of information conducting a cross-site evaluation of the Adolescent Family Life (AFL) care demonstration program utilizing revised core evaluation instruments. ''Evaluating the Title XX Adolescent Family Life (AFL) Program: Care Demonstration Projects'' is authorized by Title XX of the Public Health Service Act. The program is requesting 3 year approval. Respondents will be pre-adolescents and adolescents aged 9–19 participating in the care demonstration projects and will complete pre-intervention surveys and post-intervention surveys. The affected public will be individuals in the demonstration projects and comparison participants.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline Care survey for pregnant adolescents	3,333	1	23/60	1,278
Baseline Care survey for parenting adolescents	1,000	1	23/60	383
Follow-up survey (at birth)	3,333	1	23/60	1,278
Follow-up Care survey (6 months after birth)	4,333		23/60	1,661
Follow-up Care survey (12 months after birth)	4,333	1	23/60	1,661
Total				6,261

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–12791 Filed 6–6–08; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0291]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluating the Title XX Adolescent Family Life (AFL) Program: Prevention Demonstration Projects—OMB No. 0990–0291–Revision—Office of Adolescent Pregnancy Programs (OAPP).

Abstract: The Office of Adolescent Pregnancy Programs (OAPP) is requesting approval by the Office of Management and Budget (OMB) to revise a previously approved collection of information conducting a cross-site evaluation of the Adolescent Family Life (AFL) prevention demonstration program utilizing revised core evaluation instruments. ''Evaluating the Title XX Adolescent Family Life (AFL) Program: Prevention Demonstration Projects'' is authorized by Title XX of

the Public Health Service Act. The project is requesting a 3 year approval. Respondents will be adolescents and pre-adolescents aged 9–19 participating in the prevention demonstration projects and will complete pre-intervention surveys and post-intervention surveys. The affected public will be individuals in the demonstration projects and comparison participants.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline survey	13,333	1	22/60	4889
Year 1 Follow-up survey	13,333	1	22/60	4889
Year 2 Follow-up survey	13,333	1	22/60	4889
Total				14,667

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–12794 Filed 6–6–08; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Impact of Cultural and Socioeconomic Factors on Post-Treatment Surveillance Among African Americans With Colorectal Cancer, Potential Extramural Project 2008–R–03

Correction: This notice was published in the **Federal Register** on April 18, 2008, Volume 73, Number 76, page 21137. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 11, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12877 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Survey of Community Support Interventions for Mammography Screenings, Potential Extramural Project 2008–R–13

Correction: This notice was published in the **Federal Register** on April 18, 2008, Volume 73, Number 76, page 21136. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 10, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12879 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Evaluating the Risk for Development of Childhood Cancer Among Infants With Birth Defects, Potential Extramural Project 2008–R–06

Correction: This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, page 20679. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 12, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12880 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Evaluation of Environmental and Policy Interventions To Increase Fruit and Vegetable Intake, Potential Extramural Project 2008–R–11

Correction: This notice was published in the **Federal Register** on April 21, 2008, Volume 73, Number 77, page 21355. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 11, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12882 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Retrospective Evaluation of Patterns of Care for American Indian and Alaska Native Men With Elevated Prostate Specific Antigen, Potential Extramural Project 2008–R–15

Correction: This notice was published in the **Federal Register** on April 18, 2008, Volume 73, Number 76, page 21137. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 11, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12889 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control (NCIPC) Advisory Committee for Injury Prevention and Control (ACIPC)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following subcommittee and committee meetings:

Name: Science and Program Review Subcommittee (SPRS).

Time and Date: 10:30 a.m.–12:30 p.m., June 25, 2008.

Place: The teleconference will originate at CDC, 4770 Buford Highway, NE., Building 106, Ninth Floor, Room 108E, Atlanta, Georgia 30341. To participate, dial (877) 934–7121 and enter conference code 8396688.

Status: Open: 10:30 a.m.–10:45 a.m., June 25, 2008. Closed: 10:45 a.m.–12:30 p.m., June 25, 2008.

Purpose: The Science and Program Review Subcommittee provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control.

Matters To Be Discussed: The subcommittee will meet June 25, 2008, to provide a secondary review of, discuss, and evaluate the individual research grant and cooperative agreement applications submitted in response to Fiscal Year 2008. Requests for Applications (RFAs) related to the following individual research announcements: 08001, Youth Violence through Community-Level Change; 08002, Grants for Traumatic Injury Biomechanics and their Severity; 08003, Research for Prevention Violence and Violence Related Injury; 08004, Translation Research to Prevent Motor Vehicle-Related Crashes and Injuries to Teen Drivers and Their Passengers; 08005, Dissertation Grant Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; 08006, Feasibility of Acute Concussion Management in the Emergency Department; and 08007, Assessing the Effects of Interpersonal Violence Prevention on Suicide. The applications being reviewed include information of a confidential nature, including personal and financial information concerning individuals associated with the applications. Following this meeting, the voting members of ACIPC will meet via teleconference to vote on the recommendations of the SPRS regarding the RFAs. This conference call will take place on June 27, 2008.

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 11:30 a.m.–12:30 p.m., June 27, 2008.

Place: The teleconference will originate at CDC, 4770 Buford Highway, NE., Building 106, Sixth Floor, Room 6A, Atlanta, Georgia 30341. To participate, dial (877) 934–7121 and enter conference code 8396688.

Status: Open: 11:30 a.m.–11:55 a.m., June 27, 2008. Closed: 11:55 a.m.–12:30 p.m., June 27, 2008.

Purpose: The committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Director, Centers for Disease Control and Prevention, and the Director, National Centers for Injury Prevention and Control regarding feasible goals for the prevention and control of injury. The committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters To Be Discussed: Agenda items for the open portion include the call to order and introductions and request for public comments. The Committee will vote on the results of the secondary review. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and (b), title 5 U.S.C., and the Determination of the Director, Management

Analysis and Services Office, CDC pursuant to Public Law 92–463. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Amy Harris, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S F–63, Atlanta, Georgia 30341–3724, telephone (770) 488–4936.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12892 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health, (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–5 p.m., June 26, 2008 (Closed);

8 a.m.–5 p.m., June 27, 2008 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone (703) 684–5900, Fax (703) 684–1403.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Matters To Be Discussed: The meeting will convene to address matters related to the conduct of Study Section business and to consider Safety and Occupational Health-Related Grant Applications.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (404) 498–2511, Fax (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–12793 Filed 6–6–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Approval of Supplemental New Animal Drug Application; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it has approved a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The approved NADA provides for the veterinary prescription use of a sustained-release injectable moxidectin formulation for prevention of heartworm disease and treatment of existing hookworm infections in dogs. The supplemental NADA adds animal safety information to product labeling.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 141–189 that provides for veterinary prescription use of PROHEART 6 (moxidectin) Sustained Release Injectable for Dogs, used for prevention of heartworm disease and treatment of existing hookworm infections. The supplemental NADA updates the warning, precaution, adverse reactions, and post-approval experience sections of product labeling. In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) and 21 CFR 514.105(a) and 514.106(a), the Center for Veterinary Medicine is providing notice that this supplemental NADA is approved as of May 23, 2008.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 2, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 08–1329 Filed 6–5–08; 12:00 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 25, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, Maryland Ballroom, 8727

Colesville Rd., Silver Spring, MD, 301–589–5200.

Contact Person: Elaine Ferguson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 22–275, tolvaptan (proposed trade name SAMSKA), Otsuka Pharmaceutical Development & Commercialization, Inc., for the proposed indication of treatment of hypervolemic and euvolemic, hyponatremia. The committee will hear presentations from FDA and the sponsors specifically regarding change in sodium level as basis for drug approval.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 20, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 13, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 16, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

FDA regrets that it was unable to publish this notice 15 days prior to the June 25, 2008, Cardiovascular and Renal Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Cardiovascular and Renal Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–12868 Filed 6–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 15, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for Oxiplex/SP Gel, sponsored by FzioMed, Inc. This device is intended to be used as a surgical adjuvant during posterior lumbar laminectomy, laminotomy, or discectomy to improve patient outcomes by reducing postoperative leg pain, back pain, and neurological symptoms.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person on or before July 1, 2008. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 23, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 24, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–12866 Filed 6–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Peripheral and Central Nervous System Drugs Advisory Committee and the Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Peripheral and Central Nervous System Drugs Advisory Committee and the Psychopharmacologic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 10, 2008, from 8 a.m. to 5 p.m.

Location: Sheraton College Park Hotel, The Ballroom, 4095 Powder Mill Rd., Beltsville, MD, 301–937–4422.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *yvette.waples@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512543 and 3014512544. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Peripheral and Central Nervous System Drugs Advisory Committee, the Psychopharmacologic Drugs Advisory Committee, representatives from the Pediatric Advisory Committee, and the Drug Safety and Risk Management Advisory Committee will consider the results of FDA's analysis of suicidality (both suicidal ideation and behavior) from placebo-controlled clinical studies of 11 drugs. The following drugs will be considered: (1) Carbamazepine (marketed as CARBATROL, Shire Pharmaceuticals, EQUETRO, Validus Pharmaceuticals, Inc., TEGRETOL, Tegretol XR, Novartis Pharmaceuticals Corp.); (2) felbamate (marketed as FELBATOL, Meda Pharmaceuticals, Inc.); (3) gabapentin (marketed as NEURONTIN, Pfizer, Inc.); (4) lamotrigine (marketed as LAMICTAL, GlaxoSmithKline); (5) levetiracetam (marketed as KEPPRA, UCB, Inc.); (6) oxcarbazepine (marketed as TRILEPTAL, Novartis Pharmaceuticals Corp.); (7) pregabalin (marketed as LYRICA, Pfizer Inc.); (8) tiagabine (marketed as GABITRIL, Cephalon, Inc.); (9) topiramate (marketed as TOPAMAX, Ortho-McNeil-Janssen Pharmaceuticals, Inc.,); (10) valproate (marketed as DEPAKOTE, DEPAKOTE ER, DEPAKENE, DEPACON, Abbott Laboratories); and (11) zonisamide (marketed as ZONEGRAN, Dainippon). FDA will discuss with the committee actions taken in light of the results and whether any additional actions are necessary.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 25, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 3 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 17, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may

conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 18, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–12870 Filed 6–6–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomics and Genetics.

Date: June 23–24, 2008.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301–435–1047, *mccormim@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes, and Genetics Specials.

Date: June 26–27, 2008.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Genetics and Profiling.

Date: June 26, 2008.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; CMBK Member Conflict.

Date: June 30, 2008.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: July 10–11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Deca, 4507 Brooklyn Avenue, NE., Seattle, WA 98105.

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychopathology, Developmental Disabilities, Stress and Aging Fellowship Study Section.

Date: July 11, 2008.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Estina E. Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ELSI of Human Research.

Date: July 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiac Remodeling, Aging and Vascular Function.

Date: July 16, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Social and Psychological Aspects of Alcohol Use.

Date: July 21, 2008.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemistry Small Business Review.

Date: July 22, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Biology.

Date: July 22, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioanalytical Instrumentation Shared Instrumentation Study Section.

Date: July 28, 2008.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Roadmap: Microbiome-New Technologies.

Date: July 28, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biomedical Imaging and Bioengineering.

Date: July 28, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mass Spectrometry Shared Instrumentation Study Section.

Date: July 29, 2008.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Roadmap: Microbiome-DACC.

Date: July 29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Biological Sciences.

Date: July 31–August 1, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–12655 Filed 6–6–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interdisciplinary Developmental Science Centers for MH: Mature Centers & Formative Centers.

Date: July 11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; AIDS Applications.

Date: July 11, 2008.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Enid Light, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 30, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–12652 Filed 6–6–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: June 24, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health, Aging, and the Life-Course.

Date: June 24, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2c–212, Bethesda, MD 20892, 301–402–7700, *rv23@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93866, Aging Research, National Institutes of Health, HHS)

Dated: May 30, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–12653 Filed 6–6–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Changing Parental Relationships and Child Well-Being.

Date: June 26, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@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: May 30, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–12654 Filed 6–6–08; 8:45 am]

BILLING CODE 4140–01–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; New Collection, FEMA Form 142–1–1.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the proposed collection concerning public alert and warning systems at the Federal, State, territorial, tribal, and local levels of government which is necessary for the inventory and evaluation and assessment of existing public alert and warning resources and their integration with the Integrated

Public Alert and Warning System (IPAWS).

SUPPLEMENTARY INFORMATION: Presidential Executive Order 13407 establishes the policy for an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and well being. The Integrated Public Alert and Warning System (IPAWS) is the Department of Homeland Security's (DHS) response to the Executive Order. This Executive Order requires that DHS establish an inventory of public alert and warning resources, capabilities, and the degree of integration at the Federal, State, territorial, tribal, and local levels of government. The information collected will consist of the communication systems being used for collaboration, situational awareness, and emergency notification at the local Emergency Operations Center (EOC) and higher. This information will help FEMA identify the technologies currently in use or desired for inclusion into IPAWS.

Collection of Information

Title: Integrated Public Alert and Warning System (IPAWS) Inventory and Evaluation Survey.

Type of Information Collection: New Collection.

OMB Number: 1660–NEW40.

Form Numbers: FEMA Form 142–1–1, IPAWS Inventory and Evaluation Survey.

Abstract: FEMA will be conducting an inventory, evaluation and assessment of the capabilities of Federal, State, local, and tribal government alert and warning systems. The IPAWS Inventory and Evaluation Survey will collect data that will facilitate the integration of public alert and warning systems. It will also reduce Federal planning costs by leveraging existing State systems.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours: 9660.

ANNUAL HOUR BURDEN

Data collection activity	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (hours) (C)	Annual responses (D) = (A × B)	Total annual burden hours (hours) (C × D)
FEMA Form 142–1–1, IPAWS Inventory & Evaluation Survey	1932	1	5	1932	9660
Total	1932			1932	9660

Estimated Cost: The estimated total annual cost burden to respondents, using wage rate categories, is estimated to be $234,351.60. The estimated total annual cost to the Federal Government is $2,566,186.02.

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 August 8, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Walter Florence, Business Operations Specialist, National Continuity Program IPAWS Division, FEMA, (202) 646–3169 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: June 2, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–12824 Filed 6–6–08; 8:45 am]

BILLING CODE 9110–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–C–01A1]

Notice of HUD's Fiscal Year (FY) 2008 SuperNOFA for HUD's Discretionary Grant Programs; Correction for Section 202 and Section 811 Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; correction.

SUMMARY: On March 19, 2008, HUD published its Notice of Fiscal Year (FY) 2008 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2008 NOFAs for Discretionary Programs (General Section). On May 12, 2008, HUD published its FY2008 SuperNOFA, for HUD's Discretionary Grant Programs. This document makes corrections or clarifications to the Section 202 Housing for the Elderly Program (Section 202 Program), and Section 811 Supportive Housing For Persons With Disabilities (Section 811 Programs).

DATES: The application submission dates for the program sections of the SuperNOFA remain as published in the **Federal Register** on May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Questions regarding the General Section of March 19, 2008, should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. Eastern Time at (800) HUD–8929. Hearing-impaired persons may call 800–HUD–2209. For the programs listed in this notice, please contact the office or individual listed under Section VII of the Section 202 and Section 811 program sections of the SuperNOFA, published on May 12, 2008.

SUPPLEMENTARY INFORMATION: On March 19, 2008 (73 FR 14882), HUD published its Notice of Fiscal Year (FY) 2008 Notice of Funding Availability (NOFA);

Policy Requirements and General Section to HUD's FY2008 NOFAs for Discretionary Programs (General Section). Early publication of the General Section was intended to provide prospective applicants additional time to become familiar with and address those provisions in the General Section that constitute part of almost every application. On May 12, 2008 (73 FR 27032), HUD published its Notice of HUD's Fiscal Year (FY) 2008, SuperNOFA for HUD's Discretionary Grant Programs. The FY2008 SuperNOFA announced the availability of approximately $1.02 billion in HUD assistance. This notice published in today's **Federal Register** makes technical corrections to the Section 202 Housing for the Elderly Program (Section 202 Program), and Section 811 Supportive Housing For Persons With Disabilities (Section 811 Program).

Summary of Technical Corrections

Summaries of the technical corrections made by this document follow. The page number shown in brackets identifies where the individual funding availability announcement that is being corrected can be found in the May 12, 2008, SuperNOFA. The technical correction described in today's **Federal Register** will also be reflected in the application instructions located on Grants.gov/Apply. Applicants who have submitted their applications prior to this publication can choose to resubmit an updated application that reflects the corrections and clarifications. The last application received and validated by Grants.gov by the deadline date will be the application that is reviewed and rated.

Section 202 Housing for the Elderly Program (Section 202 Program) [27296]

On page 27296, Overview Information, Section D., first column, HUD inadvertently listed an incorrect Funding Opportunity Number and is correcting the Funding Opportunity Number.

On page 27310, Section IV.E.5., first column, HUD inadvertently cited the authority for the requirement that requires that funds be disbursed prior to September 30, 2011, and is correcting this citation.

On pages 27312–27312, Section V.A.3. Rating Factor 3, Soundness of Approach, HUD inadvertently omitted a rating factor applicable to applications that include sites that are not permissively zoned for the intended use.

On page 27316, Section VI.C.1, second and third paragraphs, center column, HUD is clarifying the recording requirements using the Logic Model.

These corrections are also reflected in the instructions found on Grants.gov/Apply. Applicants must download the instructions to receive all forms and instructions related to this NOFA. Applicants are encouraged to read the instructions on Grants.gov/Apply prior to submitting your application in response to the Section 202 Program funding opportunity.

Section 811 Supportive Housing for Persons With Disabilities (Section 811 Program) [27319]

On page 27340, section V.A.5.c and d, first column, HUD incorrectly included rating factors that are not applicable to this competition.

On page 27342, Section VI.C.1, second and third paragraphs, center column, HUD is clarifying the recording requirements using the Logic Model.

These corrections are also reflected in the instructions found on Grants.gov/Apply. Applicants must download the instructions to receive all forms and instructions related to this NOFA. Applicants are encouraged to read the instructions on Grants.gov/Apply prior to submitting your application in response to the Section 811 Programs funding opportunity.

Accordingly, in the Notice of HUD's FY2008, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 73 FR 27032, in the issue of May 12, 2008, the following corrections are made.

1. Section 202 Supportive Housing for the Elderly Program

On page 27296, Overview Information, Section D, first column, the Funding Opportunity Number is corrected to read as follows:

D. *Funding Opportunity Number:* FR–5200–N–26; OMB Approval Number is 2502–0267.

On page 27310, Section IV.E.5., HUD is correcting the second sentence of this paragraph to read as follows:

''Under 31 U.S.C. Section 1551, no funds can be disbursed fro the account after September 30, 2016.''

On page 27313, Section V.A.3. Rating Factor 3, Soundness of Approach, HUD is adding the following rating factor:

m. (-1). The site(s) is not permissively zoned for the intended use.

On page 27316, Section VI.C.1., second and third paragraphs, center column, HUD is clarifying the recording requirements using the Logic Model to read as follows:

''1. The Program Outcome Logic Model (Form HUD–96010) must be completed indicating the proposed measures against the proposed activities/output and proposed outcome(s) for the appropriate year. The proposed measures should be entered in the ''Pre'' column of the form. The Logic Model has been designed to clearly identify the stages of the development process and it must present a realistic annual projection of outputs and outcomes that demonstrates your full understanding of the development process. Using the ''Year One'' through ''Year Three'' tabs on the Logic Model, you must demonstrate your ability to ensure that the proposed measures will result in the timely development of your project. To provide for greater consistency in reporting, you must include all activities and outcomes excepted per year of the period of performance. **Note:** The reported outcome of an identified activity/output may be realized in a different year.

The Logic Model will capture information in two stages. Stage one will demonstrate your ability to develop the project within the required timeframe. This stage will capture data that relates to initial closing, construction, and final closing. Stage one will require the submission of a completed form HUD–96010, Logic Model on an annual basis, beginning with the date of the Agreement Letter and concluding with the date of Final Closing. At the time of the Project Planning Conference, HUD and the applicant will finalize the services and activities in association with this Logic Model and the development timeline. On an annual basis, applicants will report against the finalized logic model by documenting the achieved measures in the ''Post'' column. (**Note:** Applicants are not required to complete the YTD (year-to-date) column.) The final reporting requirement for the Logic Model will require that the applicant use the ''Total'' worksheet to fully document the activities and outcomes as well as the associated measures that have occurred during the period of performance. In addition, a response to each of the program management evaluation questions is required at time of final report.

The second stage will require the Owner to submit a completed form HUD–96010, Logic Model on an annual basis, beginning one year after the date of the final logic model submission that was required in stage one and concluding at the conclusion of the mortgage. Stage two will require the Owner to document the services/activities that are made available to

tenants and the expected outcomes and measures of such services.''

2. Section 811 Supportive Housing for Persons With Disabilities (Section 811 Programs), Beginning at Page 27319

On page 27340, section V.A.5., first column, HUD is deleting paragraphs c and d.

On page 27342, Section VI.C.1., second and third paragraphs, center column, center column, HUD is clarifying the recording requirements using the Logic Model to read as follows:

''1. The Program Outcome Logic Model (Form HUD–96010) must be completed indicating the proposed measures against the proposed activities/output and proposed outcome(s) for the appropriate year. The proposed measures should be entered in the ''Pre'' column of the form. The Logic Model has been designed to clearly identify the stages of the development process and it must present a realistic annual projection of outputs and outcomes that demonstrates your full understanding of the development process. Using the ''Year One'' through ''Year Three'' tabs on the Logic Model, you must demonstrate your ability to ensure that the proposed measures will result in the timely development of your project. To provide for greater consistency in reporting, you must include all activities and outcomes excepted per year of the period of performance. **Note:** The reported outcome of an identified activity/output may be realized in a different year.

The Logic Model will capture information in two stages. Stage one will demonstrate your ability to develop the project within the required timeframe. This stage will capture data that relates to initial closing, construction, and final closing. Stage one will require the submission of a completed form HUD–96010, Logic Model on an annual basis, beginning with the date of the Agreement Letter and concluding with the date of Final Closing. At the time of the Project Planning Conference, HUD and the applicant will finalize the services and activities in association with this Logic Model and the development timeline. On an annual basis, applicants will report against the finalized logic model by documenting the achieved measures in the ''Post'' column. (**Note:** Applicants are not required to complete the YTD (year-to-date) column.) The final reporting requirement for the Logic Model will require that the applicant use the ''Total'' worksheet to fully document the performance and outcomes as well as the associated measures that have occurred during the period of performance. In addition, a response to each of the program management evaluation questions is required at time of final report.

The second stage will require the Owner to submit a completed form HUD–96010, Logic Model on an annual basis, beginning one year after the date of the final logic model submission that was required in stage one and concluding at the conclusion of the mortgage. Stage two will require the Owner to document the services/activities that are made available to tenants and the expected outcomes and measures of such services.''

Dated: June 2, 2008.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E8–12807 Filed 6–6–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sport Fishing and Boating Partnership Council

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of charter renewal.

SUMMARY: Following consultation with the General Services Administration, the Secretary of the Interior hereby renews the Sport Fishing and Boating Partnership Council (Council) charter for 2 years.

DATES: The charter will be filed in accordance with the Federal Advisory Committee Act on June 24, 2008.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, U.S. Fish and Wildlife Service (Service), (703) 358–1711.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide advice to the Secretary of the Interior through the Director of the Service in order to assist the Department of the Interior (Department) and the Service in achieving their goal of increasing public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating.

The Council represents the interests of the sport fishing and boating constituencies and industries and consists of no more than 18 members and up to 16 alternates appointed by the Secretary to assure a balanced, cross-sectional representation of public and private sector organizations. The Council consists of two ex-officio members: Director, U.S. Fish and Wildlife Service and the President, Association of Fish and Wildlife Agencies (AFWA). The 16 remaining members are appointed at the Secretary's discretion to achieve balanced representation for recreational fishing and boating interests. The membership comprises senior-level representatives of recreational fishing, boating, and aquatic resource conservation. These appointees must have demonstrated expertise and experience in one or more of the following areas of national interest groups: State fish and wildlife resource management agencies, saltwater and freshwater recreational fishing organizations, recreational boating organizations, recreational fishing and boating industries, recreational fishery resources conservation organizations, tribal resource management organization, aquatic resource outreach and education organizations, and tourism industry.

The Council functions solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix; Act). The Certification of renewal is published below.

This notice is published in accordance with section 9a(2) of the Act.

Certification

I hereby certify that the renewal of the Sport Fishing and Boating Partnership Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to, the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j) in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the U.S. Fish and Wildlife Service's mission to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Council will assist the Secretary and the Department of the Interior by providing advice on activities to enhance fishery and aquatic resources.

Dated: May 30, 2008.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E8–12854 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW149277]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Burlington Resources Oil & Gas Company LP and Stephen Energy Company LLC for Competitive oil and gas lease WYW149277 for land in Sweetwater County, WY. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW149277 effective December 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–12792 Filed 6–6–08; 8:45 am]

BILLING CODE4 310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–08–5700–BX; 8–08807; TAS: 14X5017]

Temporary Closure of Public Lands in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure.

SUMMARY: Pursuant to 43 CFR 8364.1 certain public lands near Stead, Nevada, will be temporarily closed to all public use. This action is being taken to provide for public safety during the Reno Air Racing Association Pylon Racing Seminar and the Reno National Championship Air Races.

DATES: *Effective Date:* Closure to all public use June 18 through June 21, 2008, and September 7 through September 14, 2008.

FOR FURTHER INFORMATION CONTACT: Bryant Smith, (775) 885–6000.

SUPPLEMENTARY INFORMATION: These closures are authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

The area described contains 680 acres, more or less.

Exceptions: Closure restrictions do not apply to e vent officials, medical/rescue, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with the closure orders is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months.

Authority: 43 CFR 8360.0–7 and 8364.1.

Dated: June 2, 2008.

Donald T. Hicks,

Field Manager, Carson City Field Office.

[FR Doc. E8–12838 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0028]

MMS Information Collection Activity: 1010–0072 Prospecting for Minerals other than Oil, Gas and Sulphur in the Outer Continental Shelf, Extension of an Information Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0072).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 280, ''Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf.''

DATES: Submit written comments by August 8, 2008.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* Under the tab ''More Search Options,'' click Advanced Docket Search, then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2008–OMM–0028 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0072'' in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the form that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 280, Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf.

OMB Control Number: 1010–0072.

Form: MMS–134.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1337(k) of the OCS Lands Act authorizes the Secretary ''* * * to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.'' An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that ''* * * any person authorized by the Secretary may conduct geological and geophysical [G&G] explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and they do not disturb a site, structure, or object of historical or archaeological significance. Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications.

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

The MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs.

Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

Responses are mandatory or required to obtain or retain a benefit. No questions of a sensitive nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

Frequency: On occasion, annual; and as required in the permit.

Estimated Number and Description of Respondents: Approximately one hard mineral permittee or one notice filer at any given time and one affected State.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 109 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 280	Reporting and recordkeeping requirements	Hour burden
		Non-hour cost burden
10; 11(a); 12; 13; Permit Form	Apply for permit (form MMS–134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan.	8
11(b); 12(c)	File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities.	8 $1,900
21(a)	Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1
22	Request approval to modify operations	1
23(b)	Request reimbursement for expenses for MMS inspection	1
24	Submit status and final reports on specified schedule	8
28	Request relinquishment of permit	1
31(b); 73	Governor(s) of adjacent State(s) submissions to MMS: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1
33, 34	Appeal penalty, order, or decision—burden covered under 5 CFR 1320.4(a)(2), (c)	

Citation 30 CFR part 280	Reporting and recordkeeping requirements	Hour burden / Non-hour cost burden
40; 41; 50; 51; Permit Form	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
42(b); 52(b)	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS	
42(c), 42(d); 52(c), 52(d)	Notify MMS of 3rd party transactions	1
60; 61(a)	Request reimbursement for costs of reproducing data/information & certain processing costs.	20
72(b)	Submit in not less than 5 days comments on MMS intent to disclose data/information.	1
72(d)	Contractor submits written commitment not to sell, trade, license, or disclose data/information.	1
Part 280	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2
Permit Form	Request extension of permit time period	1
Permit Form	Retain G&G data/information for 10 years and make available to MMS upon request.	1

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden for this collection. In § 280.12, respondents are required to pay $1,900 to file a notice to conduct research activities related to hard minerals. We have identified no other non-hour cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: June 2, 2008.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E8–12809 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0022]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 part CFR 218, regarding (1) Cross-lease netting in calculation of late-payment interest; (2) designating a designee; and (3) recoupment of overpayments on Indian oil and gas leases. This notice also provides the public a second opportunity to comment on the paperwork burden of the regulatory requirements. We shortened the title of this ICR to meet OMB requirements. The new title of this

information collection request (ICR) is ''30 CFR Part 218, Collection of Monies Due the Federal Government.'' The form associated with this collection is Form MMS–4425, Designation Form for Royalty Payment Responsibility.

DATES: Submit written comments on or before *July 9, 2008.*

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior (OMB Control Number 1010–0107).

You also may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0022'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0107 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. Please reference ICR 1010–0107 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or e-mail *hyla.hurst@mms.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 218, Collection of Monies Due the Federal Government.

OMB Control Number: 1010–0107.

Bureau Form Number: Form MMS–4425.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act (30 U.S.C. 1923), the Indian Mineral Development Act of 1982 (Pub. L. 97–382–Dec. 22, 1982), and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties and other mineral revenues from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the mineral revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral revenues are on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

The burden hour and requirements in § 218.203 have been moved to collection 1010–0120, Solid Minerals and Geothermal Collections (expires December 31, 2010) and are therefore removed from this collection. This change enables program-wide review of all information collections for solid minerals and geothermal resources. This ICR covers unique reporting circumstances including (1) Cross-lease netting in calculation of late-payment interest; (2) designation of designee; and (3) tribal permission for recoupment on Indian oil and gas leases.

Cross-Lease Netting in Calculation of Late-Payment Interest

Regulations at § 218.54 require MMS to assess interest on unpaid or underpaid amounts. The MMS distributes these interest revenues to states, Indian tribes, and the U.S. Treasury, based on financial lease distribution information. Current regulations at § 218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest, when certain conditions are met. This is called cross-lease netting. However, RSFA sections 6(a), (b), and (c) require MMS to pay interest on lessees' Federal oil and gas overpayments made on or after February 13, 1997 (6 months after the August 13, 1996, enactment of RSFA). The MMS implemented this RSFA provision in 1997 and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at § 218.42 no longer applicable for these leases. The MMS estimates that, in about seven cases per year, lessees must comply with the provisions of § 218.42(b) and (c) for Indian tribal leases or Federal leases other than oil and gas, demonstrating that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for MMS to determine the correct amount of interest owed by the lessee and to ensure proper value is collected.

Designation of Designee

The RSFA established that lessees (owners, primarily, of operating rights, or secondarily, lease record title) are responsible for making royalty and related payments on Federal oil and gas leases. These RSFA requirements are codified at § 218.52. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. The MMS designed Form MMS–4425, Designation Form for Royalty Payment Responsibility, to request all the information necessary for lessees to comply with these RSFA requirements when they choose to designate an agent to pay for them.

Tribal Permission for Recoupment on Indian Oil and Gas Leases

In order to report cross-lease netting on Indian oil and gas leases, lessees must also comply with regulations at § 218.53(b), allowing only lessees with written permission from the tribe to recoup overpayments on one lease against a different lease for which the tribe is the lessor. The payor must furnish MMS with a copy of the tribe's written permission. Generally, a payor may recoup an overpayment against the current month's royalties or other revenues owed on the same tribal lease. For any month, a payor may not recoup more than 50 percent of the royalties or

other revenues owed in that month, under an individual allotted lease, or more than 100 percent of the royalties or other revenues owed in that month, under a tribal lease. Lessees use Form MMS–2014, Report of Sales and Royalty Remittance (burden hours covered under ICR 1010–0140, expires November 30, 2009), for oil and gas lease recoupments.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the duties of the office and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection. The requirement to respond is mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,612 Federal and Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,219 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR part 218	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions— Cross-lease netting in calculation of late-payment interest.				
218.42(b) and (c)	Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset * * * if * * * the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information * * *			
	(c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest is not owed... the burden is on the payor to demonstrate that the exception applies * * *	2	7	14
Subpart B—Oil and Gas, General—How does a lessee designate a Designee?				
218.52(a), (c), and (d)	How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *			
	(c) If you want to terminate a designation * * * you must provide [the following] to MMS in writing * * * (d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership. The MMS currently uses Form MMS–4425, Designation Form for Royalty Payment Responsibility, to collect this information.	0.75	1,600	1,200
Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases.				
218.53(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * * A copy of the tribe's written permission must be furnished to MMS * * *	1	5	5
Total Burden			1,612	1,219

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on August 9, 2007 (72 FR 44853), announcing that we would submit this ICR to OMB for

approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 9, 2008.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: May 5, 2008.

Walter D. Cruickshank,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–12817 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Lewis and Clark National Historical Park

AGENCY: National Park Service.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l–(9)(c)(1), the boundary of Lewis and Clark National Historical Park, Clatsop County, Oregon, is modified to include an additional three tracts totaling 7.94 acres of land. These lands are adjacent to the northwestern boundary of the Fort Clatsop unit of the park and are depicted on a map entitled ''Lewis and Clark National Historical Park Proposed Boundary,'' dated November 2007, and numbered 405/80,028.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, Washington 98104, (206) 220–4100. The map depicting the revision is on file and available for inspection at this address. Before including your address, phone number, or other personal identifying information in your comment, please be aware that your entire comment, including your personal information, may be made publicly available at any time.

DATES: The effective date of this boundary revision is June 9, 2008.

SUPPLEMENTARY INFORMATION: Inclusion of these lands within the park boundary will enable willing land owners to sell and convey interests in the subject land to the National Park Service. The lands are suitable to serve expanded public visitor uses and provide a western trailhead entrance for the park's ''Fort-to-Sea Trail.'' Additionally, the boundary revision will afford greater protection of park resources.

Dated: January 7, 2008.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

Editorial Note: This document was received at the Office of the Federal Register on June 4, 2008.

[FR Doc. E8–12841 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–C1–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 24, 2008. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 24, 2008.

J. Paul Loether,

Chief, National Register/National Historic Landmarks Program.

ARKANSAS

Sebastian County

May—Lecta—Sweet Historic District, Roughly bounded by May Ave., Rogers Ave., Sweet Ave., and Kinkead Ave., Fort Smith, 08000597.

CALIFORNIA

Los Angeles County

Pasadena Arroyo Parks and Recreation District, Roughly bounded by the Foothill Freeway on the north, the city limits on the south, Arroyo Blvd on east, San Rafael, Pasadena, 08000579.

COLORADO

Larimer County

Buckeye School, (Rural School Buildings in Colorado MPS) off W. Cty. Rd. 80, Wellington, 08000599

KANSAS

Barton County

Bridge No. 222—Off System Bridge, (New Deal-Era Resources of Kansas MPS) NE 60 Ave. S. and NE. 210 Rd., ⅛ mile East on 210 Rd., Beaver, 08000608.

Bridge No. 640 Federal Aid Highway System Bridge, (New Deal-Era Resources of Kansas MPS) NE 60 Ave., ⅛ mile north of NE 210 Rd., Beaver, 08000611.

Bridge No. 650—Federal Aid Highway System Bridge, (New Deal-Era Resources of Kansas MPS) NE 60 Ave., 1/12 mile south of NE 220 Rd., Beaver, 08000612.

Bourbon County

First Presbyterian Church, 308 S. Crawford, Fort Scott, 08000619.

Doniphan County

First National Bank Building, (Highland, Doniphan County, Kansas MPS) 422–424 W. Main St., Highland, 08000609.

Douglas County

Fernand—Strong, House, (Lawrence, Kansas MPS) 1515 University Dr., Lawrence, 08000614.

Linn County

Prescott Rural High School, (Public Schools of Kansas MPS) 202 West 4th St., Prescott, 08000610.

Nemaha County

Lake Nemaha Dam Guardrail, (New Deal-Era Resources of Kansas MPS) 5.12 miles south of Seneca, KS on Hwy 63,Seneca, 08000620.

KANSAS

Phillips County

Agra Lake and Park, (New Deal-Era Resources of Kansas MPS) ¼ mile north of Hwy 36, west edge of Agra, Agra, 08000616.

Reno County

Hamlin Block, (Commercial and Industrial Resources of Hutchinson MPS) 304–306 S. Main, Hutchinson, 08000613.

Saline County

Lee, H.D., Company Complex, 248 N. Santa Fe, Salina, 08000618.

Sedgwick County

Dunbar Theatre, (Theaters and Opera Houses of Kansas MPS) 1007 N. Cleveland,Wichita, 08000615.

Shawnee County

Church of the Assumption and Rectory, 204 SW 8th St., Topeka, 08000607.

Wabaunsee County

Brandt Hotel, 400 Missouri St., Alma, 08000617.

MICHIGAN

Charlevoix County

East Jordan Lumber Company Store Building, 104 Main St., East Jordan, 08000586.
Votruba Block, 112 Main St., East Jordan, 08000585.

Iron County

Central School, 218 W. Cayuga St., Iron River, 08000584.

Marquette County

Marquette and Western Railroad Negaunee Freight Depot, 420 Rail St., Negaunee, 08000587.

Wayne County

Garden Bowl, 4104–4120 Woodward Ave., Detroit, 08000578.
Majestic Theater, 4126–4140 Woodward Ave., Detroit, 08000577.
Newberry, Helen, Nurses Home, 100 E. Willis, Detroit, 08000576.

NEBRASKA

Burt County

Guhl, William and Emma, Farmhouse, 1560 Hwy 77, Oakland, 08000600.
Douglas County Barker Building, 306 S. 15th St., Omaha, 08000605.
Park Avenue Apartment District, 2935 Leavenworth St., 804 Park Ave., 803 S. 30th St., 2934 Leavenworth St., 720 Park Ave., 721 S. 30th St., Omaha, 08000602.
Selma Terrace, 630, 634 and 636 Park Ave., Omaha, 08000603.
Terrace Court, 836, 840 and 842 Park Ave., Omaha, 08000604.

Gage County

Schmuchk, J., Block, 113 N. 5th St., Beatrice, 08000598.

Hall County

Shady Bend Gas Station, Grocery, and Diner, (Lincoln Highway in Nebraska MPS) 3609 E. Hwy 30, Grand Island, 08000601.

NEW MEXICO

Curry County

Hillcrest Park Archway, (New Deal in New Mexico MPS) Intersection of E. 10th and Sycamore St., approximately 2,757′ east of intersection of 10th and Prince St., Clovis, 08000573.

De Baca County

Fort Sumner Cemetery Wall and Entry, (New Deal in New Mexico MPS) 17th and Dunn St., 1 mile north of intersection of 17th and U.S. 60, Fort Sumner, 08000575.

Lea County

Lovington Fire Department Building, (New Deal in New Mexico MPS) 209 S. Love St., Lovington, 08000574.

NEW YORK

Albany County

Clarksville Elementary School, 58 Verda Ln. Clarksville, 08000580.

Dutchess County

Storm—Adriance—Brinckerhoff House, 451 Beekman Rd. East Fishkill, 08000581.

Oneida County

Calvary Episcopal Church (former), 1101 Howard Ave. Utica, 08000595.
Utica Parks and Parkway Historic District, Parkway and Pleasant St. Utica, 08000594.

Rensselaer County

District No. 6 Schoolhouse, Brick Church Rd. and Buck Rd. Brunswick, 08000582.

Rockland County

DePew, Peter, House, 101 Old Rte 204, New City, 08000596.
St. Paul's Episcopal Church, 26 S. Madison Ave. Spring Valley, 08000593.

OHIO

Cuyahoga County

Ansel Road Apartment Buildings Historic District, 1588 Ansel Rd. to 9501 Wade Park Ave. Cleveland, 08000589.

Franklin County

Ealy, George and Christina, House, 6359 Dublin-Granville Rd., New Albany, 08000626.

Hamilton County

Hatch, George, House, 830 Dayton St. Cincinnati, 08000583.
Verona Apartments, 2356 Park Ave., Cincinnati, 08000625.

Mahoning County

Burt Building, 325–327 W. Federal St, Youngstown, 08000588.

Medina County

Medfair Heights Apartment Historic District, 221 N. State St., Medina, 08000624.

Montgomery County

Dayton Canoe Club, 1020 Riverside Dr. Dayton, 08000591.

Ottawa County

Island House, 102 Madison St., Port Clinton, 08000623.

Portage County

Byers, John F., House, 5551 S. Prospect, Ravenna, 08000590.

Summit County

South Main Street Historic District, 156–222 S. Main St., 153–279 S. Main St., Akron, 08000622.

RHODE ISLAND

Newport County

Southern Thames Historic District, Thames St. from Memorial Blvd south to Morton Ave., Newport, 08000592.

SOUTH CAROLINA

Florence County
Florence Downtown Historic District, Portions of W. Evans, North Dargan St., and S. Dargan St, Florence, 08000621.

WISCONSIN

Milwaukee County

Saint James Court Apartments, 831 W. Wisconsin Ave., Milwaukee, 08000606.

[FR Doc. E8–12812 Filed 6–6–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Resource Recovery and Conservation Act

Notice is hereby given that on May 14, 2008, a proposed Consent Judgment in *United States* v. *Asti Holding Corp., et al.*, Civil Action No. CV–02–4749, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under Section 9006 of the Resource Recovery and Conservation Act, as amended, 42 U.S.C. 6991e, on behalf of the U.S. Environmental Protection Agency against Asti Holding Corp., JP Christy, Inc. *a/k/a* ''P.J. Christy, Inc.'', Venice Equities Inc., EM-ESS Petroleum Corp., Northland Marketing Corp., Wheatley Petroleum LLC; 2800 Sunrise Bellmore Corp.; Hartplace Realty, Inc.; Capri Holding Corp.; Benevento Holding Corp.; 122–05 Merrick Corp.; 1676 Flatbush Realty LLC; Brescia Holding Corp.; Ancona Holding Corp.; Bari Holding Corp.; Plus Petroleum, Ltd.; Vidoge, Inc.; Mat Mac Realty; Pisa Holding Corp.; Siena Holding Corp.; 1206 Bellmore Avenue Realty Corp.; 1303 Webster Avenue Realty LLC; Cosenza Holding Corp.; and Joseph Macchia, Jr. (collectively ''defendants''). The United States alleges that defendants violated the regulations governing underground storage tanks (''USTs''), set forth at 40 CFR part 280, at the following twenty-five facilities, which were automobile fueling stations with USTs that defendants have owned and/or operated: (1) 644 Bushwick Avenue, Brooklyn, New York; (2) 122–

21 Rockaway Boulevard, South Ozone Park, New York; (3) 169 Third Avenue, Brooklyn, New York; (4) 586 South Conduit Avenue, Brooklyn, New York; (5) 784 Jamaica Avenue, Brooklyn, New York; (6) 126 Fourth Avenue, Brooklyn, New York; (7) 1463 Eastern Parkway, Brooklyn, New York; (8) 4090 Boston Road, Bronx, New York; (9) 117–01 Springfield Boulevard, Cambria Heights, New York; (10) 9702 Foster Avenue, Brooklyn, New York; (11) 2800 Sunrise Highway, Bellmore, New York; (12) 2425 Merrick Road, Bellmore, New York; (13) 243–02 South Conduit Avenue, Rosedale, New York; (14) 253 Elmont Road, Elmont, New York; (15) 122–05 Merrick Boulevard, Jamaica, New York; (16) 1676 Flatbush Avenue, Brooklyn, New York; (17) 1525 Myrtle Avenue, Brooklyn, New York; (18) 402 Rosevale Avenue, Ronkonkoma, New York; (19) 175 Targee Street, Staten Island, New York; (20) 81–02 Atlantic Avenue, Ozone Park, New York; (21) 153–17 Northern Boulevard, Flushing, New York; (22) 327 Hamilton Avenue, Brooklyn, New York; (23) 1206 Bellmore Avenue, Bellmore, New York; (24) 1303 Webster Avenue, Bronx, New York; and (25) 910 Conklin Street, Farmingdale, New York.

The Consent Judgment requires defendants to pay a civil penalty of $650,000, which was calculated after conducting an ability-to-pay analysis. The Consent Judgment also provides for injunctive relief to be implemented over the next five years at defendants' facilities, consisting of maintenance of ongoing compliance with the UST regulations, and submission of reports demonstrating such compliance.

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 Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to the *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Asti Holding Corp., et al.*, Civil Action No. CV–02–4749, D.J. Ref. No. 90–7–1–07305.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/Consent_Decree.html*. A copy of the proposed Consent Judgment may 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. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–12758 Filed 6–6–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 5–08]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, June 20, 2008, at 10:30 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed Decisions, and Orders in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. *Telephone:* (202) 616–6988.

Mauricio J. Tamargo.

Chairman.

[FR Doc. 08–1336 Filed 6–5–08; 3:24 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in the benefit period eligibility under the EB Program for Alaska.

The following change has occurred since the publication of the last notice regarding the State's EB status:

- May 18, 2008, Alaska triggered ''on'' EB. Alaska's 3-month total unemployment rate rose above the 6.5 percent threshold and equaled 110 percent of the corresponding rate in the prior year. This causes the state to be triggered ''on'' to an EB period beginning June 1, 2008.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 2nd day of June, 2008.

Brent R. Orrell,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–12831 Filed 6–6–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Publication of Unemployment Insurance Program Letters (UIPLs): UIPL 09–08—Immediate Deposit and Withdrawal Standards—Intercept of Refunds of Erroneous Employer Contributions; and UIPL 14–08—Treatment of Fees Collected by State Child Support Agencies

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC). These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 09–08—Immediate Deposit and Withdrawal Standards—Intercept of Refunds of Erroneous Employer Contributions

Recently, the question has arisen whether refunds of erroneously paid employer contributions may be intercepted to pay liabilities the employer owes the state rather than directly refunding the employer. Many state laws currently permit intercept of state income tax refunds or lottery winnings to pay other liabilities owed the state. This UIPL is issued to inform states of the Department's interpretation of Federal law requirements.

States are permitted to intercept the refund rather than directly refund it to the taxpayer.

UIPL 14–08—Treatment of Fees Collected by State Child Support Agencies

States have long been required to deduct and withhold certain child support obligations from UC. In 2005, Section 7310 of the Deficit Reduction Act amended Federal law to mandate that state child support agencies impose an annual fee of $25 for collecting child support obligations under certain circumstances. In response to this mandate, some states have chosen to amend their laws and regulations. This UIPL is issued to assist the states in assuring that any such amendments are consistent with Federal UC law.

Signed in Washington, DC, this 2nd day of June, 2008.

Brent R. Orrell,

Acting Assistant Secretary, Employment and Training Administration.

Appendices

Appendix A

January 29, 2008

Advisory: Unemployment Insurance Program Letter No. 9–08.

To: State Workforce Agencies.

From: Douglas F. Small, Deputy Assistant Secretary.

Subject: Immediate Deposit and Withdrawal Standards—Intercept of Refunds of Erroneous Employer Contributions.

1. *Purpose.* To provide guidance regarding the Department of Labor's (Department's) interpretation of Federal law regarding the intercept of refunds of erroneous employer contributions to offset other employer liabilities to the state.

2. *References.* Sections 3304(a)(4), and 3306(h) of the Federal Unemployment Tax Act (FUTA); Section 303(a)(5), of the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 45–89.

3. *Background.* Section 3304(a)(4), FUTA, requires, as a condition of employers in a state receiving credit against the Federal unemployment tax, that:

> all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for *refunds of sums erroneously paid into such fund* * * * [Emphasis added.]

The same withdrawal standard is found in Section 303(a)(5), SSA, as a condition for a state to receive administrative grants.

Recently, the question has arisen whether refunds of erroneously paid employer contributions may be intercepted to pay liabilities the employer owes the state rather than directly refunded to the employer. Many state laws currently permit intercept of state income tax refunds or lottery winnings to pay other liabilities owed the state. This UIPL is issued to inform states of the Department's interpretation of Federal law requirements.

4. *Intercept of Refunds.* Federal law authorizes the state unemployment compensation (UC) agency to ''refund'' the amounts erroneously paid by employers into the state unemployment fund. Federal law does not specify that the refund must be made directly to the employer. As a result, the state UC agency may intercept the refund and apply it to obligations the employer may owe the state.

The Department notes that permitting the UC program to participate in state-wide intercept programs may enhance the UC fund if the funds intercepted by the state through other sources are permitted to be used to satisfy past due employer contributions to the unemployment fund.

Unlike refunds of amounts erroneously paid by employers, Federal law requires the payment of compensation to the individual whose unemployment is being compensated. Section 3306(h), FUTA, defines compensation to mean ''cash benefits *payable to* individuals with respect to *their* unemployment.'' (Emphasis added.) As explained in UIPL 45–89, under the withdrawal standard:

> all unemployment compensation must be paid directly, as a matter of right, to the individual whose unemployment is being compensated, except for some narrowly limited statutory exceptions. * * * To deduct compensation to pay debts, or to otherwise provide for payment to someone other than the claimant personally, would defeat the intent and purpose of the program.

Thus, Federal law requires a state to limit withdrawals from its unemployment fund to compensation paid directly to the individual. However, there are a number of statutory exceptions, including one permitting withdrawals to pay refunds of sums erroneously paid into the fund. This exception for refunds does not require direct payment.

5. *Action.* State administrators should distribute this advisory to appropriate staff.

6. *Inquiries.* Questions should be addressed to your Regional Office.

Appendix B

March 12, 2008

Advisory: Unemployment Insurance Program Letter No. 14–08.

To: State Workforce Agencies.

From: Brent R. Orrell, Acting Assistant Secretary.

Subject: Treatment of Fees Collected by State Child Support Agencies.

1. *Purpose.* To provide guidance regarding the application of Federal unemployment compensation (UC) law to the mandatory collection of fees related to child support collection.

2. *References.* Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Sections 303(e)(2), 454(6)(B)(ii), and 457(a)(3) of the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 45–89; and Section 7310 of the Deficit Reduction Act of 2005 (DRA), Public Law 109–171.

3. *Background.* States have long been required to deduct and withhold certain child support obligations from UC. (See Section (303)(e)(2), SSA, and UIPL No. 45–89.) In 2005, Section 7310 of the DRA amended Federal law to mandate that state child support agencies impose an annual fee of $25 for collecting child support obligations under certain circumstances. In response to this mandate, some states have chosen to amend their laws and regulations. This UIPL is issued to assist the states in assuring that any such amendments are consistent with Federal UC law.

4. *Federal Law.* Section 3304(a)(4), FUTA, requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that—

> All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund. * * *

Section 303(a)(5), SSA, provides a similar requirement as a condition for a state to receive administrative grants. These provisions, known as the ''withdrawal standard,'' mean that money may only be withdrawn from the unemployment fund for payment of ''compensation,'' with certain specified exceptions. Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' One exception to the withdrawal standard is found in Section 303(e)(2)(A), SSA, which requires a state UC agency to ''deduct and withhold from any [UC] otherwise payable to an individual * * *'' amounts to pay ''child support obligations'' pursuant to part D of Title IV of the SSA.

Section 7310 of the DRA added Section 454(6)(B)(ii) to the SSA, pertaining to state plans for child support, to require that, for each case where the custodial parent ''has never received'' Temporary Assistance for Needy Families, the state child support agency is to ''impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State *from support collected*, * * * paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds. * * *'' (Emphasis added.) The amendment also added Section 457(a)(3), SSA, to provide that ''the State shall distribute to the family the portion of the amount so collected that remains *after withholding any fee.* * * *'' (Emphasis added.) The DRA did not amend Federal UC law.

5. *Interpretation.* Exceptions to the withdrawal standard are narrowly construed. Section 3 of UIPL No. 45–89 explained ''that deductions may be made only when authorized by Federal law.'' Paragraph 4.b of the UIPL added that, with specified exceptions, state law must provide that UC benefit payments ''be exempt from levy, execution, attachment, order for the payment of attorneys fees or court costs, or any other remedy for the collection of public or private debts, prior to receipt by the claimant.'' Therefore, absent an explicit statutory authorization, states may not deduct and withhold a processing fee from UC. Since the DRA did not amend Federal UC law, states may not deduct and withhold a processing fee from a claimant's UC when deducting child support.

The DRA did, however, amend Federal law to provide that ''collected'' child support obligations may be used to pay the mandatory fee. As a result, after the full amount of the child support obligation has been deducted from a claimant's UC and sent to the state child support agency, the child support agency may, consistent with Section 7310, DRA, withhold the processing fee before sending the balance of the child support collected to the child support recipient.

States are reminded that, when crafting legislation or regulations to implement the provisions of the DRA, care should be taken to ensure the requirements of the withdrawal standard, as interpreted in this UIPL, are met. In short, a state law or regulation may not authorize the payment of the child support fee directly from UC, but it may authorize the payment of the fee from child support collected by the state child support agency consistent with Section 303(e)(2), SSA.

6. *Action Required.* State administrators are requested to review existing state law provisions and agency practices involving the child support intercept program to ensure consistency with Federal UC law requirements.

[FR Doc. E8–12810 Filed 6–6–08; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 08–06]

Notice of the June 17, 2008 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Tuesday, June 17, 2008.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss and consider country-specific compact development issues and compact implementation issues affecting a number of MCC's countries; and certain administrative matters.

The agenda items are expected to involve the discussion of classified information and the meeting will be closed to the public.

Dated: June 5, 2008.

William G. Anderson, Jr.,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 08–1335 Filed 6–5–08; 12:53 pm]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used by individuals applying for a research card which is needed to use original archival records in a National Archives and Records Administration facility. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 8, 2008 to be assured of consideration.

ADDRESSES: *Comments should be sent to:* Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Researcher Application.

OMB number: 3095–0016.

Agency form number: NA Form 14003.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 18,487.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,465 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: June 4, 2008.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E8–12997 Filed 6–6–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 9, 2008. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2009–007

1. *Applicant:* Erica Wikander, Environmental Officer, Quark Expeditions, Inc., 47 Water Street, Norwalk, CT 06854.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area (ASPA). The applicant plans tourist visits by passengers onboard cruises of the *Kapitan Khlebnikov* to the historic huts in the Ross Sea area of Antarctica. The historic huts are located in the following Antarctic Specially Protected Areas (ASPA): Cape Evans (ASPA 154); Cape Royds (ASPA 156); Hut Point (ASPA 157); Cape Adare (ASPA 159); and Cape Hallett (ASPA 106). Expedition staff will ensure that the Management Plans for each of the sites are followed. There will be no more than 100 passengers at a time at the sites.

Location

Cape Evans (ASPA 154); Cape Royds (ASPA 156); Hut Point (ASPA 157); Cape Adare (ASPA 159); and Cape Hallett (ASPA 106).

Dates

March 15, 2008 to March 15, 2013.

Permit Application No. 2009–008

2. *Applicant:* Brian Stone, Deputy Division Director, Antarctic Infrastructure & Logistics, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area (ASPA). The applicant plans educational visits by members of the U.S. Antarctic Program to the historic huts in the Ross Sea area of Antarctica. The historic huts are located in the following Antarctic Specially Protected Areas (ASPA): Cape Evans (ASPA 154); Cape Royds (ASPA 156); Hut Point (ASPA 157); and Cape Adare (ASPA 159). All visits will be conducted in accordance with the management plan for the specific sites.

Location

Cape Evans (ASPA 154); Cape Royds (ASPA 156); Hut Point (ASPA 157); and Cape Adare (ASPA 159).

Dates

October 1, 2008 to September 30, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E8–12760 Filed 6–6–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions helicopter flight seeing for the Motor Vessel, Octopus for the 2006–2007 austral summer season. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within July 9, 2008. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for Quark Expeditions Inc.'s vessels, *Akademik Sergey Vavilov, Akademik Ioffe*, and *Clipper* Adventurer for operation of remote field support and emergency provisions for passenger landings in Antarctica. On each landing of passengers emergency gear is taken ashore in case the weather deteriorates and passengers are required to stay ashore for an extended period. Emergency provisions include: white gas cooking fuel, car type battery for long-range VHF radio communications, food, sleeping bags, and tents. All waste products (paper, food, and human wastes) will be removed from Antarctica and properly disposed in an appropriate port of disembarkation. In the event of an accidental fuel spill, all contaminated snow and or soil will be removed. in accordance with Antarctic waste regulations.

Application for the permit is made by: Erica Wikander, Environmental Officer, Quark Expeditions, Inc., 47 Water Street, Norwalk, CT 06854.

Location: Antarctic Peninsula.

Dates: October 1, 2008 to March 31, 2013.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–12786 Filed 6–6–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–016]

Constellation Generation Group, LLC, and Unistar Nuclear Operating Services, LLC; Acceptance for Docketing of an Application for Combined License for Calvert Cliffs Nuclear Power Plant Unit 3

By four letters dated March 14, 2008, as supplemented by a letter dated May 15, 2008, Constellation Generation Group, LLC, and UniStar Nuclear Operating Services, LLC (CGG and UniStar) submitted Part 2 of their application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for one U.S. EPR pressurized water reactor in accordance with the requirements contained in 10 CFR Part 52 ''Licenses, Certifications and Approvals for Nuclear Power Plants.'' This reactor is identified as Calvert Cliffs Nuclear Power Plant, Unit 3 and is to be located in Lusby in Calvert County, Maryland.

CGG and UniStar previously submitted Part 1 of this application by letters dated July 13 and December 14, 2007, as supplemented by letters dated July 16, August 2, September 11, and October 30, 2007, and January 14 and March 3, 2008, in accordance with the requirements contained in 10 CFR Parts 2 and 52. The partial application included the environmental report (ER) as well as additional information that must accompany the first part of any COL application as required by 10 CFR 2.101(a)(5). Part 1 was accepted for review and docketed by the NRC on January 25, 2008 (ML080160547), and with the docketing of Part 2, the application is complete.

Notices of receipt and availability of this application were previously published in the **Federal Register** (72 FR 45832) on August 15, 2007, and (73 FR 24321) on May 2, 2008.

The NRC staff has determined that CGG and UniStar have submitted information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 52 that is acceptable for docketing. The Docket Number established for Unit 3 is 5200016.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Informal Hearing Procedures for NRC Adjudications,'' of 10 CFR Part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff held a public scoping meeting on March 19, 2008.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the proceeding on this application.

For reference purposes, information regarding the U.S. EPR design referenced by this COL application can be found on the NRC Web site at *http://www.nrc.gov/reactors/new-licensing/design-cert/epr.html.*

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone

at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 3rd day of June 2008.

For the Nuclear Regulatory Commission.

John Rycyna,

Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–12844 Filed 6–6–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Operations, Inc; Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.75(f)(3), for Facility Operating License No. DPR–35, issued to Entergy Nuclear Operations, Inc. (Entergy or the licensee), for operation of Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, MA. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Entergy to submit the Pilgrim site-specific preliminary decommissioning cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. This is an exemption to the schedule requirement of 10 CFR 50.75(f)(3) which requires that a preliminary decommissioning cost estimate be submitted to the NRC at or about 5 years prior to the projected end of operations. The current expiration date of Pilgrim operating license is June 8, 2012.

The proposed action is in accordance with the licensee's application dated February 28, 2008.

The Need for the Proposed Action

The proposed exemption to the schedule requirement of 10 CFR 50.75(f)(3) is needed to allow Entergy to submit the Pilgrim site-specific preliminary cost estimate, including an up-to-date assessment of major factors that have the potential to impact the cost of decommissioning by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. The exemption request applies to the timing of the submission of the preliminary cost estimate and did not request an exemption from any of the information requirements of the regulation.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation (SE) of the proposed action and concludes that the preliminary decommissioning cost estimate for Pilgrim is not likely to be higher than the current minimum formula amount to such a degree that a problematic underfunding situation will exist that would require a full 5-year period to rectify. The details of the staff's SE will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Pilgrim, dated January 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 2008, the NRC staff consulted with the Massachusetts State official of the Massachusetts Emergency Management Agency regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 28, 2008, Agencywide Documents Access and Management System (ADAMS) accession number ML081000176. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of May 2008.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–12893 Filed 6–6–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between April 1, 2008, and April 30, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

Revocation

Schedule A 213.3170(a), Millennium Challenge Corporation

All positions established to create the Millennium Challenge Corporation. No new appointments may be made under this authority after September 30, 2007. Effective 4–26–2008.

Schedule B

No Schedule B appointments were approved for April 2008.

Schedule C

The following Schedule C appointments were approved during April 2008.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS00151 Deputy Press Secretary to the Associate Director for Communications. Effective April 04, 2008.

BOGS80007 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective April 16, 2008.

Section 213.3304 Department of State

DSGS69729 Special Advisor to the Women's Rights Coordinator. Effective April 8, 2008.

DSGS69731 Staff Assistant to the Counselor. Effective April 10, 2008.

DSGS69732 Staff Assistant to the Director, Policy Planning Staff. Effective April 11, 2008.

DSGS69733 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective April 16, 2008.

DSGS69737 Special Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs. Effective April 18, 2008.

DSGS69738 Public Affairs Specialist (Speechwriter) to the Deputy Assistant Secretary. Effective April 22, 2008.

DSGS69740 Special Assistant to the Under Secretary for Global Affairs. Effective April 24, 2008.

DSGS69739 Policy Advisor and Chief Speechwriter to the Deputy Director (Principal). Effective April 28, 2008.

DSGS69736 Deputy Director to the Principal Deputy Assistant Secretary. Effective April 29, 2008.

Section 213.3306 Department of Defense

DDGS17147 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Global Security Affairs). Effective April 11, 2008.

DDGS17151 Special Assistant to the Secretary of Defense for Protocol. Effective April 16, 2008.

DDGS17152 Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective April 18, 2008.

DDGS17154 Special Assistant to the Director, Department of Defense Office of Legislative Counsel. Effective April 18, 2008.

DDGS17150 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective April 24, 2008.

DDGS17146 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective April 29, 2008.

DDGS17153 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective April 29, 2008.

DDGS17155 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective April 29, 2008.

Section 213.3310 Department of Justice

DJGS00087 Senior Policy Advisor to the Director of the Violence Against Women Office. Effective April 07, 2008.

DJGS00090 Chief of Staff and Counsel to the Assistant Attorney General. Effective April 18, 2008.

DJGS00111 Deputy Chief of Staff to the Assistant Attorney General. Effective April 24, 2008.

DJGS00095 Confidential Assistant to the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives. Effective April 29, 2008.

Section 213.3311 Department of Homeland Security

DMGS00747 Policy Advisor to the Deputy Administrator, Federal Emergency Management Agency. Effective April 11, 2008.

DMGS00749 Confidential Assistant to the Counselors to the Secretary. Effective April 18, 2008.

DMGS00748 Confidential Assistant to the Director, Bureau of Citizenship and Immigration Services. Effective April 24, 2008.

Section 213.3312 Department of the Interior

DIGS01122 Special Assistant to the White House Liaison. Effective April 16, 2008.

DIGS01123 Science Advisor to the Assistant Secretary for Water and Science. Effective April 29, 2008.

DIGS01124 Media Relations Specialist to the Director, Office of Communications. Effective April 29, 2008.

Section 213.3313 Department of Agriculture

DAGS00934 Director of Native American Programs to the Assistant Secretary for Congressional Relations. Effective April 01, 2008.

Section 213.3314 Department of Commerce

DCGS60664 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services. Effective April 04, 2008.

DCGS00664 Special Assistant to the Director, Advocacy Center. Effective April 09, 2008.

DCGS00418 Special Assistant to the Under Secretary for Economic Affairs. Effective April 11, 2008.

DCGS00460 Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 24, 2008.

DCGS00476 Deputy Director, Executive Secretariat to the Director, Executive Secretariat. Effective April 24, 2008.

DCGS60001 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective April 24, 2008.

DCGS60512 Senior Advisor to the Under Secretary of Commerce for Industry and Security. Effective April 24, 2008.

Section 213.3315 Department of Labor

DLGS60239 Special Assistant to the Director of Scheduling. Effective April 15, 2008.

Section 213.3316 Department of Health and Human Services

DHGS60570 Confidential Assistant (Advance) to the Deputy Director for Advance. Effective April 18, 2008.

DHGS60029 Special Assistant to the Assistant Secretary for Public Affairs. Effective April 29, 2008.

Section 213.3317 Department of Education

DBGS00661 Special Assistant to the Director, Scheduling and Advance Staff. Effective April 09, 2008.

DBGS00665 Confidential Assistant to the Deputy Assistant Secretary. Effective April 11, 2008.

DBGS00298 Confidential Assistant to the Deputy Chief of Staff for Policy and Programs. Effective April 15, 2008.

Section 213.3331 Department of Energy

DEGS00646 Special Assistant to the Chief Financial Officer. Effective April 18, 2008.

Section 213.3332 Small Business Administration

SBGS00661 Policy Analyst to the Assistant Administrator for Policy and Strategic Planning. Effective April 01, 2008.

SBGS00656 Congressional Liaison to the Assistant Administrator for Congressional and Legislative Affairs. Effective April 02, 2008.

SBGS00659 Special Assistant to the Associate Administrator for Field Operations the Office of Field Operations. Effective April 02, 2008.

SBGS00658 Speechwriter to the Deputy Associate Administrator for the Office of Communications and Public Liaison. Effective April 8, 2008.

Section 213.3337 General Services Administration

GSGS50120 Public Affairs Specialist to the Deputy Associate Administrator for Communications. Effective April 8, 2008.

Section 213.3346 Selective Service System

SSGS03464 Management Analyst to the Director Selective Service System. Effective April 04, 2008.

Section 213.3348 National Aeronautics and Space Administration

NNGS15001 Special Assistant to the Chief Financial Officer. Effective April 02, 2008.

Section 213.3360 Consumer Product Safety Commission

PSGS60001 Special Assistant (Legal) to the Commissioner. Effective April 11, 2008.

Section 213.3384 Department of Housing and Urban Development

DUGS60595 Congressional Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 09, 2008.

DUGS60326 Staff Assistant to the Assistant to the Secretary/White House Liaison. Effective April 24, 2008.

Section 213.3391 Office of Personnel Management

PMGS30249 Congressional Relations Officer to the Director, Office of Congressional Relations. Effective April 7, 2008.

Section 213.3394 Department of Transportation

DTGS60451 Director of Communications to the Administrator. Effective April 02, 2008.

DTGS60202 Special Assistant to the Administrator. Effective April 15, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–12826 Filed 6–6–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an International Roundtable on Interactive Data for Public Financial Reporting Open Meeting on Tuesday, June 10, 2008, from 9:30 a.m. to 12 p.m.

The Roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC. The Roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

Proposed topics to be discussed at the Roundtable include the experience in countries that have already adopted interactive data; the views of countries currently considering adopting interactive data; and the perspectives from analysts and users of financial information about how best to take advantage of the capabilities of interactive data.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 4, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12926 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on June 12, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for June 12, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 4, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12927 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57903; File No. SR–NYSE–2008–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Exclude From its Earnings Standard Gains or Losses from Extinguishment of Debt Prior to Maturity on a Three-Month Pilot Basis

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (''Manual''). The amendment will enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The proposed amendment was originally filed with the Commission as a pilot program (''Pilot Program'') [5] which has since expired and this filing seeks to renew the Pilot Program for an additional three months. The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56195 (August 2, 2007), 72 FR 44904 (August 9, 2007) (SR–NYSE–2007–71).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The adjustment will relate only to gains or losses incurred in the three-year period under examination for purposes of the earnings standard. The proposed amendment was originally filed with the Commission for a six-month period as a Pilot Program.[6] The Pilot Program has expired and this filing seeks to renew the Pilot Program for an additional three months.

Prior to the promulgation of Statement of Financial Accounting Standards No. 145 (''SFAS No. 145'') in 2002, Financial Accounting Standards Board Statement No. 4 (''FASB No. 4'') required that gains and losses from the extinguishment of debt prior to its maturity that were included in the determination of net income be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. SFAS No. 145 rescinded FASB No. 4 and, as a result, gains or losses in connection with the extinguishment of debt prior to its maturity are now generally included in the calculation of operating earnings under generally accepted accounting principles (''GAAP''). As a result, some companies that would not otherwise be qualified to list may qualify as a result of the inclusion in pre-tax income of gains from the extinguishment of debt prior to its maturity. In addition, some prospective listed companies whose operating earnings would have met the requirements of the Exchange's pre-tax earnings test prior to 2002 are now not qualified to list as they are required to include losses from the extinguishment of debt prior to its maturity in pre-tax income. In the Exchange's experience, these gains and losses are primarily non-cash in nature. The gains generally represent the accelerated accrual of original issue discount, while the losses generally represent the remaining unamortized portion of costs incurred at the time of initial borrowing.

[6] *Id.*

The Exchange believes that it is appropriate to return to its pre-2002 approach of excluding gains and losses from debt extinguishment from pre-tax earnings as calculated for purposes of its earnings standard. The purpose of the earnings standard is to determine the suitability for listing of companies on a forward-looking basis in light of a sustained demonstration of strong earnings. As such, the Exchange does not believe that it is relevant to include in pre-tax earnings gains and losses from the extinguishment of debt prior to its maturity that are principally nonrecurring in nature. Additionally, the Exchange notes that the analyst community also routinely exclude these gains and losses from their analyses in making recommendations as to the desirability of investing in companies' publicly-traded equity securities. The Exchange believes that adjusting company earnings for gains and losses from the extinguishment of debt prior to its maturity is consistent with the adjustments that are currently permitted under Section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

As with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. Such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that it provides for an adjustment to list applicants' historical financial results that is consistent with other adjustments already permitted under the Exchange's earnings standard and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is consistent with other adjustments the Exchange makes when evaluating applicants on a forward-looking, post-IPO basis under the existing earnings standard in Section 102.01C(I) of the Listed Company Manual, and the proposal will take effect as a Pilot Program, allowing the Commission to evaluate the suitability of the proposal during the pilot period. The Commission designates the proposal to become effective and operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–43 and should be submitted on or before June 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12796 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57904; File No. SR–NYSE–2008–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Discontinue Its Policy of Requiring Listed Companies Whose Charters Contain Transfer Restrictions To Amend Their Charters To Include Language Specifying That Those Restrictions Do Not Apply to Public Market Transactions

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to discontinue its policy of requiring listed companies whose charters contain transfer restrictions to amend their charters to include language specifying that those restrictions do not apply to public market transactions.

The text of the proposed rule change is available on the Exchange's Web site, *http://www.nyse.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to discontinue its policy of requiring listed companies whose charters contain transfer restrictions to amend their charters to include language specifying that those restrictions do not apply to public market transactions. The change in policy will apply to companies listing in connection with their initial public offerings, as well as companies transferring from other markets.

The Exchange has a long-standing policy of prohibiting the inclusion by any listed company in its charter of restrictions on transfers of the company's equity securities. Typically such provisions purport to enable the company to void transactions involving the transfer of the company's shares to purchasers who are designated prohibited holders. A purchaser is generally deemed to be a prohibited holder because it owns more than a specified threshold amount of the company's equity securities, or will do so if the prohibited transaction is consummated. Companies impose transfer restrictions for a variety of reasons, but they are most commonly found in the context of (i) real estate investment trusts (''REITs'') that wish to avoid losing their REIT status on the basis that a shareholder owns more than 5% of the company's common equity or (ii) companies recently emerged from bankruptcy whose net operating loss (''NOL'') assets may be impaired as a result of changes in ownership levels by any shareholder owning more than 5% of the common equity securities. The charter will typically provide that the company will have the right to seize any shares bought by a prohibited purchaser and place them in trust to be sold for the benefit of that prohibited purchaser. The Exchange is generally not concerned with the application of this type of arrangement as it does not affect the finality of the sale as it relates to the seller. However, the Exchange is concerned if the language of the charter may be read as giving the company the ability to unwind the transaction or prohibit sellers from transferring to any willing purchaser in Exchange transactions. To that end, the Exchange requires companies that have transfer restrictions in their charters to include the following provision:

> *NYSE Transactions.* Nothing in this Article [ ] shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any provision of this Article [ ] and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article [ ].

The Exchange believes that it is generally unproblematic for a company listing at the time of its initial public offering to amend its charter to insert the Exchange's required language, as such companies are typically closely held and can easily amend the charter by written consent prior to listing. However, to the Exchange's knowledge, none of the other national securities exchanges impose such a requirement and, as a consequence, a company transferring from another market will typically need to secure a vote from its public shareholders to amend the charter. As an accommodation, the Exchange allows transferring companies to list on the basis of a commitment to have a vote with respect to adding the required language to the charter at the company's next scheduled annual meeting. Companies are frequently uncomfortable with this requirement, as they believe it is confusing to shareholders and is unnecessary from a practical standpoint. As such, the Exchange believes the continuation of this policy by it represents a barrier to effective competition with other markets that do not apply such a policy.

The Exchange has reviewed its transfer restrictions policy and concluded that it is no longer necessary in light of the structure of the modern securities markets. Because all exchange transactions are between anonymous street name accounts, it is impossible for a listed company to identify in advance a proposed transferee as a prohibited holder and block the transaction in advance of its execution. The company will only become aware of such a transfer when the purchaser files a Form 13D or 13G, at which time the company may exercise any right it may have to seize the shares and sell them. Notwithstanding the language contained in certain charters to the effect that prohibited transfers are ''void,'' the Exchange does not believe that it is feasible for a listed company to require the unwinding of a prohibited transfer.[5] As such, the Exchange does not believe that requiring companies to include in their charters language specifying that any transfer restrictions do not apply to public market transactions provides any meaningful or necessary protection to sellers and believes that it is appropriate to discontinue this policy. The Exchange believes that discontinuing this policy will not result in any substantially greater likelihood that companies will be able to cause the unwinding of public market transactions in their equity securities. While it may be less burdensome in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange expresses no opinion as to the legal enforceability of transfer restriction provisions in company charters, which is a matter of the law of the jurisdiction of incorporation of the company in question.

many cases for companies undertaking an IPO to comply with the existing policy than is the case for companies that are already public, the Exchange believes that it is appropriate to end the policy with respect to all companies including IPOs, as it believes that the policy is unnecessary for the reasons stated above and it places the Exchange at a potential competitive disadvantage to other markets that do not impose such a requirement on companies listing at the time of their IPO.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change in policy will particularly promote competition among exchanges, as it will eliminate a potential impediment to the transfer of the listing of certain companies from other markets to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because eliminating the NYSE's longstanding transfer restrictions policy should not have any effect on the settlement of public market transactions on the Exchange. The Commission designates the proposal to become effective and operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–40 and should be submitted on or before June 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12797 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57905; File No. SR–NYSE–2008–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust the Earnings of Companies for Purposes of Its Earnings Standard by Reversing the Income Statement Effects of Changes in Fair Value of Financial Instruments Extinguished at the Time of Listing on a Three Month Pilot Basis

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (''Manual''). The amendment will enable the Exchange to adjust the earnings of companies by reversing the income statement effects for all periods of any changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing. The proposed amendment was originally filed with the Commission as a pilot program (''Pilot Program''),[5] which has since expired and this filing seeks to renew the Pilot Program for an additional three months. The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an IPO by reversing the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing. The proposed amendment was originally filed with the Commission for a six month period as a Pilot Program.[6] The Pilot Program has expired and this filing seeks to renew the Pilot Program for an additional three months.

Nonpublic companies engaging in pre-IPO financings often raise capital through the sale of preferred stock and warrants to purchase preferred stock. Preferred stock and preferred stock warrants are also sometimes issued by pre-IPO companies to service providers in lieu of cash compensation. Typically, at the time of the company's IPO, the preferred stock is converted into common stock and the preferred stock warrants are automatically exercised and the underlying preferred stock is converted into common stock of the company. In some cases, companies may also redeem some or all of the outstanding preferred stock with a portion of the proceeds from the IPO.

Some pre-IPO companies have determined that they must record in earnings changes in the fair value of certain financial instruments classified as liabilities. As the fair value of a pre-IPO company's equity often increases as the company gets closer to its IPO, many companies have had to record significant reductions in earnings associated with increases in the fair value of the preferred stock warrant liability. In certain cases, the impact on the company's earnings as reported under generally accepted accounting principles (''GAAP'') of the preferred stock liability causes otherwise qualified companies to fail to qualify under the Exchange's earnings standard. Under the Exchange's current rules, the Exchange cannot list these companies even though the preferred stock warrant liability will be extinguished at the time of the IPO by conversion into common stock or redemption out of the proceeds of the IPO.

The Exchange believes that it is appropriate to exclude the effects of changes in fair value of a financial instrument classified as a liability from a company's earnings where the financial instrument is being retired at the time of a company's listing either out of the proceeds of a concurrent offering or by conversion into common stock at the time of listing. The Exchange believes that adjusting company earnings for charges arising out of the changes in fair value of financial instruments that are retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock at the time of listing is consistent with the adjustments that are currently permitted under Section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

As with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. Such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56290 (August 20, 2007), 72 FR 49033 (August 27, 2007) (SR–NYSE–2007–75).

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that it provides for an adjustment to list applicants' historical financial results that is consistent with other adjustments already permitted under the Exchange's earnings standard and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is consistent with other adjustments the Exchange makes when evaluating applicants on a forward-looking, post-IPO basis under the existing earnings standard in Section 102.01C(I) of the Listed Company Manual, and the proposal will take effect as a Pilot Program, allowing the Commission to evaluate the suitability of the proposal during the pilot period. The Commission designates the proposal to become effective and operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–44 and should be submitted on or before June 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12798 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57911; File No. SR–NASDAQ–2008–043]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Definition of ''Non-Industry Director'' in the By-Laws of the NASDAQ OMX Group, Inc. and the NASDAQ Stock Market LLC

June 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2008, The NASDAQ Stock Market LLC (the ''NASDAQ Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NASDAQ Exchange. On May 28, 2008, the NASDAQ Exchange filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASDAQ Exchange is filing this proposed rule change relating to the amendment of its By-Laws and the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed rule change will be implemented upon approval by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized*.[4]

By-Laws of The NASDAQ OMX Group, Inc.

Article I Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a)–(l) No change.

(m) ''Non-Industry Director'' or ''Non-Industry committee member'' means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer, *director*, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary; or (3) any other individual who would not be an Industry Director or Industry committee member;

(n)–(o) No change.

* * * * *

By-Laws of The NASDAQ Stock Market LLC

These By-Laws have been established as the By-laws of The NASDAQ Stock Market LLC, a Delaware limited liability company (the ''Company''), pursuant to the First Amended Limited Liability Company Agreement of the Company, dated as of November 30, 2007 (as amended from time to time, the ''LLC Agreement''), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provision of the LLC Agreement shall control.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the LLC Agreement.

Article I Definitions

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a)–(u) No change.

(v) ''Non-Industry Director'' means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, *director*, or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry Director.

(w)–(ee) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ Exchange and NASDAQ OMX are proposing to amend their respective By-Laws to clarify that a director of an issuer of securities may appropriately be considered an ''issuer representative'' for purposes of provisions of the By-Laws that require issuer representation on the respective Boards of Directors of the companies. Specifically, Section 4.3 of the NASDAQ OMX By-Laws provides that ''[t]he number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives.'' Similarly, Article III, Section 2(a) of the NASDAQ Exchange By-Laws provides that ''[t]he number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.''

The term ''issuer representative'' is not defined by the By-Laws of either company. Article I of the NASDAQ OMX By-Laws, however, will provide (assuming approval of the Prior By-Law Filing) that '''Non-Industry Director' or 'Non-Industry committee member' means a Director (excluding the Staff Directors)[5] or committee member who is (1) A Public Director or Public committee member;[6] (2) an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary;[7] or (3) any other individual who would not be an Industry Director or Industry committee member.''[8] Similarly, the NASDAQ Exchange By-Laws define ''Non-Industry Director'' to mean ''a Director (excluding Staff Directors) who is (i) A Public Director; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry Director.''[9]

In light of these definitions, it might be contended that the definition of Non-Industry Director should inform the interpretation of the issuer

[3] Amendment No. 1 replaces and supersedes the original filing.

[4] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com* and also reflects amendments to the NASDAQ OMX By-Laws proposed in Securities Exchange Act Release No. 57761 (May 1, 2008), 73 FR 26182 (May 8, 2008) (SR–NASDAQ–2008–035) (the ''Prior By-Law Filing'').

[5] A ''Staff Director'' is defined as a NASDAQ OMX officer who is serving as a Director of NASDAQ OMX.

[6] A ''Public Director'' or ''Public committee member'' means ''a Director or committee member who has no material business relationship with a broker or dealer, [NASDAQ OMX] or its affiliates, or [the Financial Industry Regulatory Authority, Inc. (''FINRA'')].''

[7] Currently, this provision refers to the NASDAQ Exchange rather than ''any Self-Regulatory Subsidiary'' but is otherwise substantively identical. The term ''Self-Regulatory Subsidiary'' anticipates the acquisition by NASDAQ OMX of several additional self-regulatory organizations and is therefore defined as ''each of (i) [the NASDAQ Exchange]; (ii) upon the closing of their acquisition by [NASDAQ OMX], Boston Stock Exchange, Incorporated and Boston Stock Exchange Clearing Corporation; and (iii) upon the closing of their acquisition by [NASDAQ OMX], Philadelphia Stock Exchange, Inc. and Stock Clearing Corporation of Philadelphia.''

[8] The NASDAQ Exchange believes it is not necessary to quote the lengthy definitions of ''Industry Director'' and ''Industry committee member'' here. In general, the definition covers directors or committee members with material ties to broker-dealers.

[9] The capitalized terms used in the definition are defined in a manner similar to the comparable terms in the NASDAQ OMX By-Laws.

representative requirement and that therefore an issuer representative must be an officer or employee of an issuer listed on a particular exchange. The NASDAQ Exchange does not believe that such a constrained interpretation is warranted, however, in light of either the existing language of the By-Laws or the policies underlying them. Rather, the NASDAQ Exchange believes that a director of an issuer who is not also its officer or employee would be fully familiar with the concerns of public companies and could therefore adequately represent the issuer community in the deliberations of the NASDAQ Exchange and NASDAQ OMX Boards. Moreover, with regard to the NASDAQ Exchange Board, the NASDAQ Exchange notes that Section 6(b)(3) of the Act [10] requires the inclusion on the NASDAQ Exchange Board of at least one director ''representative of issuers and investors'' but does not define this requirement and that other self-regulatory organizations appear to satisfy this requirement through election of persons that may serve as directors on other boards. Indeed, the NASDAQ Exchange believes that the requirement of a director to represent issuers and investors implies that a director of a public company would be well suited to fit this role, because the business of the issuer is managed under the direction of its board and because the director is the fiduciary of investors in the issuer.

Nevertheless, to make it clear that the definition of Non-Industry Director does not serve as an impediment to a director of an issuer serving as an issuer representative, NASDAQ OMX and the NASDAQ Exchange propose to amend the definitions of Non-Industry Director to insert appropriate references to the director of an issuer.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(1) and (b)(3) of the Act,[12] in particular, in that the proposal enables the NASDAQ Exchange and NASDAQ OMX to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to provide that one or more directors of the NASDAQ Exchange shall be representative of issuers and investors and not associated with a member of the exchange, broker, or dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NASDAQ Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–043 and should be submitted on or before June 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12799 Filed 6–6–08; 8:45 am]

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[10] 15 U.S.C. 78f(b)(3).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(1) and (3).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57902; File No. SR–Amex–2008–45]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange-Traded Note Transaction Fees

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2008, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to apply the Exchange-Traded Fund and Trust-Issued Receipts Fee Schedule (''ETF Fee Schedule'') to transactions in exchange-traded notes (''ETNs'').

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to apply the ETF Fee Schedule to transactions in ETNs beginning June 1, 2008.

ETNs are securities listed under Sections 107D (Index-Linked Securities), 107E (Commodity-Linked Securities), 107F (Currency-Linked Securities), 107G (Fixed Income-Linked Securities), 107H (Futures-Linked Securities), or 107I (Combination-Linked Securities) of the Amex *Company Guide* that offer redemption at least weekly to holders of such securities. In February 2008, the Commission approved an Exchange proposal to permit ETNs to be subject to the AEMI trading rules specific to exchange-traded funds (''ETFs'').[3] Currently, ETNs are subject to the transaction charges for equities traded on the Exchange. The instant proposal would provide that ETNs be subject to the identical fees that currently apply to ETFs traded on the Exchange.

Currently, ETF transaction charges differ from equity transaction charges relating to customer accounts[4] and are $0.0023 per share (or $0.23 per 100 shares), subject to a $100 per transaction cap, resulting in transaction charges being assessed only on the first 43,478 shares. ETF and equity transaction charges both include: (i) A $0.0004 per share (or $0.04 per 100 shares) clearing charge for orders routed to and executed at another market center; (ii) a $0.0030 per share (or $0.30 per 100 shares) charge for orders routed to and executed at another market; and (iii) 0.3% of the total dollar value for transactions in a security with a share price of less than $1.00 (for ETFs the per transaction maximum fee of $100 applies). Transactions in both ETFs and equities also are subject to an order cancellation fee.[5]

Consistent with the Exchange's current ETF revenue sharing program, the Exchange proposes to distribute revenue to the specialists, Registered Traders, and DARTs as outlined below. This is identical to the revenue sharing program that exists in connection with ETFs.

ETN specialists may receive an aggregate revenue sharing program payment (calculated monthly) of as much as $0.0024 per share (or $0.24 per 100 shares) whenever the specialist either buys or sells its specialty ETN on the Exchange and is a provider of liquidity in that transaction (*e.g.* , whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The revenue sharing program payment is comprised of $0.0004 per share (or $0.04 per 100 shares) for all shares executed on the Exchange in its specialty ETN (irrespective of whether the specialist is the provider of liquidity), plus another $0.0020 (or $0.20 per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the revenue sharing program payment is limited to $0.0004 per share executed on the Exchange in its specialty ETN.[6]

A Registered Trader in ETNs will receive a revenue sharing payment of $0.0010 per share (or $0.10 per 100 shares) whenever the Registered Trader either buys or sells an ETN on the Exchange and is a provider of liquidity in that transaction. A DART in ETNs will receive a revenue sharing payment of $0.0015 per share (or $0.15 per 100 shares) whenever the DART either buys or sells an ETN on the Exchange and is a provider of liquidity in that transaction.[7] Neither the specialist, Registered Trader, nor DART will receive a payment when it is a contra-party to the same transaction. It should be noted that revenue sharing will also be paid on transactions in securities trading at less than $1.00 equal to the amount collected by the Exchange. However, the revenue sharing payment will be paid only on the portion of a transaction for which the Exchange collects revenue.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(4) of the Act[9] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members through the application of existing ETF transaction charges to ETNs.

[3] *See* Securities Exchange Act Release No. 57400 (February 29, 2008), 73 FR 12234 (March 6, 2008) (SR–Amex–2007–109).

[4] Customer accounts are defined for purposes of the fee schedule to include accounts for all market participants except specialists, Registered Traders, and Designated Amex Remote Traders (DARTs). Therefore, customer accounts (and the fees charged to them) include members' off-floor proprietary accounts, competing market makers on other exchanges, and other member and non-member broker-dealers.

[5] The ETF and equity order cancellation fee provides that the executing clearing member is charged $0.25 for every additional equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders cancelled for that mnemonic is more than 50 times the equities and ETF orders executed through Amex systems for that mnemonic in that same month. Cancellations resulting from ''Immediate or Cancel'' or ''Fill or Kill'' orders and cancellations entered to cancel at the opening orders not executed at the opening will not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of ''Immediate or Cancel'' and ''Fill or Kill'' orders will however be counted towards the number of executions. The Equities Order Cancellation Fee and ETF Order Cancellation Fee set forth in the Equity Fee Schedule and ETF Fee Schedule, respectively, would be revised under this proposal to clarify that ETN orders be included as part of the calculation to determine whether the order cancellation fee applies to a particular executing clearing member.

[6] *See* e-mail from Jeffrey Burns, Vice President and Associate General Counsel, Amex, to Nathan Saunders, Special Counsel, and Linda Jeng-Braun, Attorney, Division of Trading and Markets, Commission, dated May 29, 2008.

[7] DARTs were recently added to the revenue sharing program for ETFs. *See* Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR–Amex–2008–23).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B.Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2008–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2008–45 and should be submitted on or before June 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12803 Filed 6–6–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11256 and # 11257]

Arkansas Disaster Number AR–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1758–DR), dated 05/20/2008.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/02/2008 and continuing through 05/12/2008.

DATES: *Effective Date:* 05/12/2008.

Physical Loan Application Deadline Date: 07/21/2008.

EIDL Loan Application Deadline Date: 02/20/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Arkansas, dated 05/20/2008 is hereby amended to establish the incident period for this disaster as beginning 05/02/2008 and continuing through 05/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–12871 Filed 6–6–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11273]

California Disaster # CA–00083 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 06/03/2008.

Incident: California Salmon Fishery Closure 2008.

Incident Period: 04/10/2008 and continuing.

DATES: *Effective Date:* 06/03/2008.

EIDL Loan Application Deadline Date: 03/03/2009.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Del Norte, Mendocino, Monterey, San Mateo,

Santa Clara, Santa Cruz, Shasta, Sonoma.

Contiguous Counties:

California: Alameda, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Marin, Merced, Modoc, Napa, Plumas, San Benito, San Francisco, San Luis Obispo, Siskiyou, Solano, Stanislaus, Tehama, Trinity.

Oregon: Curry, Josephine.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 112730.

The States which received an EIDL Declaration # are: California; Oregon.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: June 3, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–12872 Filed 6–6–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6252]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Essential Art of African Textiles: Design Without End''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Essential Art of African Textiles: Design Without End'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 29, 2008, until on or about March 29, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 29, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–12859 Filed 6–6–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6251]

Notice of Availability of the Final Environmental Assessment and a Finding of No Significant Impact for the Proposed Enbridge Southern Lights Pipeline Project

AGENCY: Department of State.

ACTION: Notice of Availability of the Final Environmental Assessment and a Finding of No Significant Impact for the Proposed Enbridge Southern Lights Pipeline Project.

SUMMARY: This notice announces the availability of the Final Environmental Assessment and a Finding of No Significant Impact for the Proposed Enbridge Southern Lights Pipeline Project.

On April 19, 2007, Enbridge Pipelines (Southern Lights) L.L.C. applied for a Presidential permit to construct, connect, operate, and maintain facilities (including a 20-inch diameter pipeline) at the U.S.-Canadian border at Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada. EPSL seeks this authorization in connection with its Southern Lights Pipeline Project (''LSr Project''), which is designed to transport Canadian crude oil from the Western Canadian Sedimentary Basin (''WCSB'') to existing refinery markets in the Midwest region of the United States.

Executive Order 13337 of April 30, 2004, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities, including pipelines, for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential Permits upon a national interest determination. The Executive Order directs the Secretary of State to refer the application and pertinent information to, and to request the views of, the heads of certain agencies before issuing a Permit and authorizes the Secretary to consult with other interested federal and state officials, as appropriate. The Executive Order also authorizes **Federal Register** notification of receipt of Presidential permit applications and for public comments on those applications. The functions assigned to the Secretary have been further delegated within the Department of State.

The Department of State published in the **Federal Register** a Notification of Receipt and Notice of Intent to prepare an Environment Assessment (EA) regarding the EPSL Application for a permit on July 27, 2007 (72 FR 41383). That notification solicited public comment on the application for a 45-day period, and announced the Department of State would conduct public scoping meetings along the proposed route. The Department's Notice of Availability of the draft EA and request for public comment was published in the **Federal Register** on November 29, 2007 (72 FR 67335), seeking comments by December 28, 2007. The Department received public comments in response to its two notices and has taken them into account in preparing the Final Environmental Assessment on the EPSL Application.

As required by Executive Order 13337, EPSL's pipeline application and a Draft Environmental Assessment were also transmitted to the relevant federal agencies for their review and comment on November 29, 2007. The Department of State received no objections from federal agencies regarding the issuance of a permit.

In accordance with the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321–4370f, the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the Department's regulations for the implementation of NEPA, 22 CFR Part 161, EPSL has prepared a Final Environmental Assessment (FEA) under the guidance and supervision of the Department, with full public participation, including public meetings and ample opportunity for written and oral public comment on the project. Based on the FEA and the record created as part of the Department's evaluation of the EPSL application, on June 2, the Department determined that ''issuance of a Presidential Permit authorizing construction of the proposed Southern Lights Pipeline would not have a significant impact on the quality of the human environment within the United

States.'' Accordingly, the Department on that date adopted a ''Finding Of No Significant Impact'' (FONSI) and determined that an environmental impact statement will not be prepared on the EPSL application.

FOR FURTHER INFORMATION CONTACT: The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties, along with the Finding of No Significant Impact, at the Department of State, 2200 C Street, NW., Room 3535, Washington, DC 20520 (*Attn:* Mr. J. Brian Duggan, Tel. 202–647–1291). The above documents may also be requested by e-mail at *dugganjb@state.gov.*

Issued in Washington, DC on June 2, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E8–12861 Filed 6–6–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 8, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1999–5846.

Date Filed: February 5, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 26, 2008.

Description: Supplement No. 5 of United Air Lines, Inc. to its pending application for renewal and amendment of its experimental certificate of public convenience and necessity for Route 566 (U.S.-Mexico) to include authority to carry persons, property and mail in foreign air transportation between Chicago, IL and Cancun, Mexico.

Docket Number: DOT–OST–2008–0058.

Date Filed: February 8, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 29, 2008.

Description: Application of Royal Falcon Air Services requesting a foreign air carrier permit and an exemption authorizing Royal Falcon to provide the following service: (i) Charter foreign air transportation of persons, property and mail between any point or points in Jordan and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Jordan for the purpose of carrying local traffic between Jordan and the United States; and (ii) other charters between third countries and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–12836 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 15, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0065.

Date Filed: February 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 7, 2008.

Description: Application of Gadair European Airlines, S.L. (''Gadair'') requesting a foreign air carrier permit to engage in (i) Charter foreign air transportation of persons, property and mail between any point or points in Spain and any point or points in the United States, (ii) effective March 30, 2008, scheduled and charter foreign air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond coextensive with the rights provided under the U.S.–EC Air Transport Agreement, (iii) effective March 30, 2008, scheduled and charter foreign air transportation of persons, property and mail between any point or points in any member of the European Common Aviation Area and any point or points in the United States coextensive with the rights provided under the U.S.–EC Air Transport Agreement, and (iv) other charters. Gadair further requests equivalent exemption authority enabling it to provide the services described above pending issuance of a foreign air carrier permit.

Docket Number: DOT–OST–2008–0064.

Date Filed: February 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 7, 2008.

Description: Application of BA European Ltd t/a OpenSkies ''OpenSkies'' requesting issuance of a foreign air carrier permit to enable it to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. OpenSkies also requests exemption authority to enable it to hold out and provide the service described above under the ''OpenSkies'' name pending issuance of a foreign air carrier

permit and such additional or other relief.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–12887 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 11, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2006–24295.

Date Filed: January 11, 2008.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 1, 2008.

Description: Application of Compass Airlines, Inc. (''Compass''), requesting an amendment to its certificate of public convenience and necessity to remove Condition 4 to Compass's certificate, so that Compass's air carrier authority will not be limited solely to operations performed under a fee-for-service agreement with major U.S. carriers.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–12845 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 15, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0061.

Date Filed: February 13, 2008.

Parties: Members of the Interantional Air Transport Association.

Subject:

Result of Mail Vote (GVA/CAC/005/007), dated 31 October 2007.

Amendments to Resolution 823 and Resolution 809.

Intended effective date: 01 January 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–12891 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 8, 2008

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0052.

Date Filed: February 5, 2008.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 558, Resolution 011a, Mileage Manual Non TC Member/Non IATA Carrier Sectors (Memo 1446). Intended effective date: 15 March 2008.

Docket Number: DOT–OST–2008–0057.

Date Filed: February 8, 2008.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 559—Resolution 010y TC31 North & Central Pacific TC3 (except Japan)—North America, Caribbean Special Passenger Amending Resolution from Hong Kong SAR to USA, Canada (Memo 0435). Intended effective date: 21 February 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–12834 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program 14 CFR Part 150; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program (NCP) submitted by the Columbus Regional Airport Authority (CRAA) under the provisions of 49 U.S.C. Sections 47501, *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150 (Part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 5, 2007 the FAA determined that the noise exposure maps submitted by the CRAA under Part 150 were in compliance with applicable requirements. On May 19, 2008, the FAA approved the Port Columbus International Airport noise compatibility program updates. Twenty-one (21) measures were approved or approved as voluntary. Four (4) measures required no action. Two (2) program elements related to new or revised flight procedures for noise abatement that were proposed by CRAA.

DATES: *Effective Date:* The effective date of the FAA's approval of the Port Columbus International Airport noise compatibility program is May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Jones, Community Planner, Detroit Airports District Office, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan, Phone (734) 229–2900. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Port Columbus International Airport, effective May 19, 2008.

Under Section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following:

a. The noise compatibility program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental determination of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Romulus, Michigan.

On November 27, 2007, the CRAA submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted in 2006–2007. The Port Columbus International Airport noise exposure maps were determined by FAA to be in compliance with applicable legal requirements on December 5, 2007. Notice of this determination was published in the **Federal Register** on December 20, 2007 (FR Doc. 07–6109 Filed 12–19–07; 8:45 a.m.).

The CRAA study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and local jurisdictions starting in 2008. It was requested that the FAA evaluate and approve this material as a NCP as described in Section 47504 of the Act. The FAA began its review of the program on December 5, 2007, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control).

The submitted program contained twenty-seven (27) proposed actions for noise mitigation on and/or off the airport which continue or expand the intent of the 2001 Record of Approval (ROA) approval. The FAA previously approved twenty-one (21) of these measures on January 10, 2001. The 2007 NCP recommends twenty-five (25) proposed actions for approval and two (2) actions to be withdrawn. The proposed actions are a combination of existing, amended, and new from the 2001 ROA. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective May 19, 2008.

Consistent with the 2001 ROA, the 2008 ROA approved all twenty-five (25) proposed actions in the NCP. Outright approval was granted for nineteen (19) program elements. These elements were: Amend the Port Columbus International Airport Night Time Aircraft Runway-up Policy to designate a new run-up location such that EJA's new building will provide attenuation of jet engine maintenance run-ups for adjacent residential areas located along 1–270; construct a noise berm/wall; replacement and potential relocation of Ground Run-up Barrier B (location/materials/size); offer a program for noise insulation for noncompatible structures for noncompatible residences within the 65+ DNL contour for Future (2012) Noise Compatibility Program condition, in exchange for an avigation easement; seek cooperation from the City of Columbus and Franklin County to amend their land use compatibility standards to achieve the level of compatibility identified in the recommended land use compatibility guidelines; seek cooperation from the City of Columbus and Franklin County to amend the boundaries of the Airport Environs Overlay (AEO) district to include proposed Airport Land Use Management District corresponding to the 60 DNL of the 20-year NCP contour (2023); seek cooperation from the Franklin County, City of Gahanna, and Jefferson Township to amend the Franklin County zoning resolution, Section 660.07, Avigation Easement, to require applicants for rezoning, change of use, or special use permit to convey an avigation easement to the appropriate Airport; seek cooperation from Jefferson Township and the City of Gahanna to adopt the proposed Airport Land Use Management District as part of their official zoning regulations; seek cooperation from Franklin County, Jefferson Township, Mifflin Township, and the City of Gahanna to adopt subdivision codes applicable to the proposed Airport Land Use Management District; seek cooperation from Franklin County, Jefferson Township, Mifflin Township, and the City of Gahanna to adopt building codes applicable to the proposed Airport Land Use Management District; seek cooperation from the board of realtors to participate in a fair disclosure program for property located within the proposed Airport Land Use Management District; periodically place advertisements in a variety of media outlets delineating the boundaries of the Airport Land Use Management District; development an Airport Land Use Management District based on the 2023 Noise Exposure Map/Noise Compatibility Program noise contour, other geographic, and jurisdictional boundaries; maintain the noise abatement elements of FAA (Airport Traffic Control Tower) ATCT Tower Order; maintain the Noise Management Office for noise compatibility program

management; maintain an on-going public involvement program regarding the noise compatibility program; maintain the noise and flight track monitoring system and expand and upgrade the system as necessary and add four permanent noise monitoring towers and upgrade the computer software and hardware as necessary; routinely update the noise contours and periodically update the noise program; and establish a land use compatibility task force which meets periodically to discuss issues relevant to airport noise compatibility planning. Approval as a voluntary measure was granted for two (2) program elements. These elements were: Increase nighttime use of Runway 10L/28R and amend FAA Tower Order CMH ATCT 7110.1 to read as follows: ''Unless wind, weather, runway closure, or loss of NAVAIDs dictate otherwise, between the hours of 10 p.m. and 8 a.m. local time, runways 28L and 10R are assigned jet aircraft; jet aircraft with Stage 3 engines may use Runway 10L/28R for arrival operations between the hours of 10 p.m. and 1 a.m. local time; and jet aircraft with Stage 3 engines may use Runway 10L and 28R after 6 a.m.''; and maximize east flow and amend FAA Tower Order CMH ATCT 7110.lb and the Airport Facilities Directory to reflect implementation of the ''east flow'' informal preferential runway use system. No action was taken on two (2) program elements. These elements were: Construct a new run-up barrier at the north airfield, if the EJA (NetJets) building does not adequately attenuate jet maintenance run-up noise for adjacent residential areas located along 1–270; and offer a program for noise insulation for noncompatibile structures for noncompatible churches within the 65+ DNL contour for the 2012 NEMINCP condition in exchange for an avigation easement. No action was required as the measure relates to flight procedures under 49 U.S.C. 47504 was taken on two (2) program elements. These program elements were: Implement a 15-degree turn off of Runway 28R, after crossing the runway end to a 295-degree heading, only during peak operating periods when traffic warrants; and create performance-based overlay procedures for all existing and proposed arrival/departure procedures (RNAV/RNP/GPS/CDA).

These determinations are set forth in detail in a ROA signed by the Great Lakes Region Airports Division Manager on May 19, 2008. The ROA, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above. The ROA also will be available online at *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise* .

Dated: May 28, 2008.

Issued in Romulus, Michigan.

Matthew J. Thys,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. E8–12591 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of Public Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, July 15, 2008, from 9 a.m. to 4:30 p.m. and Wednesday, July 16, 2008, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the CGH Technologies Inc Office, Training Conference Room, Eighth Floor, 600 Maryland Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, Executive Director, ATPAC, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4527.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, July 15, 2008, from 9 a.m. to 4:30 p.m. and Wednesday, July 16, 2008, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Executive Director, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Richard Jehlen no later than July 11, 2008. The next quarterly meeting of the FAA ATPAC is scheduled for November 2008, in Washington, DC.

Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on May 23, 2008.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E8–12874 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0079]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers

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

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise an information collection (IC) entitled, ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers,'' that requires Mexico-domiciled for-hire and private motor carriers to file an application Form OP–2 if they wish to register to transport property only within municipalities in the United States on the U.S.-Mexico international borders or within the commercial zones of such municipalities. FMCSA invites public comment on the ICR.

DATES: We must receive your comments on or before *August 8, 2008.*

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA Docket Number FMCSA–2008–0079 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Group Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Please note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below:

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Denise Ryan, Transportation Specialist, Office of Information Technology, Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave., SE., Washington, DC 20590. Telephone Number: (202) 493–0242; E-mail Address: *denise.ryan@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background: Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the Mexico-U.S. border into the United States. Part 368 of title 49, CFR, contains the regulations that require Mexico-domiciled motor carriers to apply to the FMCSA for a Certificate of Registration to provide interstate transportation in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A). The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation.

Foreign (Mexico-based) motor carriers use Form OP–2 to apply for Certificate of Registration authority at the FMCSA. The form requests information on the foreign motor carrier's name, address, U.S. DOT Number, form of business (e.g., corporation, sole proprietorship, partnership), locations where the applicant plans to operate, types of registration requested (e.g., for-hire motor carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

OMB Control Number: 2126–0019.

Type of Request: Revision of a currently-approved information collection.

Respondents: Foreign motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 615.

Estimated Time per Response: 4 hours to complete Form OP–2.

Expiration Date: August 31, 2008.

Frequency of Response: Other (Once).

Estimated Total Annual Burden: 2,460 hours [615 responses × 4 hours to complete Form OP–2 = 2,460].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: May 30, 2008.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E8–12881 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for public transportation projects in the following areas: Jacksonville, Florida; Denver, Colorado; Staten Island, New York; Gig Harbor, Washington; Wasilla, Alaska. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Title 23, United States Code (U.S.C.), section 139(l). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zelasko, Environmental Protection Specialist, Office of Planning and Environment, 202–366–0244, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA), and in other documents in the FTA administrative record for the project. The final agency environmental

decision documents—Records of Decision (ROD) or Findings of No Significant Impact (FONSI)—for the listed projects are available online at *http://www.fta.dot.gov/planning/environment/planning_environment_documents.html*, or may be obtained by contacting the FTA Regional Office for the metropolitan area where the project is located. Contact information for the FTA Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, the National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q].

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Jacksonville Bus Rapid Transit System, Jacksonville, Florida. *Project sponsor:* Jacksonville Transportation Authority (JTA). *Project description:* The FTA and the JTA have completed a Tier 1 Programmatic Final Environmental Impact Statement (PFEIS) of the Jacksonville Bus Rapid Transit (BRT) system. The Jacksonville BRT program consists of BRT lines and stations in four corridors, construction of BRT ancillary facilities, and the acquisition of BRT vehicles. The BRT system corridors would extend from downtown Jacksonville north to the intersection of Lem Turner Road and Norwood Avenue; southeast toward the intersection of Baymeadows Road and I–95; east to Regency Square Mall; and southwest to 103rd Street. On the basis of the Tier 1 Programmatic EIS, FTA and JTA identified 14 proposed station locations along the four corridors for proposed property acquisition. Five other proposed station locations would require further examination of potential impacts on communities and historic properties in Tier 2 NEPA documents. When JTA seeks FTA funding for any of the BRT lines covered by the Tier 1 PFEIS, FTA and JTA would perform a Tier 2 NEPA review of the proposed project to identify potential environmental impacts and develop appropriate mitigation measures in more detail. *Final Agency Actions:* ROD signed on April 2, 2008. *Supporting documentation:* JTA Bus Rapid Transit Tier 1 Programmatic Final Environmental Impact Statement issued in January 2008.

2. *Project name and location:* West Corridor Light Rail Project, Denver and Jefferson Counties, Colorado. *Project sponsor:* Regional Transportation District. *Project description:* The project consists of the design and construction of 12.1 miles of light rail transit (LRT) from the existing LRT at the Auraria West Station to the Jefferson Government Center. The project was documented in a previous EIS and ROD that was issued in April 2004. Since April 2004, the Regional Transportation District made a number of changes to the project including changes to the alignment, LRT frequency, the number of tracks west of the Denver Federal Center, station location and layout, bridges, and pedestrian facilities. The final agency actions announced in this notice apply only to these changes. *Final agency actions:* FONSI signed on November 16, 2007; Section 106 Memorandum of Agreement Amendment 1 signed September 2007; Project-level Air Conformity determination; Section 4(f) de minimis impact finding. *Supporting documentation:* Revised Environmental Assessment of changes to the West Corridor Light Rail Project issued in November 2007.

3. *Project name and location:* Charleston Bus Annex, Staten Island, New York. *Project sponsors:* Metropolitan Transit Authority (MTA) and New York City Transit (NYCT). *Project description:* The Charleston Bus Annex project consists of construction of a two-story bus maintenance and administration building and two outdoor parking areas on a 10.8-acre site under jurisdiction of New York City's Department of Citywide Administrative Services. As part of the project, NYCT will also construct a new stormwater sewer, install a deep groundwater well to ensure adequate bus washing water supply during drought conditions, relocate maintenance and storage of 220 buses from existing bus depots, modify several bus routes to originate and terminate in front of the Charleston Bus Annex site, implement traffic improvement measures, and construct two new bus stops along Arthur Kill Road. *Final agency actions:* FONSI signed on November 30, 2007; Section 106 Finding of No Adverse Effect. *Supporting documentation:* Environmental Assessment for the Charleston Bus Annex issued in September 2007.

4. *Project name and location:* Peninsula Park and Ride, Gig Harbor, Washington. *Project sponsor:* Pierce Transit. *Project description:* The Peninsula Park and Ride project is located on a 7-acre site on the west side of State Route 16 at Hunt Street between 1,500 and 2,500 feet south of Wollochet Drive NW/Pioneer Way. The main components of the project include a 600-space park and ride lot; a pedestrian/bicycle overpass approximately 200 feet long over State Route 16; facilities for limited local bus service; landscaping; sidewalks; and stormwater facilities. *Final agency actions:* FONSI signed on April 6, 2006; Section 4(f) de minimis impact finding; Section 106 Finding of No Adverse Effect; Project-level Air Conformity determination. *Supporting documentation:* Environmental Assessment for the Peninsula Park and Ride issued in September 2005 and Errata issued in March 2006.

5. *Project name and location:* South Wasilla Track Realignment, Wasilla, Alaska. *Project sponsor:* Alaska Railroad Corporation (ARRC). *Project description:* ARRC will realign approximately 4 miles of mainline track from milepost 154 to milepost 158 in the southeast portion of Wasilla in the Matanuska-Susitna Borough of south-central Alaska. The project includes a new 225-foot bridge over Wasilla Creek, a new embankment west of the creek crossing with 2 underpasses through the embankment to allow vehicular access, acquisition of a minimum of 200 foot right-of-way, construction of two grade-separated crossings, elimination of 5 mainline at-grade crossings, and the realignment of Old Matanuska Road. Portions of the existing track will be left in place for use as a temporary siding; the remaining track will be removed. *Final agency actions:* FONSI signed on February 1, 2006; Section 106 Determination of No Adverse Effect; Section 4(f) de minimis impact finding. *Supporting documentation:* South Wasilla Track Realignment Environmental Assessment issued in August 2005.

Issued on: June 2, 2008.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E8–12814 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0048]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CIMBA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0048 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 9, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0048. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CIMBA is:

Intended Use: ''Passengers only.''

Geographic Region: ''San Francisco Bay and its tributaries.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 2, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–12863 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Correction—Notice of Meeting.

SUMMARY: This is to correct the **Federal Register** Notice that was posted on May 27, 2008. The correct date and time for this meeting is Wednesday, June 25, 2008. An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 25, 2008.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, June 25, 2008, from 2 to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MA W–406, Seattle, WA, 98174. Due to limited teleconference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1–888–912–1227 or 206–220–6096, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: June 2, 2008.

Richard Morris,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–12884 Filed 6–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application and Termination Notice for Municipal Securities Dealer Principal or Representative

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 9, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition,

interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Application and Termination Notice for Municipal Securities Dealer Principal or Representative.

OMB Number: 1550–0NEW.

Form Number: MSD–4 and MSD–5.

Description: The forms are completed by certain Federal Savings Association (FSA) employees that act as municipal securities dealer principals or representatives, and are submitted to OTS. OTS reviews the information to monitor registered persons entry into, and exit from, municipal securities dealer activities. The information contributes to the OTS's understanding of the FSA and helps to facilitate the supervision of the municipal securities dealer activities.

Type of Review: New collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2.

Estimated Number of Responses: 14.

Estimated Burden Hours per Response: Form MSD–4 is 1 hour; MSD–4 is 15 minutes.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 11 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: June 3, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–12815 Filed 6–6–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0049]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Joanne Spittle, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5979; or e-mail: *joanne.spittle@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0529.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Need and Use of the Information: MARAD requires the information in order to process applications for waivers of the coastwise trade laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses.

Description of Respondents: Small passenger vessel owners who desire to operate in the coastwise trade.

Annual Responses: 100 responses.

Annual Burden: 100 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

Dated: June 3, 2008.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–12852 Filed 6–6–08; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register
Vol. 73, No. 111
Monday, June 9, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[No. 06–45]

Paul H. Volkman; Denial of Application

Correction

In notice document E8–11851 beginning on page 30630 in the issue of Wednesday, May 28, 2008 make the following correction:

On page 30641, in the third column, ''[36]No footnote.'' should read ''[36]At the time he submitted his renewal and modification applications, Respondent's registration had been immediately suspended. It would make no sense to construe this provision as excusing a registrant who is under an immediate suspension (and who has been preliminarily found to pose an imminent danger to public health and safety) from compliance with the 45-day requirement for timely filing of a renewal application. Of course, even when a registrant under an immediate suspension complies with the 45-day rule, his registration does not continue in effect past the expiration date.''

[FR Doc. Z8–11851 Filed 6–6–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2-ES-2008-0055; 92210-1117-0000-FY08-B4]

RIN 1018-AV46

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*) in Texas

Correction

In proposed rule document E8–10742 beginning on page 29294, in the issue of Tuesday, May 20, 2008, make the following corrections:

(1) On page 29300, in the second column, in paragraph (3) in the first line ''TX 0910'' should read ''TX–10''.

(2) On the same page, in the same column, in the same paragraph, in lines 6, 9, and 18 ''TX 0910C and TX 0910 C'' are corrected to read ''TX–10C''.

(3) On the same page, in the third column, in paragraph (4) in the first line, ''TX 0914'' should read ''TX–14''.

(4) On the same page, in the same column, in paragraph (5) ''TX 0917'' should read ''TX–17''.

(5) On the same page, in the same column, in the last paragraph, lines 13 and 14 should read ''vacated until TX–17 is not described because we are not proposing that it be''.

[FR Doc. Z8–10742 Filed 6–6–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9391]

RIN 1545-BF85

Source Rules Involving U.S. Possessions and Other Conforming Changes

Correction

In rule document 08–1105 beginning on page 19350 in the issue of Wednesday, April 9, 2008 make the following corrections:

1. On page 19357, in the third column, in the first paragraph, in the last line, ''§601.601(d)(2)(ii)(b)'' should read ''§601.601(d)(2)(ii)(*b*)''.

§1.937–2 [Corrected]

2. On page 19373, in §1.937–2(k) at *Example 1.*(ii), the equation is being reprinted correctly as set forth below.

$$\$100\text{x gain} \times \frac{\text{945 days in possession holding period}}{\text{1461 days in total holding period}}$$

[FR Doc. C8–1105 Filed 6–6–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday
June 9, 2008

Part II

Department of Housing and Urban Development

24 CFR Part 203

Federal Housing Administration: Acceptable Payment History for Late Request for Endorsement of Mortgage for Insurance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5160–P–01]

RIN 2502–AI56

Federal Housing Administration: Acceptable Payment History for Late Request for Endorsement of Mortgage for Insurance

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's current regulations require that a mortgage show an acceptable payment history when submitted for late endorsement, but they are silent as to what constitutes an acceptable payment history. This proposed rule would provide factors that establish an acceptable payment history when a mortgage is submitted for Federal Housing Administration (FHA) insurance more than 60 days after closing, and would make one technical amendment pertaining to the submission of documentation for endorsement.

DATES: *Comment Due Date:* August 8, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically so that HUD, in turn, can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9278, Washington, DC 20410–8000; telephone number (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Current HUD regulations at 24 CFR 203.255(c)(7) provide that when a mortgage is submitted for insurance more than 60 days after closing, it must show an acceptable payment history as part of the pre-endorsement review conducted by HUD. Although HUD may determine on a case-by-case basis what constitutes an acceptable payment history, such a procedure is time consuming and inefficient. In the recent past, HUD has issued more general guidance for determining an acceptable payment history on two occasions. Mortgagee Letter 2004–14, issued April 12, 2004, provided for the submission of a payment history or ledger, as well as a certification that:

1. All mortgage payments due have been made by the mortgagor prior to or within the month due. If any payments have been made after the month due, the loan is not eligible for endorsement until six consecutive payments have been made prior to and/or within the calendar month due, and;
2. All escrow accounts for taxes, hazard insurance, and mortgage insurance premiums are current and intact, except for disbursements that may have been made to cover payments for which the accounts were specifically established, and;
3. The mortgage lender did not provide the funds to bring and/or keep the loan current or to bring about the appearance of an acceptable payment history.

Subsequently, on May 17, 2005, HUD issued Mortgagee Letter 2005–23, which eliminated the submission of the payment history or ledger, as well as the requirement for six consecutive payments. Instead of the payment history or the 6 months of payments, the certification under Mortgagee Letter 2005–23 included a statement that no mortgage payment is currently unpaid more than 30 days. The second and third factors, however, continued to be included.

II. This Proposed Rule

Having gained experience with the approaches in each of the cited Mortgagee Letters, HUD has determined that the first factor of Mortgagee Letter 2004–14, along with the two additional factors included in both Mortgagee Letters, provide an acceptable level of assurance that a mortgage for which a late endorsement is requested shows an acceptable payment history. The record of six consecutive payments as evidence of an acceptable payment history had been a longstanding HUD policy before the issuance of Mortgagee Letter 2005–23, which instead provided the alternative of an assurance that the loan was current at the time it was submitted for FHA's insurance endorsement. HUD considers it appropriate to return to its earlier, more rigorous longstanding policy, particularly at time of increased defaults and of concerns over the too-permissive lending practices associated with these increases. A more rigorous policy is expected to result in a lower level of default and claims on loans submitted to FHA for late endorsement. Accordingly, HUD, in this rule, is proposing to include the three factors of Mortgagee Letter 2004–14 in its regulations at 24 CFR 203.255(c)(7). In doing so, HUD will provide clarity and certainty as to which mortgages qualify for late endorsement when submitted more than 60 days after closing. Paperwork approval is concurrently being sought for the associated ledger and certification requirements. The certification requirements will be provided in § 203.255(b).

To achieve the regulatory changes discussed above, section 203.255(c) would be amended to designate the introductory paragraph as paragraph (c)(1) and revise existing paragraph (c)(7) as (c)(1)(vii), to include the three factors as paragraphs (A) through (C).[1] The current, undesignated, second paragraph in § 203.255(c)(7) would be designated as § 203.255(c)(2). As noted above, HUD would also amend § 203.255(b) to include the certification

[1] On September 5, 2007, HUD announced FHA*Secure*, an initiative that allows families with strong credit histories who had been making timely payments on their non-FHA-insured mortgages before a loan interest rate reset—but are now in default—to qualify for refinancing with FHA mortgage insurance. The proposed acceptable payment history standards would apply to the FHA-insured mortgage used to refinance the debt, but would not apply to the non-FHA-insured mortgage being refinanced. Therefore, this proposed rule does not affect the eligibility of a family that otherwise meets the eligibility criteria, but is in default on their mortgage, from participating in FHA*Secure.* A copy of Mortgagee Letter 2007–11, which announced FHA*Secure,* may be downloaded at: *http://portal.hud.gov/fha/reference/ml2007/07–11ml.doc.*

requirement. In addition to these changes, HUD would make a technical amendment. Newly designated paragraph (c)(2) would be revised to remove the erroneous indication that a false or fraudulent certification can be corrected and resubmitted in a way that would then make the mortgage eligible for endorsement. Certifications are subject to statutory requirements and penalties that the existing language in this regulation could not supersede.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. Interested persons are invited to submit comments regarding the information collection requirements in this proposed rule. Comments must be received within 60 days from the date of this proposed rule.

The burden of the information collections resulting from this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Description of information collection	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Payment History/Ledger	8,700	13	.10	11,310
Lender Certification	8,700	13	.50	56,550

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5160-P–01) and must be sent to:

HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503,
Fax number: (202) 395–6974

and

Reports Liaison Officer,
Office of the Assistant Secretary for Housing—Federal Housing Commissioner,
Department of Housing and Urban Development,
451 Seventh Street, SW.,
Washington, DC 20410–8000.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would provide factors for determining what constitutes an acceptable payment history for the purpose of late endorsement of a mortgage. The rule would not impose any additional burden on entities or individuals, but only examines compliance, over a limited period of time, with obligations that individuals have agreed to assume in exchange for a benefit. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for FHA mortgage insurance for homes is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan Programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. In § 203.255 by:

A. Redesignating paragraph (b)(14) as (b)(15),

B. Adding a new paragraph (b)(14),

C. Redesignating paragraph (c) introductory text and paragraphs (c)(1) through (c)(7) as paragraph (c)(1) introductory text and paragraphs (c)(1)(i) through (c)(1)(vii), respectively,

D. Designating the undesignated paragraph following (c)(7) as paragraph (c)(2), and

E. Revising newly designated paragraph (c)(1)(vii) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(b) * * *

(14) In the case where a mortgage lender submits a loan for endorsement more than 60 days after closing as permitted by the Secretary, a certification to the Secretary that the lender has complied with the factors identified in § 203.255(c)(1)(vii).

(c)(1) * * *

(vii) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing, the mortgage shows an acceptable payment history. A mortgage that meets the following factors shows an acceptable payment history:

(A) All mortgage payments due have been made by the mortgagor prior to or within the month due. If any payments have been made after the month due, the loan is not eligible for endorsement until six consecutive payments have been made prior to or within the calendar month due, and;

(B) All escrow accounts for taxes, hazard insurance, and mortgage insurance premiums are current and intact, except for disbursements that may have been made to cover payments for which the accounts were specifically established, and;

(C) The mortgage lender did not provide the funds to bring and/or keep the loan current or to bring about the appearance of an acceptable payment history.

(2) In addition to the reviews and determinations made in paragraph (c)(1) of this section, the Secretary is authorized to determine if the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will, among other things, inform the mortgagee in writing of this determination and will include the reasons for the determination and further inform whether any actions may be taken to correct the determination of ineligibility for endorsement.

* * * * *

Dated: May 12, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–12813 Filed 6–6–08; 8:45 am]

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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 "P L U S" (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. 2356/P.L. 110–239

To amend title 4, United States Code, to encourage the display of the flag of the United States on Father's Day. (June 3, 2008; 122 Stat. 1559)

H.R. 2517/P.L. 110–240

Protecting Our Children Comes First Act of 2007 (June 3, 2008; 122 Stat. 1560)

H.R. 4008/P.L. 110–241

Credit and Debit Card Receipt Clarification Act of 2007 (June 3, 2008; 122 Stat. 1565)

S. 2829/P.L. 110–242

To make technical corrections to section 1244 of the National Defense Authorization Act for Fiscal Year 2008, which provides special immigrant status for certain Iraqis, and for other purposes. (June 3, 2008; 122 Stat. 1567)

S.J. Res. 17/P.L. 110–243

Directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean. (June 3, 2008; 122 Stat. 1569)

Last List June 2, 2008

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
2000–End	(869–064–00023–8)	53.00	Jan. 1, 2008
8	(869–064–00024–6)	66.00	Jan. 1, 2008
9 Parts:			
1–199	(869–064–00025–4)	64.00	Jan. 1, 2008
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–064–00027–1)	64.00	Jan. 1, 2008
51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–064–00040–8)	66.00	Jan. 1, 2008
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–064–00055–6)	29.00	Apr. 1, 2008
19 Parts:			
1–140	(869–064–00056–4)	64.00	Apr. 1, 2008
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
*200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–064–00062–9)	43.00	Apr. 1, 2008
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
*170–199	(869–064–00064–5)	53.00	Apr. 1, 2008
*200–299	(869–064–00065–3)	20.00	Apr. 1, 2008
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
*500–599	(869–064–00067–0)	50.00	Apr. 1, 2008
600–799	(869–064–00068–8)	20.00	Apr. 1, 2008
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
*1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
*300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–064–00074–2)	63.00	Apr. 1, 2008
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–064–00078–5)	33.00	Apr. 1, 2008
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
*§§ 1.0–1–1.60	(869–064–00080–7)	52.00	Apr. 1, 2008
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
*§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
*§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
*§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[6] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
*400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.