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# Federal Register

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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, July 8, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
Vol. 73, No. 115
Friday, June 13, 2008



## COMMISSION ON CIVIL RIGHTS

### 5 CFR Chapter LXVIII

**RINs 3035–AA05, 3209–AA15**

## Supplemental Standards of Ethical Conduct for Employees of the United States Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Final rule.

**SUMMARY:** The United States Commission on Civil Rights (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing this rule for employees of the Commission, which supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The rule requires employees of the Commission to obtain prior approval before engaging in outside employment. The text of the rule was published in the **Federal Register** on August 30, 2006 at 71 FR 51533 as a proposed rule and provided that comments should have been received by September 29, 2006 to be considered in the formulation of the final rule. No comments were received.

**DATES:** This rule is effective July 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights, Office of the Staff Director, 624 Ninth Street, NW., Suite 621, Washington, DC 20425; Telephone: (202) 376–7796; Facsimile: (202) 376–1163.

**SUPPLEMENTARY INFORMATION:** In 1979, the United States Commission on Civil Rights adopted a set of Employee Responsibilities and Conduct rules as set forth in 45 CFR part 706. See 44 FR 75152, as revised in 2002 at 67 FR 70498. That rule in the pertinent part required employees to obtain approval, in writing, from their supervisors before engaging in outside employment. 45 CFR 706.7.

On August 7, 1992, OGE published new executive branch Standards of Ethical Conduct regulations, which became generally effective on February 3, 1993. The Standards, as corrected and amended, are codified at 5 CFR part 2635. These regulations, together with OGE's executive branchwide financial disclosure and financial interests regulations codified at 5 CFR parts 2634 and 2640, superseded the Commission's old Employee Responsibilities and Conduct regulations at 45 CFR part 706, including the provision requiring employees to obtain prior approval before engaging in outside employment. In a separate rulemaking also being published in the **Federal Register** today, the Commission is removing its old superseded conduct regulation and replacing it with a residual crossreferences provision.

The Commission, however, has determined, with OGE concurrence, that it is necessary and desirable for the purpose of administering its ethics program to require its employees to again obtain written approval before engaging in outside employment, except for certain volunteer community service activities the DAEO has designated as ''generally approved.'' Section 7801.102 of new chapter LXVIII of 5 CFR will now require prior approval for outside activities in order to ensure that the activity would not otherwise violate a Federal statute or regulation, including the branchwide Standards. The section includes a definition, at paragraph (d), of outside employment, to mean any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It also provides, at paragraph (c), that upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee is required to submit a revised request for approval. The rule does not include special Government employees in the prior approval provision, since they consist primarily of State Advisory Committee members who serve on the Commission as uncompensated employees. Accordingly, by this rulemaking, the Commission is reinstituting the prior approval requirement, albeit in a modified form in light of the promulgation of the branchwide Standards. Furthermore, in § 7801.101 of 5 CFR, the Commission states the purpose of the supplemental regulation and includes cross-references to other Government ethics regulations applicable to Commission employees in addition to the new part. The cross-referenced regulations are the executive branch Standards, as well as the OGE executive branch financial disclosure and financial interests regulations noted above, and the separate specific executive branchwide employee responsibilities and conduct regulations of the Office of Personnel Management codified at 5 CFR part 735. Moreover, the section identifies the Solicitor as the Designated Agency Ethics Official and requires that employees seeking approval for outside employment obtain the approval of the Designated Agency Ethics Official, except to the extent that volunteer professional activities designated ''generally approved'' do not require additional prior written approval. In this final rule, the Commission is adding two references in paragraph (a) of 7801.101 to clarify that all of the other regulations referenced are executive branchwide regulations. The Commission is also adding the word ''outside'' to the word ''employment'' in definitional paragraph (d) of § 7801.102 to clarify the term being defined. Finally, the Commission is adding a new paragraph (e) to § 7801.102 on volunteer community service activities of its professional and non-professional staff to reflect its new Administrative Instruction, with a cross-reference thereto in paragraph (a). Paragraph (e) addresses the types of clearances needed for both volunteer (pro bono) community service activities that are designated as ''generally approved,'' or pre-approved by the DAEO, and those that are not so designated. Otherwise, the Commission, with OGE concurrence, is adopting its proposed supplemental standards regulation as final without change.

### Matters of Regulatory Procedure

*Executive Orders 12866 and 12988*

Because this rule relates to Commission personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

*Regulatory Flexibility Act*

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule does not have a significant economic impact on a substantial number of small entities because it primarily affects Commission employees.

*Paperwork Reduction Act*

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rulemaking document because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

*Congressional Review Act*

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

**List of Subjects in 5 CFR Part 7801**

Conflict of interests, Government employees.

Dated: March 28, 2008.

**Emma Monroig,**

*Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights.*

Dated: March 28, 2008.

**Robert Lerner,**

*Assistant Staff Director for Civil Rights Enforcement, Delegated Duties of the Staff Director, United States Commission on Civil Rights.*

Approved: April 2, 2008.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

■ For the reasons set forth in this preamble, the United States Commission on Civil Rights, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXVIII, consisting of part 7801, to read as follows:

**CHAPTER LXVIII—COMMISSION ON CIVIL RIGHTS**

## PART 7801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Sec.
7801.101 General.
7801 .102 Prior approval for outside employment

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1975b(d); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

**§ 7801.101 General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the United States Commission on Civil Rights (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained at 5 CFR part 2635. Employees of the Commission are required to comply with this part, 5 CFR part 2635, the executive branchwide financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and implementing guidance and procedures. Commission employees are also subject to the executive branch regulations on responsibilities and conduct at 5 CFR part 735.

(b) *Definition.* The Designated Agency Ethics Official (DAEO) is the Solicitor for the Commission.

**§ 7801.102 Prior approval for outside employment.**

(a) An employee, other than a special Government employee, of the Commission who wishes to engage in outside employment shall first obtain the approval, in writing, of the Designated Agency Ethics Official (DAEO). Volunteer professional services, however, may be ''generally approved'' in advance as described in paragraph (e) of this section.

(b) Standard for approval. Approval shall be granted by the DAEO only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee must submit a revised request for approval.

(d) For purposes of this section, ''outside employment'' means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

(e)(1) The Commission may designate volunteer activities as ''generally approved,'' or preapproved by the DAEO, in order to facilitate the participation of the Commission's professional and nonprofessional staff (whether involving legal or non-legal services). Non-representational pro bono legal services designated as ''generally approved'' require employees to notify the DAEO, the General Counsel (GC), and the employee's supervisor (if different from the GC) prior to the employee's participation; however, no additional prior approval is required. Representational pro bono legal services designated as ''generally approved'' still require prior case-specific written approval by the DAEO pursuant to this section, and notification of the GC and the employee's supervisor (if different from the GC). Non-legal professional volunteer activities designated as ''generally approved'' require employees to notify their supervisor and the DAEO. However, no additional prior written approval is required.

(2) To provide professional services or advice to a program or activity not designated as ''generally approved,'' the employee must notify his or her supervisor and submit a written request and justification in advance to the DAEO. In addition, in order to provide pro bono legal services the employee must notify the GC (if the GC is not the employee's supervisor). If providing representational pro bono legal services, the employee must also obtain written case-specific prior approval from the DAEO pursuant to this section. All requests for approval submitted to the DAEO must reflect that the required notifications were made by the employee. All DAEO approvals must be in writing.

[FR Doc. E8–13170 Filed 6–12–08; 8:45 am]

**BILLING CODE 6335–01–M**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

**[Regulation B; Docket No. R–1295]**

### Equal Credit Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final Rule; technical amendment.

**SUMMARY:** The Board is publishing amendments to Regulation B (Equal Credit Opportunity Act) to update the address where questions should be

directed concerning creditors for which the Federal Reserve System administers compliance with the regulation.

**DATES:** *Effective Date:* June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Cooper, Manager, Consumer Complaints, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3946. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* The ECOA is implemented by the Board's Regulation B.

In addition to the general prohibition against discrimination, Regulation B contains specific rules concerning the taking and evaluation of credit applications, including procedures and notices for credit denials and other adverse actions. Under section 202.9 of Regulation B, notification given to an applicant when adverse action is taken must contain the name and address of the federal agency that administers compliance with respect to the creditor. Appendix A of Regulation B contains the names and addresses of the enforcement agencies where questions concerning a particular creditor shall be directed.

The Board recently established a centralized Federal Reserve Consumer Help Center (''Help Center'') for receiving inquiries about creditors for which the Board enforces Regulation B. In September 2007, the Board revised the name and address in Appendix A to reflect the Help Center's address. 72 FR 55020 (Sept. 28, 2007). Although this change was effective October 29, 2007, creditors have until October 1, 2008 to include the new name and address on their adverse action notices. The amendment being made today does not affect that requirement.

The Board has also established centralized telephone numbers that consumers can use to contact the Help Center and inquire about creditors for which the Board enforces Regulation B. In the September 2007 **Federal Register** notice, the Board included these telephone numbers in Appendix A. As a result, the Board has received questions about whether the telephone numbers must be included in creditors' adverse action notices. Section 202.9 of Regulation B does not require creditors to include telephone, facsimile, or TDD numbers in their adverse action notices. Accordingly, to clarify the matter, the Board is amending Appendix A of Regulation B to eliminate the reference to the telephone numbers. The mandatory compliance date remains October 1, 2008.

**List of Subjects in 12 CFR Part 202**

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Sex discrimination.

**Authority and Issuance**

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 202 to read as follows:

## PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** Section 15 U.S.C. 1691–1691f.

■ 2. Appendix A to part 202 is amended by revising the third paragraph to read as follows:

**Appendix A to Part 202—Federal Enforcement Agencies**

* * * * *

*State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act:* Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 9, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8–13222 Filed 6–12–08; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0290; Directorate Identifier 2007–NM–250–AD; Amendment 39–15557; AD 2006–16–18 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Sandel Avionics Incorporated Model ST3400 Terrain Awareness Warning System/ Radio Magnetic Indicator (TAWS/RMI) Units Approved Under Technical Standard Order(s) C113, C151a, or C151b; Installed on Various Small and Transport Category Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is revising an existing airworthiness directive (AD) that applies to Sandel Avionics Incorporated Model ST3400 TAWS/RMI units as described above. The existing AD currently requires installing a warning placard on the TAWS/RMI and revising the Limitations section of the airplane flight manual (AFM). The existing AD also requires installing upgraded software in the TAWS/RMI. This new AD allows installing later revisions of the software described in the existing AD. This AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are issuing this AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

**DATES:** This AD is effective July 18, 2008.

On September 25, 2006 (71 FR 48461, August 21, 2006), the Director of the Federal Register approved the incorporation by reference of Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

**ADDRESSES:** For service information identified in this AD, contact Sandel Avionics Incorporated (Sandel), 2401 Dogwood Way, Vista, California 92081.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://*

*www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Ha A. Nguyen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5335; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an airworthiness directive (AD) to revise AD 2006–16–18, amendment 39–14718 (71 FR 48461, August 21, 2006). The existing AD applies to Sandel Avionics Incorporated (Sandel) Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; as installed on various small and transport category airplanes. The proposed AD was published in the **Federal Register** on March 13, 2008 (73 FR 13498) to require installing a warning placard on the TAWS/RMI, revising the Limitations section of the airplane flight manual (AFM), and installing upgraded software in the TAWS/RMI.

### Comments

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

### Conclusion

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

### Costs of Compliance

This AD describes the installation of later revisions of software than those specified in AD 2006–16–18; however, this change imposes no new costs on operators. Costs are repeated here for operator convenience only.

This AD affects about 300 airplanes of U.S. registry. The actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $24,000, or $80 per airplane.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14718 (71 FR 48461, August 21, 2006) and adding the following new airworthiness directive (AD):

**2006–16–18 R1 Sandel Avionics Incorporated:** Amendment 39–15557. Docket No. FAA–2007–0290; Directorate Identifier 2007–NM–250–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective July 18, 2008.

**Affected ADs**

(b) This AD revises AD 2006–16–18.

**Applicability**

(c) This AD applies to Sandel Avionics Incorporated (Sandel) Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; as identified in Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004; as installed on various small and transport category airplanes, certificated in any category, including, but not limited, to the airplane models listed in Table 1 of this AD.

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS

| Manufacturer | Airplane model(s) |
|---|---|
| Airbus | A300. |
| Avions Marcel Dassault-Breguet Aviation (AMD/BA). | Falcon 10. |
| Boeing | 727, 737, 747. |
| Bombardier (LearJet) | 24, 35, 36, 55. |
| British Aerospace (Operations) Limited | Jetstream Series 3101. |

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS—Continued

| Manufacturer | Airplane model(s) |
|---|---|
| Cessna | 208, 208B, 421C; 501, 525, 550, 560, 650, S550. |
| Embraer | EMB–120. |
| Dassault-Aviation | Mystere-Falcon 50, Mystere-Falcon 200. |
| Gulfstream | G–I, G–1159A (G–III) |
| Israel Aircraft Industries (IAI) | 1124, 1125 Westwind Astra. |
| McDonnell Douglas | DC–10. |
| Piper | PA–31T2. |
| Raytheon | 58; 1900D, 400; A36; BAe.125 Series 800A; HS.125 Series 600A/700A; Hawker 800–XP; 200, 300, 350; A200, B100, B200, B300, C90, C90A, C90B, E90, F90; MU–300–10. |
| Sabreliner | 60 (NA–265–60). |
| Twin Commander | 500–A, 695A. |
| Viking Air Limited | DHC–6. |

**Unsafe Condition**

(d) This AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI unit configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are issuing this AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

**Compliance**

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

**Installing Placard**

(f) Within 14 days after September 25, 2006 (the effective date of AD 2006–16–18): Install a placard on the TAWS/RMI which states, ''NOT FOR PRIMARY VOR NAVIGATION,'' in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

**Revising Airplane Flight Manual (AFM)**

(g) Within 14 days after September 25, 2006: Revise the Limitations section of the applicable AFM to include the following statement: ''Use of ST3400 TAWS/RMI for primary VOR navigation is prohibited unless the indicator has 3.07 or A3.06 software or later.'' This may be done by inserting a copy of this AD into the AFM.

**Updating Software**

(h) Within 90 days after September 25, 2006, in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004: Field-load the TAWS/RMI with updated software having revision 3.07 (for units having serial numbers (S/Ns) under 2000) or revision A3.06 (for units having S/Ns 2000 and subsequent). Revisions of software later than revision 3.07 or A3.06, as applicable, are considered acceptable for compliance with the requirements of this paragraph. The placard and AFM limitations revision installed as required by paragraphs (f) and (g) of this AD may be removed after the software upgrade required by paragraph (h) of this AD has been accomplished.

**Parts Installation**

(i) As of 90 days after September 25, 2006, no person may install, on any airplane, a Model ST3400 TAWS/RMI unit, unless it has been modified in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(k) You must use Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004 on September 25, 2006 (71 FR 48461, August 21, 2006).

(2) For service information identified in this AD, contact Sandel Avionics Incorporated (Sandel), 2401 Dogwood Way, Vista, California, 92081.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 3, 2008.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13165 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0328; Airspace Docket No. 08–ASW–4]**

## Establishment of Class E Airspace; Hinton, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** This action confirms the effective date of the direct final rule that establishes Class E airspace at Hinton, OK, published in the **Federal Register** March 26, 2008 (73 FR 15881), Docket No. FAA–2008–0328, Airspace Docket No. 08–ASW–4.

**DATES:** *Effective Date:* 0901 UTC June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Mallett, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, Fort Worth, Texas 76193–0530; at telephone (817) 222–4949.

**SUPPLEMENTARY INFORMATION:**

**History**

The FAA published a direct final rule with request for comments in the **Federal Register** March 26, 2008 (73 FR

9452), Docket No. FAA–2008–0328, Airspace Docket No. 08–ASW–4, establishing Class E airspace at Hinton, OK. The FAA uses the direct final rule procedure for non-controversial rules where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit an adverse comment, was received within the comment period, the regulation would become effective on June 5, 2008.

No adverse comments were received; thus, this notice confirms that the direct final rule will become effective on this date.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 1, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

* * * * *

Issued in Fort Worth, TX, on May 28, 2008.

**Ronnie L. Uhlenhaker,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. E8–12906 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–0186; Airspace Docket No. 08–ANM–2]**

**RIN 2120–AA66**

## Revision of Legal Descriptions of Multiple Federal Airways in the Vicinity of Farmington, NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects an error in the airspace description of a final rule published in the **Federal Register** on July 21, 2003 (68 FR 42962), Docket No. FAA–2002–13013, Airspace Docket No. 02–ANM–10. In that rule, the description of Jet Route 10 (J–10) was incorrect. This is an administrative correction to a published legal description. Additionally, the cite for J–10 was incorrectly written as paragraph 6010(a) Domestic VOR Federal Airways: This will be corrected to ''paragraph 2006 Jet Routes''.

**DATES:** *Effective Date:* 0901 UTC, June 13, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On May 27, 2003, a final rule was published in the **Federal Register** (68 FR 28707) Revision of J–10. This action realigned J–10 from Farmington, NM to the Flagstaff, AZ Very High Omnidirectional Radio Range Tactical Air Navigation (VORTAC) by removing a route segment via the Drake, AZ. VORTAC. On July 21, 2003, a final rule was published in the **Federal Register** (68 FR 42962) Airspace Docket No. 02–ANM–10, changing the name of the Farmington VORTAC to the Rattlesnake VORTAC. In that rule, J–10 was written with the route segment that was removed in (68 FR 28707). This action corrects this error by removing ''via the Drake, AZ 262° radials;'' and inserting ''Flagstaff 251° radials; Flagstaff, AZ.''

### Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to airspace description as published in the **Federal Register** on July 21, 2003 (68 FR 42962), Airspace Docket No. 02–ANM–10, FAA Docket No. FAA–2002–13013, and incorporation by reference in 14 CFR 71.1, is corrected as follows:

**§ 71.1 [Amended]**

*Paragraph 2004—Jet Routes*

* * * * *

**J–10 [Amended]**

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075° and Flagstaff 251°, radials; Flagstaff, AZ; Rattlesnake, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

Issued in Washington, DC, on May 19, 2008.

**Stephen L. Rohring,**

*Acting Manager, Airspace and Rules Group.*

[FR Doc. E8–11966 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## 14 CFR Part 97

**[Docket No. 30612; Amdt. No. 3273]**

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

**DATES:** This rule is effective June 13, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2008.

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

*For Examination—*

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

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

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

**The Rule**

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

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

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

**Conclusion**

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

**List of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC, on May 30, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.35 [Amended]**

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

*Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 04/25/08 | KS | Wichita | Wichita Mid-Continent | 8/5001 | ILS or LOC Rwy 1R, Amdt 17A. This Notam Published in TL 08–12 Is Hereby Rescinded in Its Entirety. |
| 05/13/08 | MN | Cloquet | Cloquet Carlton County | 8/7372 | NDB or GPS Rwy 17, Amdt 3B. This Notam Published in TL 08–13 Is Hereby Rescinded in Its Entirety. |
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7631 | ILS or LOC Rwy 32, Amdt 18. |
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7632 | ILS or LOC Rwy 14, Amdt 5B. |
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7633 | ILS or LOC Rwy 23R, Amdt 3A. |
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7634 | ILS or LOC Rwy 23L, Amdt 5. |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7635 | ILS or LOC Rwy 5L Amdt 3...ILS Rwy 5L (Cat II) Amdt 3...ILS Rwy 5L (Cat III) Amdt 3. |
| 05/15/08 | IN | Indianapolis | Indianapolis Intl | 8/7636 | ILS or LOC Rwy 5R Amdt 5...ILS Rwy 5R (CAT II) Amdt 5...ILS Rwy 5R (CAT III) Amdt 5. |
| 05/15/08 | IN | Marion | Marion Muni | 8/7637 | RNAV (GPS) Rwy 22, Orig. |
| 05/15/08 | MA | Westfield/Springfield | Barnes Muni | 8/7649 | ILS or LOC Rwy 20, Amdt 6. |
| 05/15/08 | NJ | Newark | Newark Liberty Intl | 8/7651 | ILS or LOC Rwy 22R, Amdt 4. |
| 05/15/08 | KY | Lexington | Blue Grass | 8/7652 | RNAV (GPS) Rwy 4, Amdt 1. |
| 05/15/08 | CA | Vacaville | Nut Tree | 8/7654 | VOR–A, Amdt 4B. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7829 | VOR/DME A, Amdt 1A. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7830 | RNAV (GPS) Rwy 9, Orig. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7831 | RNAV (GPS) Rwy 27, Amdt 1. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7832 | RNAV (GPS) Rwy 18, Amdt 1. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7833 | RNAV (GPS) Rwy 36, Amdt 1. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7835 | ILS or LOC Rwy 36, Orig. |
| 05/16/08 | AR | Stuttgart | Stuttgart Muni | 8/7836 | NDB Rwy 18, Amdt 10B. |
| 05/16/08 | AR | Pine Bluff | Grider Field | 8/7842 | RNAV (GPS) Rwy 18, Orig-A. |
| 05/16/08 | AR | Pine Bluff | Grider Field | 8/7844 | VOR/DME Rwy 36, Amdt 12. |
| 05/16/08 | AR | Pine Bluff | Grider Field | 8/7845 | VOR Rwy 18, Amdt 20. |
| 05/16/08 | AR | Pine Bluff | Grider Field | 8/7846 | ILS or LOC Rwy 18, Amdt 3. |
| 05/16/08 | IA | Atlantic | Atlantic Muni | 8/7864 | NDB Rwy 12, Amdt 9A. |
| 05/16/08 | IA | Harlan | Harlan Muni | 8/7865 | GPS Rwy 15, Orig. |
| 05/16/08 | OK | Tulsa | Tulsa Intl | 8/7877 | RNAV (GPS) Rwy 8, Orig. |
| 05/16/08 | CA | Ontario | Ontario Intl | 8/7918 | ILS Rwy 26L, Amdt 7B. |
| 05/16/08 | CA | Riverside | Riverside Muni | 8/7919 | ILS Rwy 9, Amdt 7A. |
| 05/16/08 | CA | Hawthorne | Jack Northrop Field/Hawthorne Muni | 8/7920 | VOR or GPS Rwy 25, Amdt 15A. |
| 05/16/08 | CA | Hawthorne | Jack Northrop Field/Hawthorne Muni | 8/7921 | LOC Rwy 25, Amdt 10A. |
| 05/16/08 | WA | Spokane | Spokane Intl | 8/7922 | RNAV (GPS) Rwy 21, Orig-C. |
| 05/16/08 | WA | Spokane | Spokane Intl | 8/7923 | RNAV (GPS) Rwy 3, Orig-D. |
| 05/19/08 | MO | Warrensburg | Skyhaven | 8/8013 | VOR/DME A, Amdt 2. |
| 05/19/08 | MO | Warrensburg | Skyhaven | 8/8014 | RNAV (GPS) Rwy 18, Orig-A. |
| 05/19/08 | MO | Warrensburg | Skyhaven | 8/8015 | RNAV (GPS) Rwy 36, Orig-A. |
| 05/19/08 | ME | Rangeley | Steven A. Bean Muni | 8/8048 | NDB or GPS–A, Amdt 4A. |
| 05/19/08 | NC | Goldsboro | Goldsboro-Wayne Muni | 8/8077 | ILS or LOC Rwy 23, Amdt 1. |
| 05/19/08 | TN | Millington | Charles W. Baker | 8/8078 | GPS Rwy 36, Orig-A. |
| 05/19/08 | MO | Ava | Ava Bill Martin Memorial | 8/8097 | GPS Rwy 31, Orig. |
| 05/19/08 | NY | New York | John F. Kennedy Intl | 8/8140 | ILS or LOC Rwy 31R, Amdt 15. |
| 05/19/08 | NY | New York | John F. Kennedy Intl | 8/8141 | ILS or LOC Rwy 31L, Amdt 10A. |
| 05/19/08 | OK | Hobart | Hobart Muni | 8/8144 | RNAV (GPS) Rwy 35, Amdt 1. |
| 05/19/08 | OH | West Union | Alexander Salamon | 8/8145 | RNAV (GPS) Rwy 5, Orig. |
| 05/20/08 | CA | Imperial | Imperial County | 8/8271 | VOR or GPS–A, Amdt 4. |
| 05/20/08 | MN | Waseca | Waseca Muni | 8/8289 | VOR or GPS–A, Amdt 4. |
| 05/20/08 | MN | Waseca | Waseca Muni | 8/8290 | NDB or GPS Rwy 15, Amdt 4. |
| 05/21/08 | TX | Brownsville | Brownsville/South Padre Island Intl | 8/8410 | LOC BC Rwy 31L, Amdt 11A. |
| 05/21/08 | NJ | Newark | Newark Liberty Intl | 8/8439 | ILS Rwy 11, Amdt 1. |
| 05/21/08 | CA | Daggett | Barstow-Daggett | 8/8446 | RNAV (GPS) Rwy 26, Orig-A. |
| 05/21/08 | CA | Daggett | Barstow-Daggett | 8/8447 | RNAV (GPS) Rwy 22, Orig. |
| 05/21/08 | NJ | Wildwood | Cape May County | 8/8468 | RNAV (RPS) Rwy 10, Orig. |
| 05/21/08 | NJ | Wildwood | Cape May County | 8/8469 | RNAV (GPS) Rwy 19, Orig. |
| 05/21/08 | NJ | Wildwood | Cape May County | 8/8470 | LOC Rwy 19, Amdt 6A. |
| 05/21/08 | NJ | Wildwood | Cape May County | 8/8471 | VOR–A, Amdt 3A. |
| 05/21/08 | PA | Butler | Butler County/KW Scholter Fld | 8/8525 | ILS or LOC Rwy 8, Amdt 7. |
| 05/21/08 | PA | Butler | Butler County/KW Scholter Fld | 8/8526 | RNAV (GPS) Rwy 8, Orig. |
| 05/21/08 | MO | St Louis | Spirit of St Louis | 8/8557 | ILS Rwy 8R, Amdt 13B. |
| 05/21/08 | NM | Farmington | Four Corners Rgnl | 8/8558 | ILS or LOC Rwy 25, Amdt 7A. |
| 05/21/08 | NM | Farmington | Four Corners Rgnl | 8/8559 | RNAV (GPS) Rwy 25, Orig. |
| 05/21/08 | NM | Farmington | Four Corners Rgnl | 8/8560 | VOR/DME Rwy 7, Amdt 4. |
| 05/21/08 | MO | St Louis | Spirit Of St Louis | 8/8561 | ILS Rwy 26L, Orig. |
| 05/21/08 | ND | Fargo | Fargo/Hector Intl | 8/8572 | VOR/DME or TACAN Rwy 18, Amdt 1A. |
| 05/21/08 | LA | Many | Hart | 8/8582 | Take Off Minimums and (Obstacle) Departure Procedures. |
| 05/22/08 | LA | Shreveport | Shreveport Regional | 8/8623 | RNAV (GPS) Rwy 32, Orig. |
| 05/22/08 | LA | Shreveport | Shreveport Regional | 8/8624 | RNAV (GPS) Rwy 5, Orig. |
| 05/22/08 | LA | Shreveport | Shreveport Regional | 8/8625 | RNAV (GPS) Rwy 23, Orig-A. |
| 05/22/08 | LA | Shreveport | Shreveport Regional | 8/8626 | RNAV (GPS) Rwy 14, Orig. |
| 05/22/08 | LA | New Orleans | Louis Armstrong New Orleans Intl | 8/8746 | RNAV (GPS) Rwy 10, Orig. |
| 05/22/08 | LA | New Orleans | Louis Armstrong New Orleans Intl | 8/8747 | VOR/DME Rwy 10, Orig-A. |
| 05/22/08 | OH | New Lexington | Perry County | 8/8759 | VOR/DME OR GPS Rwy 26, Amdt 1. |
| 05/22/08 | AR | Fort Smith | Fort Smith Rgnl | 8/8760 | ILS Rwy 7, Orig-A. |
| 05/22/08 | AR | Fort Smith | Fort Smith Rgnl | 8/8761 | RNAV (GPS) Rwy 7, Orig-A. |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 05/22/08 ..... | AR | Fort Smith ..... | Fort Smith Rgnl ..... | 8/8764 | VOR/DME or TACAN Rwy 7, Amdt 11A. |
| 05/22/08 ..... | AR | Fort Smith ..... | Fort Smith Rgnl ..... | 8/8766 | RADAR–1, Amdt 8A. |
| 05/22/08 ..... | IA | Charles City ..... | Northeast Iowa Rgnl ..... | 8/8767 | NDB or GPS Rwy 12, Orig-D. |
| 05/22/08 ..... | IA | Charles City ..... | Northeast Iowa Rgnl ..... | 8/8769 | LOC Rwy 12, Orig-D. |
| 05/22/08 ..... | AR | Fort Smith ..... | Fort Smith Rgnl ..... | 8/8770 | VOR or TACAN Rwy 25, Amdt 20F. |
| 05/22/08 ..... | AR | Fort Smith ..... | Fort Smith Rgnl ..... | 8/8771 | RNAV (GPS) Rwy 25, Orig-A. |
| 05/22/08 ..... | AR | Fort Smith ..... | Fort Smith Rgnl ..... | 8/8773 | ILS or LOC Rwy 25, Amdt 21C. |
| 05/22/08 ..... | TX | San Angelo ..... | San Angelo Regional/Mathis Fld ..... | 8/8790 | VOR/DME or TACAN Rwy 3, Orig. |

[FR Doc. E8–12864 Filed 6–12–08; 8:45 am]
**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30611; Amdt. No 3272]**

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

**DATES:** This rule is effective June 13, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2008.

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

*For Examination—*

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

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

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

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

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

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

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

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

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an Identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. This, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, Associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the

TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

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

**List of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC on May 30, 2008.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, Under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

*Effective 3 JUL 2008*

Gary, IN, Gary/Chicago Intl, RNAV (RNP) RWY 30, Orig-A
Linden, MI, Prices, RNAV (GPS) RWY 9, Amdt 1
Linden, MI, Prices, RNAV (GPS) RWY 27, Amdt 1

*Effective 31 JUL 2008*

Anniston, AL, Anniston Metropolitan, ILS OR LOC RWY 5, Amdt 2
Anniston, AL, Anniston Metropolitan, NDB RWY 5, Amdt 3
Anniston, AL, Anniston Metropolitan, RNAV (GPS) RWY 5, Orig
Anniston, AL, Anniston Metropolitan, RNAV (GPS) RWY 23, Orig
St Elmo, AL, St Elmo, GPS RWY 6, Orig, CANCELLED
St Elmo, AL, St Elmo, RNAV (GPS) RWY 6, Orig
San Jose, CA, Norman Y. Mineta/San Jose Intl, RNAV (GPS) Y RWY 12R, Amdt 2
San Jose, CA, Norman Y. Mineta/San Jose Intl, RNAV (GPS) Y RWY 30L, Amdt 2
San Jose, CA, Norman Y. Mineta/San Jose Intl, RNAV (RNP) Z RWY 12R, Orig
San Jose, CA, Norman Y. Mineta/San Jose Intl, RNAV (RNP) Z RWY 30L, Orig
Hayden, CO, Yampa Valley, VOR–A, Amdt 4, CANCELLED
Montrose, CO, Montrose Regional, VOR RWY 13, Amdt 7B, CANCELLED
Pueblo, CO, Pueblo Memorial, NDB RWY 26R, Amdt 17A, CANCELLED
Naples, FL, Naples Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Decorah, IA, Decorah Muni, RNAV (GPS) RWY 29, Orig
Decorah, IA, Decorah Muni, VOR/DME RNAV OR GPS RWY 29, Amdt 3A, CANCELLED
Muscatine, IA, Muscatine Muni, VOR RWY 24, Orig-B, CANCELLED
West Union, IA, George L. Scott Muni, NDB RWY 35, Amdt 4, CANCELLED
Boise, ID, Boise Air Terminal/Gowen Fld, VOR RWY 10R, Orig-A, CANCELLED
Cahokia/St. Louis, IL, St. Louis Downtown, ILS OR LOC RWY 30L, Amdt 9
Chicago/Aurora, IL, Aurora Muni, VOR–A, Amdt 2A, CANCELLED
Pontiac, IL, Pontiac Muni, GPS RWY 24, Orig, CANCELLED
Pontiac, IL, Pontiac Muni, RNAV (GPS) RWY 6, Orig
Pontiac, IL, Pontiac Muni, RNAV (GPS) RWY 24, Orig
Pontiac, IL, Pontiac Muni, Takeoff Minimums and Obstacle DP, Orig
Pontiac, IL, Pontiac Muni, VOR RWY 24, Amdt 2
Madison, IN, Madison Muni, RNAV (GPS) RWY 3, Amdt 1
Madison, IN, Madison Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Madison, IN, Madison Muni, VOR/DME RWY 3, Amdt 9
Pratt, KS, Pratt Industrial, RNAV (GPS) RWY 17, Amdt 1
Pratt, KS, Pratt Industrial, RNAV (GPS) RWY 35, Amdt 1
Pratt, KS, Pratt Industrial, Takeoff Minimums and Obstacle DP, Orig
Monroe, MI, Custer, RNAV (GPS) RWY 3, Orig
Monroe, MI, Custer, RNAV (GPS) RWY 21, Orig
Monroe, MI, Custer, Takeoff Minimums and Obstacle DP, Amdt 6
Monroe, MI, Custer, VOR RWY 3, Amdt 2
Monroe, MI, Custer, VOR RWY 21, Amdt 2
Alexandria, MN, Chandler Field, RNAV (GPS) RWY 31, Amdt 1
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, Takeoff Minimums and Obstacle DP, Orig
Crete, NE, Crete Muni, GPS RWY 35, Orig-A, CANCELLED
Crete, NE, Crete Muni, RNAV (GPS) RWY 17, Amdt 1
Crete, NE, Crete Muni, RNAV (GPS) RWY 35, Orig
Crete, NE, Crete Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Crete, NE, Crete Muni, VOR/DME RWY 17, Amdt 4
Wahoo, NE, Wahoo Muni, GPS RWY 20, Orig-A, CANCELLED
Wahoo, NE, Wahoo Muni, NDB RWY 20, Amdt 3
Wahoo, NE, Wahoo Muni, RNAV (GPS) RWY 20, Orig
Wahoo, NE, Wahoo Muni, Takeoff Minimums and Obstacle DP, Orig
Newark, OH, Newark-Heath, Takeoff Minimums and Obstacle DP, Amdt 2
Newark, OH, Newark-Heath, VOR-A, Amdt 13
Versailles, OH, Darke County, NDB OR GPS RWY 27, Orig, CANCELLED
Versailles, OH, Darke County, RNAV (GPS) RWY 9, Orig
Versailles, OH, Darke County, RNAV (GPS) RWY 27, Orig
Wapakoneta, OH, Neil Armstrong, GPS RWY 8, Orig-A, CANCELLED
Wapakoneta, OH, Neil Armstrong, RNAV (GPS) RWY 8, Orig
Wapakoneta, OH, Neil Armstrong, RNAV (GPS) RWY 26, Orig
Wapakoneta, OH, Neil Armstrong, Takeoff Minimums and Obstacle DP, Amdt 2
Wapakoneta, OH, Neil Armstrong, VOR/DME RNAV OR GPS RWY 26, Amdt 5C, CANCELLED
Prineville, OR, Prineville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
San Juan, PR, Luis Munoz Marin Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Wise, VA, Lonesome Pine, LOC/DME RWY 24, Orig-A, CANCELLED

[FR Doc. E8–12867 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1260

**RIN 2700–AD40**

## NASA Grant and Cooperative Agreement Handbook—C.A.S.E. Reporting and Property Delegations

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the NASA Grant and Cooperative Agreement Handbook regulations to remove NASA Form 1356, Committee on Academic Science and Engineering (C.A.S.E.) Report. This final rule also makes an amendment to clarify the general preference for internal administration of grants and cooperative agreements with no Government-furnished property.

**DATES:** *Effective Date:* This final rule is effective June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jamiel C. Commodore, NASA, Office of Procurement, Contract Management Division; (202) 358–0302; e-mail: *Jamiel.C.Commodore@nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The NASA Grant Handbook at § 1260.75 requires grant officers to complete the NASA Form 1356, Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects. The C.A.S.E. reports had once been the basis for reporting to the National Science Foundation's Federal Science and Engineering Support Survey. The information obtained on the C.A.S.E. reports is available through other available systems and the NF 1356 has been eliminated. Therefore, the requirement for grant officers to complete the form is removed.

The NASA Grant Handbook at § 1260.70 requires that property administration, in most cases, be delegated to the Office of Naval Research (ONR) but it is not clear that the requirement applies to grants that are initially awarded with Government-furnished property. Consequently, many grants without property were unnecessarily being delegated to ONR for administration.

### B. Regulatory Flexibility Act

NASA certifies that this final rule will not 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 the change affects only the internal operating procedure within NASA.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 14 CFR Part 1260

Grant programs—science and technology.

**James A. Balinskas,**

*Acting Assistant Administrator for Procurement.*

■ Accordingly, 14 CFR part 1260 is amended as follows:

## PART 1260—[AMENDED]

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

■ 2. Amend § 1260.3 by revising the definition for ''progress report'' in paragraph (b) to read as follows:

**§ 1260.3 Definitions.**

* * * * *

(b) * * *

*Progress report* means a concise statement of work accomplished during the report period (see §§ 1260.22 and 1260.75(a)(3)).

* * * * *

■ 3. Amend § 1260.70 by revising paragraphs (a) and (c) to read as follows:

**§ 1260.70 Delegation of administration.**

(a) If a grant or a cooperative agreement is awarded with Government-furnished property, administration should be delegated to the Office of Naval Research (ONR). If a grant or cooperative agreement has no Government-furnished property, administration will normally be performed by the issuing Center or by the NASA Shared Service Center (NSSC). However, the grant officer or the NSSC grant administrator has the option to delegate administration to ONR and should do so when exceptional administrative issues are anticipated. Other administration duties may be assigned as listed on NF 1674. Exceptions to this policy are:

(1) Training grants will not be delegated.

(2) Grants of short duration (9 months or less) or low dollar value ($50k or less) will normally not be delegated.

(3) Grant officers may waive specific administration requirements (as listed on NF 1674) in exceptional circumstances for individual grants. Exceptions to administration duties that are normally delegated must be justified and approved in writing by the Grant Officer, and made part of the file.

(4) Waiver of delegation of property administration duties that are to be instituted by a center as a standard practice constitutes a deviation to this handbook, and requires approval in accordance with § 1260.7.

* * * * *

(c) Upon acceptance of a delegation, ONR agrees to the following: ONR shall follow DoD property administration policies and procedures, plus the following NASA requirements:

(1) The recipient shall maintain property records and manage nonexpendable personal property in accordance with 14 CFR 1260.134. During Property Control System Analyses (PCSA), ONR will check the recipient's understanding and test compliance of property management requirements, including the accuracy of recipient property reports. ONR will provide one copy of each PCSA Report to the appropriate NASA center industrial property officer.

(2) ONR will investigate and notify NASA as appropriate for any unauthorized property acquisitions by the recipient. See the provision at § 1260.27.

(3) ONR will notify the cognizant grant officer and industrial policy officer when property is lost, damaged or destroyed.

(4) Under no circumstances will Government property be disposed without instructions from NASA.

(5) Prior to disposition, except when returned to NASA or reutilized on other NASA programs, ONR will ensure all NASA identifications are removed or obliterated from property, and hard drives of computers are cleared of sensitive or NASA owned/licensed software/data.

**§ 1260.75 [Amended]**

■ 4. Amend § 1260.75 by removing paragraph (a) and redesignating paragraphs (b) through (d) as (a) through (c).

[FR Doc. E8–12419 Filed 6–12–08; 8:45 am]

**BILLING CODE 7510–01–P**

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Parts 736 and 740

**[Docket No. 080519687–8707–01]**

**RIN 0694–AE37**

## Expansion of the Gift Parcel License Exception Regarding Cuba to Authorize Mobile Phones and Related Software and Equipment

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule revises a license exception in the Export Administration Regulations to allow the export of mobile phones as gifts sent by individuals to eligible recipients in Cuba. The Bureau of Industry and Security (BIS) is taking this action to provide support for individuals to support democracy-building efforts for Cuba by enabling the free exchange of information among Cuban citizens and with persons in other countries.

**DATES:** This rule is effective June 13, 2008.

**ADDRESSES:** Although this is a final rule and there is no formal comment period, comments may be submitted at any time by e-mail directly to BIS at *publiccomments@bis.doc.gov* (please refer to RIN 0694–AE37 in the subject line); or by delivery to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Comments on the information collection that this rule concerns should also be sent to David Rostker, Office of Management and Budget Desk Officer; by e-mail to *david_rostker@omb.eop.gov*; or by fax to (202) 395–7285. Refer to RIN 0694–AE37 in all comments.

**FOR FURTHER INFORMATION CONTACT:** Anthony Christino, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance at (202) 482–4252.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 21, 2008, the President, marking the Day of Solidarity with the Cuban People, announced that, in support of ''Cubans who work to make their nation democratic and prosperous and just,'' the relevant U.S. Government agencies would make any regulatory changes necessary ''to allow Americans to send mobile phones to family members in Cuba.'' The Cuban government announced earlier this year that it will now permit Cubans to acquire and use mobile phones. Recent global events have shown the value that mobile phones and communications devices can provide to those seeking to exercise the fundamental freedoms to which they are entitled under international law.

In support of this Presidential initiative, BIS is taking regulatory action consistent with all relevant laws, including the Cuban Liberty and Democratic Solidarity Act of 1996 (LIBERTAD), to allow exports of mobile phones in specified circumstances. This action is consistent with the ongoing support the United States has provided to individuals who support democracy-building efforts for Cuba by enabling the free exchange of information among persons in Cuba and with persons in other countries.

Consistent with the United States embargo of Cuba, the Export Administration Regulations (EAR) require a license for exports and reexports of all items subject to the EAR to Cuba, with only a limited number of license exceptions. One of those exceptions authorizes exports and reexports of certain items in gift parcels from donors to members of the donor's immediate family in Cuba. This rule amends the terms of License Exception Gift Parcels and Humanitarian Donations (GFT) to permit mobile phones (and related software, batteries, memory cards, chargers, and other accessories for mobile phones) to be included in such gift parcels. This rule also raises the value limit on such gift parcels from $200 to $400. This increase is intended to allow the donor to choose from a variety of currently available mobile phones without having to reduce the quantity of other items, such as medicines or medical supplies in the gift parcel. All other terms of that license exception, including eligible recipients and frequency of shipments are not changed by this rule.

Many gift parcels are shipped from the United States to Cuba through parties who consolidate multiple gift parcels. Under the EAR, a license is required for consolidations of gift parcels. This rule makes no changes to this requirement. Although individual gift parcels may be eligible for export pursuant to License Exception GFT, the consolidated shipments of multiple gift parcels are not eligible for such license exception. BIS has issued a number of licenses to parties authorizing them to export consolidated gift parcels to Cuba. As part of this rule, BIS is issuing a General Order authorizing holders of licenses to use those licenses to export gift parcels containing the mobile phones and related software, batteries, memory cards, chargers and related items that this rule makes eligible for the gift parcel license exception. This modification is necessary because some previously-issued licenses for consolidated shipments list the commodities that may be included in such consolidated gift parcels. This General Order does not, however, increase the total value of exports permitted under, or extend the expiration date of, any license. Issuance of this General Order to modify existing licenses will facilitate implementation of the new policy by allowing consolidators to begin including mobile phones right away rather than having to wait for new licenses to be issued. Consolidators will still need to apply for new licenses authorizing the full array of items to which the gift parcel exception applies as their existing licenses are fully used or expire.

## Rulemaking Requirements

1. This is a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor may be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation concerns a collection previously approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will have no effect on the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

## List of Subjects

*15 CFR Part 736*

Exports.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Export Administration Regulations amends 15 CFR parts 730 and 774 as follows:

## PART 736—[AMENDED]

■ 1. The authority citation for part 736 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Add the following General Order to the end of Supplement No. 1 to part 736, to read as follows:

**Supplement No. 1 to Part 736—General Orders**

* * * * *

General Order No. 4 of June 13, 2008 adding mobile phones and related software, batteries, memory cards, chargers and other accessories therefor to existing licenses for exports of consolidated gift parcels to Cuba.

(a) Section 740.12(a) of the EAR authorizes, among other things, certain exports of gift parcels to Cuba pursuant to a license exception. However, consolidated shipments of multiple gift parcels to Cuba require a license even if all of the individual items within the consolidated gift parcel would be eligible for this license exception if shipped alone.

(b) In addition to the items stated on the license itself, licenses authorizing the export to Cuba of the consolidated gift parcels described in paragraph (a) of this order that are effective on June 13, 2008 also authorize the export of consolidated gift parcels containing the mobile phones and software, batteries, chargers, memory cards and other accessories therefor that may be exported in gift parcels to Cuba pursuant to § 740.12(a)(2)(i)(B)(*1*) of the EAR.

(c) This General Order does not change any of the other terms (including total value of items that may be exported or expiration date) of the licenses it affects.

## PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. Section 740.12 is amended by revising paragraphs (a)(2)(i)(A)(*1*), (a)(2)(i)(B)(*1*), and (a)(2)(iv) to read as follows:

**§ 740.12 Gift parcels and humanitarian donations (GFT).**

(a) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) For Cuba, no item listed on the Commerce Control List other than mobile phones covered by ECCNs 5A991 or 5A992 and software for those phones covered by 5D992, as specified in paragraph (a)(2)(i)(B)(*1*), of this section may be included in a gift parcel.

* * * * *

(B) * * *

(1) For Cuba, the only eligible commodities and software are food (including vitamins), medicines, medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped), receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, batteries for such equipment and mobile phones covered by ECCNs 5A991 or 5A992, software for those phones covered by ECCN 5D992 and batteries, memory cards, chargers and other accessories for such mobile phones.

* * * * *

(iv) *Value.* The combined total domestic retail value of all commodities and software may not exceed $400. This limit does not apply to food sent in a gift parcel to Cuba.

* * * * *

Dated: June 9, 2008.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. E8–13271 Filed 6–12–08; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Parts 10, 24, 162, 163, and 178

**[USCBP–2008–0060; CBP Dec. 08–22]**

**RIN 1505–AB84**

## Dominican Republic—Central America—United States Free Trade Agreement

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This rule amends title 19 of the Code of Federal Regulations (''CFR'') on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the Dominican Republic—Central America—United States Free Trade Agreement.

**DATES:** Interim rule effective June 13, 2008; comments must be received by August 12, 2008.

**ADDRESSES:** You may 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–2008–0060.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. 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. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. 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:**

*Textile Operational Aspects:* Robert Abels, Office of International Trade, (202) 344–1959.

*Other Operational Aspects:* Lori Whitehurst, Office of International Trade, (202) 344–2722.

*Audit Aspects:* Mark Hanson, Regulatory Audit, (202) 344–2977.

*Legal Aspects:* Karen Greene, Office of International Trade, (202) 572–8838.

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons are invited to participate in this rulemaking by

submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

**Background**

On August 5, 2004, the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States signed the Dominican Republic—Central America—United States Free Trade Agreement (''CAFTA–DR'' or ''Agreement''). The stated objectives of the CAFTA–DR include: strengthening the special bonds of friendship and cooperation among the signatory countries and promoting regional economic integration; contributing to the harmonious development and expansion of world trade and providing a catalyst to broader international cooperation; creating an expanded and secure market for goods and services produced in the region; establishing clear and mutually advantageous rules governing trade among the signatory countries; ensuring a predictable commercial framework for business planning and investment; seeking to facilitate regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for importers and exporters; fostering creativity and innovation, and promoting trade in goods and services that are the subject of intellectual property rights; promoting transparency and eliminating bribery and corruption in international trade and investment; protecting, enhancing, and enforcing basic workers' rights; creating new employment opportunities and improving working conditions and living standards in the region; and implementing the Agreement in a manner consistent with environmental protection and conservation, promoting sustainable development, and strengthening cooperation on environmental matters.

The provisions of the CAFTA–DR were adopted by the United States with the enactment on August 2, 2005, of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the ''Act''), Public Law 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). Section 210 of the Act requires that regulations be prescribed as necessary to implement these provisions of the CAFTA–DR.

On February 28, 2006, the President signed Proclamation 7987 to implement the provisions of the CAFTA–DR with respect to El Salvador. The Proclamation, which was published in the **Federal Register** on March 2, 2006 (71 FR 10827), modified the Harmonized Tariff Schedule of the United States (''HTSUS'') as set forth in Annexes I and II of Publication 3829 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 29, incorporating the relevant CAFTA–DR rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the CAFTA–DR where the special program indicator ''P'' appears in parenthesis in the ''Special'' rate of duty subcolumn. Presidential Proclamation 7996 dated March 31, 2006, which was published in the **Federal Register** on April 4, 2006 (71 FR 16971), implemented the CAFTA–DR with respect to Honduras and Nicaragua. Presidential Proclamation 8034 dated June 30, 2006, published in the **Federal Register** on July 6, 2006 (71 FR 38509), implemented the CAFTA–DR with respect to Guatemala. Presidential Proclamation 8111 dated February 28, 2007, published in the **Federal Register** on March 6, 2007 (72 FR 10025), implemented the CAFTA–DR with respect to the Dominican Republic.

Customs and Border Protection (''CBP'') is responsible for administering the provisions of the CAFTA–DR and the Act that relate to the importation of goods into the United States from a CAFTA–DR Party for which the Agreement has entered into force. Those customs-related CAFTA–DR provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Two (General Definitions), Chapter Three (National Treatment and Market Access for Goods), and Chapter Four (Rules of Origin and Origin Procedures).

Certain general definitions set forth in Chapter Two of the CAFTA–DR have been incorporated into the CAFTA–DR implementing regulations. The tariff-related provisions within CAFTA–DR Chapter Three that are the subject of regulatory action in this interim rule are Article 3.6 (Goods Re-entered after Repair or Alteration) and those relating specifically to textile and apparel goods are Article 3.24 (Customs Cooperation), Article 3.25 (Rules of Origin and Related Matters), Article 3.28 and Annex 3.28 (Preferential Tariff Treatment for Non-Originating Apparel Goods of Nicaragua), and Article 3.29 (Definitions).

Section A of Chapter Four of the CAFTA–DR sets forth the rules for determining whether an imported good qualifies as an originating good of a Party and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the CAFTA–DR as provided for in the HTSUS. The basic rules of origin in Section A of Chapter Four are set forth in General Note 29, HTSUS. Under Article 4.1 of Chapter Four, originating goods may be grouped in three broad categories: (1) Goods that are wholly obtained or produced entirely in the territory of one or more of the Parties; (2) goods that are produced entirely in the territory of one or more of the Parties and that satisfy the specific rules of origin in CAFTA–DR Annex 4.1 (change in tariff classification requirement and/or regional value content requirement) and all other applicable requirements of Chapter Four; and (3) goods that are produced entirely in the territory of one or more of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Articles 4.3 and 4.4 set forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* rule. Article 4.5 allows production that takes place in the territory of one or more of the Parties to be accumulated such that, provided other requirements are met, the resulting good is considered originating. Article 4.6 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible goods and materials, accessories, spare parts, and tools, packaging materials, packing materials, indirect materials, transit and transshipment, sets, and consultation and modifications. All Articles within Section A are reflected in the CAFTA–DR implementing regulations, except for Article 4.14 (Consultation and Modifications).

Section B of Chapter Four sets forth procedures that apply under the CAFTA–DR in regard to claims for preferential tariff treatment. Specifically, Section B includes provisions concerning obligations related to importations and exportations, claims for preferential tariff treatment, record keeping

requirements, verification of preference claims, common guidelines, and definitions of terms used within the context of the rules of origin. All Articles within Section B, except for Article 4.21 (Common Guidelines), are reflected in these implementing regulations.

In order to provide transparency and facilitate their use, the majority of the CAFTA–DR implementing regulations set forth in this document have been included within Subpart J in part 10 of the CBP regulations (19 CFR part 10). However, implementation of the tariff preference and related provisions of CAFTA–DR has also been effected through amendments to a number of other regulatory provisions outside of Subpart J, part 10 within the CBP regulations. The regulatory changes are discussed below in the order in which they appear in this document.

**Discussion of Amendments**

*Part 10*

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in a CAFTA–DR Party for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, and Bahrain, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of CAFTA–DR Article 3.5 (Temporary Admission of Goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

*Part 10, Subpart J*

General Provisions

Section 10.581 outlines the scope of Subpart J, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart J, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart J, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.582 sets forth definitions of common terms used in multiple contexts or places within Subpart J, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1, Annex 2.1, and Article 3.29 of the CAFTA–DR, and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart J, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.583 sets forth the procedure for claiming CAFTA–DR preferential tariff treatment at the time of entry and, as provided in CAFTA–DR Article 4.16.1, states that an importer may make a claim for CAFTA–DR preferential tariff treatment based on a certification by the importer, exporter, or producer or the importer's knowledge that the good qualifies as an originating good. Section 10.583 also provides, consistent with CAFTA–DR Article 4.15.4(d), that when an importer has reason to believe that a claim is based on inaccurate information, the importer must correct the claim and pay any duties that may be due.

Section 10.584, which is based on CAFTA–DR Articles 4.15.4 and 4.16, requires a U.S. importer, upon request, to submit a copy of the certification of the importer, exporter, or producer if the certification forms the basis for the claim. Section 10.584 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the exporter or producer of the good, and provides that the certification may be used either for a single importation or for multiple importations of identical goods.

Section 10.585 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.586, which is based on CAFTA–DR Article 4.17, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.587 implements CAFTA–DR Article 4.19 concerning the maintenance of relevant records regarding the imported good.

Section 10.588, which reflects CAFTA–DR Article 4.15.2, authorizes the denial of CAFTA–DR tariff benefits if the importer fails to comply with any of the requirements under Subpart J, Part 10, CBP regulations.

Export Requirements

Section 10.589, which implements CAFTA–DR Articles 4.18 and 4.19.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to a Party. Paragraphs (a) and (b) of § 10.589, reflecting CAFTA–DR Article 4.18.1, require a person who completes such a certification to provide a copy of the certification to CBP upon request and to give prompt notification of any errors in the certification to every person to whom the certification was given. Paragraph (c) of § 10.589 reflects Article 4.19.1, concerning the recordkeeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to a Party.

Post-Importation Duty Refund Claims

Sections 10.590 through 10.592 implement CAFTA–DR Article 4.15.5, which allows an importer who did not claim CAFTA–DR tariff benefits on a qualifying good at the time of importation to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.593 through 10.605 provide the implementing regulations regarding the rules of origin provisions of General Note 29, HTSUS, Chapter Four and Article 3.25 of the CAFTA–DR, and section 203 of the Act.

**Definitions**

Section 10.593 sets forth terms that are defined for purposes of the rules of origin.

**General Rules of Origin**

Section 10.594 sets forth the basic rules of origin established in Article 4.1 of the CAFTA–DR, section 203(b) of the Act, and General Note 29(b), HTSUS. The provisions of § 10.594 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 29, HTSUS. Section 10.594(a) specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or more of the Parties.

Section 10.594(b) provides that goods that have been produced entirely in the territory of one or more of the Parties so that each non-originating material undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 29, HTSUS, are originating goods.

Essential to the rules in § 10.594(b) are the specific rules of General Note 29(n), HTSUS, which are incorporated by reference.

Section 10.594(c) provides that goods that have been produced entirely in the territory of one or more of the Parties exclusively from originating materials are originating goods.

Value Content

Section 10.595 reflects CAFTA–DR Article 4.2 concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (''RVC'') requirement. Section 10.596, reflecting CAFTA–DR Articles 4.3 and 4.4, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accumulation

Section 10.597, which is derived from CAFTA–DR Article 4.5, sets forth the rule by which originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of one or more of the Parties is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the CAFTA–DR.

De Minimis

Section 10.598, as provided for in CAFTA–DR Article 4.6, sets forth *de minimis* rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules specified in § 10.594. There are a number of exceptions to the *de minimis* rule as well as a separate rule for textile and apparel goods.

Fungible Goods and Materials

Section 10.599, as provided for in CAFTA–DR Article 4.7, sets forth the rules by which ''fungible'' goods or materials may be claimed as originating.

Accessories, Spare Parts, or Tools

Section 10.600, as set forth in CAFTA–DR Article 4.8, specifies the conditions under which a good's standard accessories, spare parts, or tools are: (1) Treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 29(n), HTSUS.

Packaging Materials and Packing Materials

Sections 10.601 and 10.602, which are derived from CAFTA–DR Articles 4.9 and 4.10, respectively, provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether non-originating materials undergo an applicable change in tariff classification under General Note 29(n), HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Indirect Materials

Section 10.603, as set forth in CAFTA–DR Article 4.11, provides that indirect materials, as defined in § 10.582(m), are considered to be originating materials without regard to where they are produced.

Transit and Transshipment

Section 10.604, which is derived from CAFTA–DR Article 4.12, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or more of the Parties that qualifies the good as originating, the good: (1) Undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Goods Classifiable as Goods Put Up in Sets

Section 10.605, which is based on CAFTA–DR Articles 3.25.9 (Rules of Origin and Related Matters) and 4.13 (Sets of Goods), provides that, notwithstanding the specific rules of General Note 29(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless: (1) Each of the goods in the set is an originating good; or (2) the total value of the non-originating goods in the set does not exceed 10 percent of the adjusted value of the set in the case of textile or apparel goods, or 15 percent of the adjusted value of the set in the case of goods other than textile or apparel goods.

Tariff Preference Level

Section 10.606 sets forth procedures for claiming CAFTA–DR tariff benefits for certain non-originating cotton or man-made fiber apparel goods of Nicaragua that are entitled to preference under an applicable tariff preference level (''TPL'').

Section 10.607, which is based on CAFTA–DR Article 3.28 and Annex 3.28, describes the non-originating cotton or man-made fiber apparel goods of Nicaragua that are eligible for TPL claims under the CAFTA–DR.

Section 10.608, as authorized by § 1634(c)(1) of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1163), requires an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber apparel good of Nicaragua specified in § 10.607 to submit a certificate of eligibility issued by the Government of Nicaragua.

Consistent with § 10.604, § 10.609 provides that a good of Nicaragua that is otherwise eligible for preferential tariff treatment under an applicable TPL will not be considered eligible for preference if it: (1) Undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Section 10.610 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart J, Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good met the conditions relating to transshipment set forth in § 10.609(a).

Origin Verifications and Determinations

Section 10.616 implements CAFTA–DR Article 4.20 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to CAFTA–DR preferential tariff treatment. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which CAFTA–DR preferential duty treatment is claimed.

Section 10.617, which reflects CAFTA–DR Article 3.24, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.618 provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under this subpart.

Section 10.619 implements CAFTA–DR Article 4.20.5 and § 206(b) of the Act, concerning the denial of preferential tariff treatment in situations in which there is a pattern of conduct

by an importer, exporter, or producer of false or unsupported CAFTA–DR preference claims.

Penalties

Section 10.620 concerns the general application of penalties to CAFTA–DR transactions and is based on CAFTA–DR Article 5.9.

Section 10.621 reflects CAFTA–DR Article 4.15.3 and § 206(a)(1) of the Act with regard to an exception to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim and pays any duties owing.

Section 10.622 implements CAFTA–DR Article 4.18.2 and § 206(a)(2) of the Act, concerning an exception to the application of penalties in the case of a U.S. exporter or producer who promptly and voluntarily provides notification of the making of an incorrect certification with respect to a good exported to a Party.

Section 10.623 sets forth the circumstances under which the making of a corrected claim or certification by an importer or the providing of notification of an incorrect certification by a U.S. exporter or producer will be considered to have been done ''promptly and voluntarily''. Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the U.S. importer, exporter, or producer making the corrected claim or certification may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.623 also specifies the content of the statement that must accompany each corrected claim or certification.

Goods Returned After Repair or Alteration

Section 10.624 implements CAFTA–DR Article 3.6 regarding duty-free treatment for goods re-entered after repair or alteration in a CAFTA–DR Party.

Retroactive Preferential Tariff Treatment for Textile and Apparel Goods

Current § 10.699 of the CBP regulations, which sets forth the conditions and requirements that apply for purposes of submitting requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive tariff treatment under the CAFTA–DR (*see* CAFTA–DR Article 3.20 and § 205 of the Act), is redesignated as § 10.625 so as to conform numerically to the new provisions added to Subpart J, Part 10, by this interim rule. In addition, paragraph (a) of redesignated § 10.625, relating to the applicability of this section, is revised by deleting certain redundant language set forth in new § 10.581 (Scope) of Subpart J, Part 10.

*Part 24*

An amendment is made to § 24.23(c), which concerns the merchandise processing fee, to implement § 204 of the Act, providing that the merchandise processing fee is not applicable to goods that qualify as originating goods under the CAFTA–DR.

*Part 162*

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional CAFTA–DR records maintenance and examination provisions contained in Subpart J, Part 10, CBP regulations.

*Part 163*

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the CAFTA–DR as an activity for which records must be maintained. Also, the list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list) is also amended to add the documentation in the importer's possession supporting an CAFTA–DR claim for preferential tariff treatment.

*Part 178*

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for preferential tariff treatment under the CAFTA–DR and the Act.

**Inapplicability of Notice and Delayed Effective Date Requirements**

Under the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the CAFTA–DR. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments received before issuing a final rule.

**Executive Order 12866 and Regulatory Flexibility Act**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the APA, as described above. For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0125.

The collections of information in these regulations are in §§ 10.583 and 10.584. This information is required in connection with claims for preferential tariff treatment under the CAFTA–DR and the Act and will be used by CBP to determine eligibility for tariff preference under the CAFTA–DR and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

*Estimated total annual reporting burden:* 4,000 hours.

*Estimated average annual burden per respondent:* .2 hours.

*Estimated number of respondents:* 20,000.

*Estimated annual frequency of responses:* 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

**List of Subjects**

*19 CFR Part 10*

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 24*

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

*19 CFR Part 162*

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 178*

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read, the specific authority for § 10.699 is removed, and the specific authority for §§ 10.581 through 10.625 is added, to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.581 through 10.625 also issued under 19 U.S.C. 1202 (General Note 29, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 note).

* * * * *

■ 2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

**§ 10.31 Entry; bond.**

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, Bahrain, El Salvador, Guatemala, Honduras, Nicaragua, or the Dominican Republic and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Note 12, 25, 26, 27, or 29, HTSUS, in the country of which the importer is a resident.

* * * * *

■ 3. Part 10, CBP regulations, is amended by revising Subpart J to read as follows:

## Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

Sec.

**General Provisions**

10.581 Scope.
10.582 General definitions.

**Import Requirements**

10.583 Filing of claim for preferential tariff treatment upon importation.
10.584 Certification.
10.585 Importer obligations.
10.586 Certification not required.
10.587 Maintenance of records.
10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.

**Export Requirements**

10.589 Certification for goods exported to a Party.

**Post-Importation Duty Refund Claims**

10.590 Right to make post-importation claim and refund duties.
10.591 Filing procedures.
10.592 CBP processing procedures.

**Rules of Origin**

10.593 Definitions.
10.594 Originating goods.
10.595 Regional value content.
10.596 Value of materials.
10.597 Accumulation.
10.598 De minimis.
10.599 Fungible goods and materials.
10.600 Accessories, spare parts, or tools.
10.601 Retail packaging materials and containers.
10.602 Packing materials and containers for shipment.
10.603 Indirect materials.
10.604 Transit and transshipment.
10.605 Goods classifiable as goods put up in sets.

**Tariff Preference Level**

10.606 Filing of claim for tariff preference level.
10.607 Goods eligible for tariff preference level claims.
10.608 Submission of certificate of eligibility.
10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.
10.610 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber apparel goods.

**Origin Verifications and Determinations**

10.616 Verification and justification of claim for preferential tariff treatment.
10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.
10.618 Issuance of negative origin determinations.
10.619 Repeated false or unsupported preference claims.

**Penalties**

10.620 General.
10.621 Corrected claim or certification by importers.
10.622 Corrected certification by exporters or producers.
10.623 Framework for correcting claims or certifications.

**Goods Returned After Repair or Alteration**

10.624 Goods re-entered after repair or alteration in a Party.

**Retroactive Preferential Tariff Treatment for Textile and Apparel Goods**

10.625 Refunds of excess customs duties.

## Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

### General Provisions

#### § 10.581 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the Dominican Republic—Central America—United States Free Trade Agreement (the CAFTA–DR) signed on August 5, 2004, and under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act; Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*), as amended by section 1634 of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1167). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CAFTA–DR and the Act are contained in parts 24, 162, and 163 of this chapter.

#### § 10.582 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Customs authority.* ''Customs authority'' means the competent governmental unit that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the CAFTA–DR, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's Domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(i) *Harmonized System.* ''Harmonized System'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods.* ''Identical goods'' means goods that are produced in the same country and are the same in all respects, including physical characteristics, quality, and reputation, but excluding minor differences in appearance.

(m) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of one or more of the Parties but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of one or more of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

(n) *Originating.* ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in CAFTA–DR Chapter Four (Rules of Origin and Origin Procedures) and General Note 29, HTSUS;

(o) *Party.* ''Party'' means:

(1) The United States; and

(2) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the CAFTA–DR is in force between the United States and that country;

(p) *Person.* ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and an exemption from the merchandise processing fee;

(r) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Tariff preference level.* ''Tariff preference level'' means a quantitative limit for certain non-originating apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in §§ 10.606 through 10.610 of this subpart.

(t) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3.29 of the CAFTA–DR;

(u) *Territory.* ''Territory'' means:

(1) With respect to each Party other than the United States, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO.* ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

**Import Requirements**

**§ 10.583 Filing of claim for preferential tariff treatment upon importation.**

(a) *Basis of claim.* An importer may make a claim for CAFTA–DR preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.584 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good qualifies as an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim.* The claim is made by including on the entry summary, or equivalent documentation, the letter ''P'' or ''P+'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim.* If, after making the claim specified in paragraph (a) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.621 and 10.623 of this subpart).

**§ 10.584 Certification.**

(a) *General.* An importer who makes a claim under § 10.583(b) of this subpart based on a certification of the importer, exporter, or producer that the good qualifies as originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 29(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 29, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the Dominican Republic—Central America—United States Free Trade Agreement; there has been no further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; the goods remained under the control of customs authorities while in the territory of a non-Party; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English language or the language of the exporting Party. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

**§ 10.585 Importer obligations.**

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.583(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CAFTA–DR;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.584 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the

responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.621 and 10.623 of this subpart).

**§ 10.586 Certification not required.**

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.584 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.584 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

**§ 10.587 Maintenance of records.**

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.583(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the CAFTA–DR. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

**§ 10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.**

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.584 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CAFTA–DR, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.604(a) of this subpart were met.

**Export Requirements**

**§ 10.589 Certification for goods exported to a Party.**

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to a Party must provide a copy of the certification (or such other medium or format approved by the Party's customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to a Party and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.622 and 10.623 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to a Party must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

**Post-Importation Duty Refund Claims**

**§ 10.590 Right to make post-importation claim and refund duties.**

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.591 of this subpart. Subject to the provisions of § 10.588 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.592(c) of this subpart.

**§ 10.591 Filing procedures.**

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.584 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a

protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

**§ 10.592 CBP processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim under § 10.591 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.591 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.591 of this subpart until judicial review has been completed.

(c) *Allowance of claim.* (1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.591 of this subpart.

(d) *Denial of claim.* (1) *General.* The port director may deny a claim for a refund filed under § 10.591 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.591 of this subpart, or if, following initiation of an origin verification under § 10.616 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.616 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

**Rules of Origin**

**§ 10.593 Definitions.**

For purposes of §§ 10.593 through 10.605:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles provided for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or more of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or more of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or more of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or more of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are registered or recorded with a Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or more of the Parties; or

(ii) Used goods collected in the territory of one or more of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or more of the Parties from used goods, and used in the territory of a Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or more of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 29, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under generally accepted accounting principles;

(q) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means a good that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they

are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means used or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

**§ 10.594 Originating goods.**

Except as otherwise provided in this subpart and General Note 29(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CAFTA-DR only if:

(a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) The good is produced entirely in the territory of one or more of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 29(n), HTSUS, and the good satisfies all other applicable requirements of General Note 29, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 29(n), HTSUS, and satisfies all other applicable requirements of General Note 29, HTSUS; or

(c) The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

**§ 10.595 Regional value content.**

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) $\times$ 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) $\times$ 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods.*

(1) *General.* Where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or headings 8701 through 8708, HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC–VNM)/NC) $\times$ 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles.*

(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or more Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods.* (i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i) or (d)(4)(ii) for automotive goods that are exported to the territory of one or more Parties.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

**§ 10.596 Value of materials.**

(a) *Calculating the value of materials.* Except as provided in § 10.603, for purposes of calculating the regional value content of a good under General Note 29(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.598 of this subpart) provisions of General Note 29(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

*Example 1.* A producer in El Salvador purchases material x from an unrelated seller in El Salvador for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in El Salvador ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into El Salvador by the seller (or by anyone else). So long as the producer acquired material x in El Salvador, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

*Example 2.* Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within El Salvador at or about the same time the goods were sold to the producer in El Salvador. Thus, if the seller of material x also sold an identical material to another buyer in El Salvador without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials.*

(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or more of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 29, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

**§ 10.597 Accumulation.**

(a) Originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or more of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.594 of this subpart and all other applicable requirements of General Note 29, HTSUS.

**§ 10.598 De minimis.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 29(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 29(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 29, HTSUS.

(b) *Exceptions.* Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used

in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103, HTSUS, or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 29(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods.* (1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

**§ 10.599 Fungible goods and materials.**

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

**§ 10.600 Accessories, spare parts, or tools.**

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 29(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(a) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.595 of this subpart.

**§ 10.601 Retail packaging materials and containers.**

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CAFTA–DR is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 29(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

*Example 1.* Guatemalan Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.596(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.595(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

*Example 2.* Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) ×100 (*see* § 10.595(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

**§ 10.602 Packing materials and containers for shipment.**

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

*Example.* Producer A of the Dominican Republic produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in the Dominican Republic. The shipping container is originating. The value of the shipping container determined under section § 10.596(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.595(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

**§ 10.603 Indirect materials.**

An indirect material, as defined in § 10.582(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

*Example.* Honduran Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.594(b)(1) of this subpart and General Note 29(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

**§ 10.604 Transit and transshipment.**

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.594 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

**§ 10.605 Goods classifiable as goods put up in sets.**

Notwithstanding the specific rules set forth in General Note 29(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

**Tariff Preference Level**

**§ 10.606 Filing of claim for tariff preference level.**

A cotton or man-made fiber apparel good of Nicaragua described in § 10.607 of this subpart that does not qualify as an originating good under § 10.594 of this subpart may nevertheless be entitled to preferential tariff treatment under the CAFTA–DR under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9915.61.01) immediately above the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

**§ 10.607 Goods eligible for tariff preference level claims.**

Goods eligible for a TPL claim consist of cotton or man-made fiber apparel goods provided for in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and that meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS.

**§ 10.608 Submission of certificate of eligibility.**

An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber apparel good must submit a certificate of eligibility issued by an authorized official of the Government of Nicaragua, demonstrating that the good is eligible

for entry under the applicable TPL, as set forth in § 10.607 of this subpart. The certificate of eligibility must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

**§ 10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.**

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good:

(1) Undergoes production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with these requirements by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

**§ 10.610 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber apparel goods.**

(a) *Effect of noncompliance.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.609(a) of this subpart were met.

**Origin Verifications and Determinations**

**§ 10.616 Verification and justification of claim for preferential tariff treatment.**

(a) *Verification.* A claim for preferential tariff treatment made under § 10.583(b) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CAFTA–DR for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of the Party in which the good is produced, to review the records of the type referred to in § 10.589(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

**§ 10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.**

(a) *Procedures to determine whether a claim of origin is accurate.* (1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of a Party conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* (1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of a Party conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of a Party, along with the competent authorities of the Party, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from a Party to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

**§ 10.618 Issuance of negative origin determinations.**

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.583(b) of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 29, HTSUS, and in §§ 10.593 through 10.605 of this subpart, the legal basis for the determination.

**§ 10.619 Repeated false or unsupported preference claims.**

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CAFTA–DR rules of origin set forth in General Note 29, HTSUS, CBP may suspend preferential tariff treatment under the CAFTA–DR to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 29, HTSUS.

**Penalties**

**§ 10.620 General.**

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CAFTA–DR.

**§ 10.621 Corrected claim or certification by importers.**

An importer who makes a corrected claim under § 10.583(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

**§ 10.622 Corrected certification by U.S. exporters or producers.**

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.589(b) with respect to the making of an incorrect certification.

**§ 10.623 Framework for correcting claims or certifications.**

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims—* (1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via

an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which are unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

**Goods Returned After Repair or Alteration**

**§ 10.624 Goods re-entered after repair or alteration in a Party.**

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in a Party as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in a Party, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to a Party, are incomplete for their intended use and for which the processing operation performed in the Party constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from a Party after having been exported for repairs or alterations and which are claimed to be duty free.

**Retroactive Preferential Tariff Treatment for Textile and Apparel Goods**

**§ 10.625 Refunds of excess customs duties.**

(a) *Applicability.* Section 205 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act, as amended by section 1634(d) of the Pension Protection Act of 2006, provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA–DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA–DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to the last CAFTA–DR country will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation.* Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA–DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed within 90 days after the date of the entry into force of the Agreement for the last CAFTA–DR country, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section:

(1) ''Eligible CAFTA–DR country'' means a country that the United States Trade Representative has determined, by notice published in the **Federal Register**, to be an eligible country for purposes of section 205 of the Act;

(2) ''Last CAFTA–DR country'' means, of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the last country for which the Agreement enters into force; and

(3) ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 4. The general authority citation for part 24 and specific authority for § 24.23 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

■ 5. Section 24.23 is amended by adding a new paragraph (c)(9) to read as follows:

**§ 24.23 Fees for processing merchandise.**

* * * * *

(c) * * *

(9) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade

Agreement Implementation Act (*see also* General Note 29, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

## PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 6. The authority citation for part 162 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 7. Section 162.0 is amended by revising the last sentence to read as follows:

**§ 162.0 Scope.**

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, and the U.S.-Morocco Free Trade Agreement are contained in Part 10, Subparts H, I, J, and M of this chapter, respectively.

## PART 163—RECORDKEEPING

■ 8. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 9. Section 163.1(a)(2) is amended by redesignating paragraphs (a)(2)(x) and (a)(2)(xi) as paragraphs (a)(2)(xi) and (a)(2)(xii), and adding a new paragraph (a)(2)(x) to read as follows:

**§ 163.1 Definitions.**

* * * * *

(a) * * *

(2) * * *

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), including an CAFTA–DR importer's certification.

* * * * *

■ 10. The Appendix to part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

**Appendix to Part 163—Interim (a)(1)(A) List**

* * * * *

IV. * * *

**§ 10.585 CAFTA–DR records that the importer may have in support of a CAFTA–DR claim for preferential tariff treatment, including an importer's certification.**

* * * * *

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 11. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 12. Section 178.2 is amended by adding new listings for ''§§ 10.583 and 10.584'' to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR Section | Description | OMB control No. |
|---|---|---|
| * | * | * |
| §§ 10.583 and 10.584. | Claim for preferential tariff treatment under the Dominican Republic-Central America-US Free Trade Agreement.. | 1651–0125 |
| * | * | * |

* * * * *

**W. Ralph Basham,**

*Commissioner, U.S. Customs and Border Protection.*

Approved: June 9, 2008.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E8–13252 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Deracoxib

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for the addition of a 50-milligram size deracoxib tablet which is used for the control of pain and inflammation in dogs.

**DATES:** This rule is effective June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed a supplement to NADA 141–203 that provides for the addition of a 50-milligram size of DERAMAXX (deracoxib) Chewable Tablets, used for the control of pain and inflammation in dogs. The supplemental NADA is approved as of May 16, 2008, and 21 CFR 520.538 is amended to reflect the approval.

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 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

**List of Subjects in 21 CFR Part 520**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

**§ 520.538 [Amended]**

■ 2. In paragraph (a) of § 520.538, remove ''25, 75, or 100 milligrams'' and in its place add ''25, 50, 75, or 100 milligrams''.

Dated: June 4, 2008.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E8–13353 Filed 6–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Ivermectin, Fenbendazole, and Praziquantel Tablets

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for the veterinary prescription use of chewable tablets containing ivermectin, fenbendazole, and praziquantel for the treatment and control of various internal parasites and for the prevention of canine heartworm disease in adult dogs.

**DATES:** This rule is effective June 13, 2008.

**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:** Intervet, Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, filed NADA 141–286 that provides for the veterinary prescription use of PANACUR Plus (ivermectin, fenbendazole, and praziquantel) Soft Chews for the treatment and control of various internal parasites and for the prevention of canine heartworm disease in adult dogs. The NADA is approved as of May 9, 2008, and the regulations are amended in 21 CFR part 520 by adding § 520.1200 to reflect the approval.

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.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

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.

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

**List of Subjects in 21 CFR Part 520**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Add § 520.1200 to read as follows:

**§ 520.1200 Ivermectin, fenbendazole, and praziquantel tablets.**

(a) *Specifications*. Each chewable tablet contains either:

(1) 68 micrograms (µg) ivermectin, 1.134 grams fenbendazole, and 57 milligrams (mg) praziquantel; or

(2) 27 µg ivermectin, 454 mg fenbendazole, and 23 mg praziquantel.

(b) *Sponsor*. See No. 057926 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*. Administer tablets to provide 6 µg per kilogram (/kg) ivermectin, 100 mg/kg fenbendazole, and 5 mg/kg praziquantel.

(2) *Indications for use*. For the treatment and control of adult *Toxocara canis* (roundworm), *Ancylostoma caninum* (hookworm), *Trichuris vulpis* (whipworm), and *Dipylidium caninum* (tapeworm), and for the prevention of heartworm disease caused by *Dirofilaria immitis* in adult dogs.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 4, 2008.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E8–13354 Filed 6–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 803

**[Docket No. FDA–2008–N–0310]**

### Medical Devices; Medical Device Reporting; Baseline Reports

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

**ACTION:** Direct final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its medical device reporting regulations to remove a requirement for baseline reports that the agency deems no longer necessary. Currently, manufacturers provide baseline reports to FDA that include the FDA product code and the premarket approval or premarket notification number. Because most of the information in these baseline reports is also submitted to FDA in individual adverse event reports, FDA is removing the requirement for baseline reports. The removal of this requirement will eliminate unnecessary duplication and reduce the manufacturer's reporting burden. FDA is amending the regulation in accordance with its direct final rule procedures. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event we receive a significant adverse comment and withdraw this direct final rule.

**DATES:** This rule is effective October 27, 2008. Submit written or electronic

comments by August 27, 2008. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2008–N–0310, by any of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Written Submissions*

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions*: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see section IX of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Press, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr, Rockville, MD 20850, 240–276–3457.

**SUPPLEMENTARY INFORMATION:**

## I. What Is the Background of the Rule?

In the **Federal Register** of December 11, 1995 (60 FR 63578), FDA published a final rule revising part 803 (21 CFR part 803) and requiring medical device manufacturers to submit certain reports relating to adverse events, including a requirement under § 803.55 to submit baseline reports on FDA Form 3417 or an electronic equivalent. Section 803.55 requires manufacturers to submit baseline reports when the manufacturer submits the first adverse event report under § 803.50 for a device model. In addition, § 803.55 requires annual updates of each baseline report.

The baseline report includes address information for the reporting and manufacturing site for the device, device identifiers, the basis for marketing for the device (e.g., the 510(k) number or PMA number), the FDA product code, the shelf life of the device (if applicable) and the expected life of the device, the number of devices distributed each year, and the method used to calculate that number. In the **Federal Register** of July 31, 1996 (61 FR 39868), FDA stayed the requirement for manufacturers to submit information on the number of devices distributed each year and the method used to calculate that number, because of questions raised about the feasibility of obtaining such information and the usefulness of such information once submitted to FDA.

With the requirement for these two data elements stayed, the data submitted in baseline reports largely overlapped with the data submitted in individual adverse event reports. That is, FDA had access to much of the information included in baseline reports through the individual adverse event reports submitted on the MedWatch mandatory reporting form (FDA Form 3500A). Two notable exceptions were the basis for marketing and the FDA product code, data elements that were included in the baseline reports but were not included in the FDA Form 3500A and its instructions.

The basis for marketing and the FDA product code were, however, subsequently incorporated into the FDA Form 3500A and its instructions. In the **Federal Register** of December 27, 2004 (69 FR 77256), FDA announced proposed modifications to FDA Form 3500A, which included adding an entry for the basis for marketing (PMA or 510(k) number). In the **Federal Register** of December 7, 2005 (70 FR 72843), FDA announced that the Office of Management and Budget approved these modifications under the Paperwork Reduction Act of 1995. FDA also modified the instructions for FDA Form 3500A to state that manufacturers use the FDA product code when completing the entry for ''Common Device Name'' on FDA Form 3500A.

With the addition of these two data elements (basis for marketing and FDA product code) to FDA Form 3500A and its instructions, the information submitted in FDA Form 3500A largely replicates the information submitted in baseline reports. As a result, the agency deems the baseline reporting requirement in § 803.55 no longer necessary. The agency believes that removing § 803.55 will reduce the reporting burden for manufacturers without impairing the agency's receipt of device adverse event information.

## II. What Does This Direct Final Rulemaking Do?

In this direct final rule, FDA is removing § 803.55, which requires manufacturers to submit a baseline report when they submit the first report under § 803.50 involving a device model and provide annual updates thereafter. In addition, this direct final rule makes conforming amendments to §§ 803.1(a), 803.10(c), and 803.58(b) to remove references to baseline reports and to § 803.55. Finally, this direct final rule removes the terms ''device family'' and ''shelf life'' from the definitions in § 803.3 because these terms are used only in the context of baseline reports.

## III. What Are the Procedures for Issuing a Direct Final Rule?

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA announced the availability of the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures'' that described when and how FDA will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to make noncontroversial changes to existing regulations. We anticipate no significant adverse comment.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule that is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as

comments regarding this direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comment, we intend to withdraw this final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the APA (5 U.S.C. 552a *et seq.*). If we receive no significant adverse comment during the specified comment period, we intend to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends.

## IV. What is the Legal Authority for This Rule?

FDA is issuing this direct final rule under the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360i, 371, and 374).

## V. What is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.30(h) and (i) 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.

## VI. What is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The direct final rule amends the existing medical device reporting regulation to remove § 803.55, which requires that manufacturers submit baseline reports, and makes conforming amendments to §§ 803.1(a), 803.3, 803.10(c), and 803.58(b) to remove references to baseline reports and to § 803.55 and to remove the terms ''device family'' and ''shelf life.'' This final rule does not impose any new requirements but instead removes a reporting requirement for manufacturers that FDA deems no longer necessary. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

## VII. How Does the Paperwork Reduction Act of 1995 Apply to This Rule?

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

## VIII. What are the Federalism Impacts of This Rule?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## IX. How Do You Submit Comments on This Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov.*

### List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 is amended as follows:

## PART 803—MEDICAL DEVICE REPORTING

■ 1. The authority citation for 21 CFR part 803 continues to read as follows:

**Authority:** 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

**§ 803.1 [Amended]**

■ 2. Section 803.1 is amended in paragraph (a), in the fourth sentence, by removing the phrase ''and baseline reports''.

**§ 803.3 [Amended]**

■ 3. Section 803.3 is amended by removing the definitions for ''Device family'' and ''Shelf life''.

**§ 803.10 [Amended]**

■ 4. Section 803.10 is amended by removing paragraph (c)(3) and redesignating paragraph (c)(4) as paragraph (c)(3).

**§ 803.55 [Removed]**

■ 5. Section 803.55 is removed.

**§ 803.58 [Amended]**

■ 6. Section 803.58 is amended in paragraph (b)(1) by removing ''803.55,''.

Dated: June 5, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–13350 Filed 6–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2008. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

**DATES:** Effective July 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2008, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during July 2008, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2008.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.95 percent for the first 20 years following the valuation date and 5.02 percent thereafter. These interest assumptions represent an increase (from those in effect for June 2008) of 0.27 percent for the first 20 years following the valuation date and 0.27 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase from those in effect for June 2008 of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2008, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 177, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 177 | 07–1–08 | 08–1–08 | 3.50 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 177, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 177 | 07–1–08 | 08–1–08 | 3.50 | 4.00 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July 2008, as set forth below, is added to the table.

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_t$ | for $t$ = | $i_t$ | for $t$ = | $i_t$ | for $t$ = |
| * | * | * | * | * | * | * |
| July 2008 | .0595 | 1–20 | .0502 | ≤20 | N/A | N/A |

Issued in Washington, DC, on this 9th day of June 2008.

**Vincent K. Snowbarger,**

*Deputy Director for Operations, Pension Benefit Guaranty Corporation.*

[FR Doc. E8–13229 Filed 6–12–08; 8:45 am]

**BILLING CODE 7709–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R04–OAR–2007–0532–200810(c); FRL–8579–6]**

### Approval and Promulgation of Implementation Plans; Alabama; Prevention of Significant Deterioration and Nonattainment New Source Review; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** On May 1, 2008, EPA published a document approving revisions to the Alabama State Implementation Plan (SIP) concerning Alabama's Prevention of Significant Deterioration (PSD) program. That document included one paragraph containing an inadvertent error in its characterization of a portion of EPA's New Source Review (NSR) rules. This document corrects that inadvertent error.

**DATES:** This action is effective June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Alabama State Implementation Plan, contact Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.* For information regarding New Source Review, contact Ms. Gracy R. Danois, Air Permits Section, at the same address above. The telephone number is (404) 562–9119. Ms. Danois can also be reached via electronic mail at *danois.gracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is making a correction to the document published on May 1, 2008 (73 FR 23957), approving revisions to Alabama's SIP incorporating rule changes to Alabama's PSD program. As part of the background information provided in the May 1, 2008, document, EPA made an inadvertent misstatement on page 23958, column 1, first full paragraph. This paragraph begins with the phrase, ''The 'reasonable possibility' standard identifies, for sources and reviewing authorities * * *'' and ends with the phrase, ''the reasonable possibility standard did not result in any actual changes to the corresponding federal rule.'' 73 FR 23958. This last quoted statement does not correctly describe EPA's recent revisions to its NSR rules regarding the meaning of the term ''reasonable possibility'' in those rules. EPA's final action regarding ''reasonable possibility'' did result in changes to federal rules found at 40 CFR

parts 51 and 52. See, 72 FR 72607, December 21, 2007.

EPA is now correcting the entirety of that first full paragraph at 73 FR 23958 by replacing it with the following paragraph:

''The 'reasonable possibility' standard identifies, for sources and reviewing authorities, the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. EPA's December 2007 action clarified the meaning of the term 'reasonable possibility' through changes to the federal rule language in 40 CFR parts 51 and 52. In the present case, although Alabama's rules include the term 'reasonable possibility,' Alabama's rules require recordkeeping for facilities for which there is a reasonable possibility as well as those for which there is not. Therefore, Alabama's SIP revisions are approvable.''

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

Dated: June 4, 2008.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E8–13348 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

**[EPA–HQ–OW–2006–0141; FRL–8579–3]**

**RIN 2040–AE86**

## National Pollutant Discharge Elimination System (NPDES) Water Transfers Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a regulation to clarify that water transfers are not subject to regulation under the National Pollutant Discharge Elimination System (NPDES) permitting program. This rule defines water transfers as an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. This rule focuses exclusively on water transfers and does not affect any other activity that may be subject to NPDES permitting requirements.

This rule is consistent with EPA's June 7, 2006, proposed rule, which was based on an August 5, 2005, interpretive memorandum entitled ''Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers.''

**DATES:** This final rule is effective on August 12, 2008. For judicial review purposes, this action is considered issued as of 1 p.m. eastern daylight time (e.d.t.) on June 27, 2008, as provided in 40 CFR 23.2. Under section 509(b)(1) of the Clean Water Act, judicial review of the Administrator's action can only be had by filing a petition for review in the United States Court of Appeals within 120 days after the decision is considered issued for purposes of judicial review.

**ADDRESSES:** The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC), EPA West 1301 Constitution Ave., Room 3334, NW., Washington DC 20460. The administrative record is also available via EPA Dockets (Edocket) at *http://www.regulations.gov* under docket number EPA–HQ–OW–2006–0141. The rule and key supporting documents are also electronically available on the Internet at *http://www.epa.gov/npdes/agriculture*.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Virginia Garelick, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2316; fax: 202–564–6384; e-mail address: *garelick.virginia@epa.gov*.

**SUPPLEMENTARY INFORMATION:**



## I. General Information

### *A. Does This Action Apply to Me?*

This action applies to those involved in the transfer of waters of the United States. The following table provides a list of standard industrial codes for operations potentially covered under this rule.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

| Category | NAICS | Examples of potentially affected entities |
|---|---|---|
| Resource management parties (includes state departments of fish and wildlife, state departments of pesticide regulation, state environmental agencies, and universities). | 924110 Administration of Air and Water Resource and Solid Waste Management Programs. | Government establishments primarily engaged in the administration, regulation, and enforcement of water resource programs; the administration and regulation of water pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels. |

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

| Category | NAICS | Examples of potentially affected entities |
|---|---|---|
| | 924120 Administration of Conservation Programs. | Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry. |
| | 237110 Water and Sewer Line and Related Structures Construction. | This category includes entities primarily engaged in the construction of water and sewer lines, mains, pumping stations, treatment plants and storage tanks. |
| | 237990 Other Heavy and Civil Engineering Construction. | This category includes dam Construction and management, flood control structure construction, drainage canal and ditch construction, flood control project construction, and spillway, floodwater, construction. |
| Public Water Supply | 221310 Water Supply | This category includes entities engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in 40 CFR 122.3. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2006–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although listed in the index, some information, 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 Water Docket in the EPA Docket Center, EPA West, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access*. You may access this **Federal Register** document electronically through the EPA Web site under the **Federal Register** listings at *http://www.regulations.gov*.

*C. Under What Legal Authority Is This Final Rule Issued?*

This final rule is issued under the authority of sections 402 and 501 of the Clean Water Act., 33 U.S.C. 1342 and 1361.

*D. What Is the Comment Response Document?*

EPA received a large number of comments on the proposed rule, including thousands of form letters. EPA evaluated all of the comments submitted and prepared a Comment Response Document containing both the comments received and the Agency's responses to those comments. The Comment Response Document complements and supplements this preamble by providing more detailed explanations of EPA's final action. The Comment Response Document is available at the Water Docket.

## II. Background and Definition of Water Transfers

Water transfers occur routinely and in many different contexts across the United States. Typically, water transfers route water through tunnels, channels, and/or natural stream water features, and either pump or passively direct it for uses such as providing public water supply, irrigation, power generation, flood control, and environmental restoration. Water transfers can be relatively simple, moving a small quantity of water a short distance, or very complex, transporting substantial quantities of water over long distances, across both State and basin boundaries. Water transfers may be of varying complexities and sizes; there may be multiple reservoirs, canals, or pumps over the course of the transfer, or the route may be a more direct connection between the donor and the receiving waterbody. There are thousands of water transfers currently in place in the United States, including sixteen major diversion projects in the western States alone. Examples include the Colorado-Big Thompson Project in Colorado and the Central Valley Project in California.

Water transfers are administered by various federal, State, and local agencies and other entities. The Bureau of Reclamation administers significant transfers in western States to provide approximately 140,000 farmers with irrigation water. With the use of water transfers, the Army Corps of Engineers keeps thousands of acres of agricultural and urban land in southern Florida from flooding in former areas of Everglades wetlands. Many large cities in the west and the east would not have adequate sources of water for their citizens were it not for the continuous redirection of water from outside basins. For example, both the cities of New York and Los Angeles depend on water transfers from distant watersheds to meet their

municipal demand. In short, numerous States, localities, and residents are dependent upon water transfers, and these transfers are an integral component of U.S. infrastructure.

The question of whether or not an NPDES permit is required for water transfers arises because activities that result in the movement of waters of the U.S., such as trans-basin transfers of water to serve municipal, agricultural, and commercial needs, typically move pollutants from one waterbody (donor water) to another (receiving water). Although there have been a few isolated instances where entities responsible for water transfers have been issued NPDES permits, Pennsylvania is the only NPDES permitting authority that regularly issues NPDES permits for water transfers. Pennsylvania began issuing permits for water transfers in 1986, in response to a State court decision mandating the issuance of such permits. See *DELAWARE Unlimited* v. *DER*, 508 A.2d 348 (Pa. Cmwlth, 1986). In addition, some Courts of Appeals have required NPDES permits for specific water transfers associated with the expansion of a ski resort and the supply of drinking water. See, e.g., *Dubois* v. *U.S. Dep't of Agriculture*, 102 F.3d 1273 (1st Cir. 1996); *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *City of New York*, 273 F.3d 481 (2nd Cir 2001), aff'd, *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *City of New York*, 451 F.3d 77 (2nd Cir 2006). Otherwise, however, water transfers have not been regulated under section 402 of the Clean Water Act (CWA or the Act).

The Supreme Court recently addressed the issue of whether an NPDES permit is necessary for the mere transfer of water in *South Fla. Water Mgmt. Dist.* v. *Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). The Supreme Court in Miccosukee vacated a decision by the 11th Circuit, which had held that a Clean Water Act permit was required for transferring water from one navigable water into another, a Water Conservation Area in the Florida Everglades. The Court remanded the case for further fact-finding as to whether the two waters in question were ''meaningfully distinct.'' [1] If they were not, an NPDES permit would not be required. The Court declined to resolve the question of whether water transfers require NPDES permits when the waterbodies at issue are meaningfully distinct. The Court noted that some legal arguments made by the parties regarding this question had not been raised in the lower court proceedings and noted that these arguments would be open to the parties on remand. *Id.* at 109.

On August 5, 2005, EPA issued a legal memorandum entitled ''Agency Interpretation on Applicability of section 402 of the Clean Water Act to Water Transfers'' (''interpretive memorandum''). The principal legal question addressed in the interpretive memorandum was whether the movement of pollutants from one water of the U.S. to another by a water transfer is the ''addition'' of a pollutant potentially subjecting the activity to the permitting requirement under section 402 of the Act. Based on the statute as a whole and consistent with the Agency's longstanding practice, the interpretive memorandum concluded that Congress generally expected water transfers would be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA.

On June 7, 2006, EPA proposed regulations based on the analysis contained in the interpretive memorandum to expressly state that water transfers are not subject to regulation under section 402 of the CWA. The Agency proposed to define water transfers as ''an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use.'' The Act reserves the ability of States to regulate water transfers under State law and this proposed rulemaking was not intended to interfere with this State prerogative. *See* CWA section 510.

EPA is issuing a final regulation that is nearly identical to the proposed rule. (Minor changes have been made for clarity.) Through today's rule, the Agency concludes that water transfers, as defined by the rule, do not require NPDES permits because they do not result in the ''addition'' of a pollutant. Consistent with the proposed rule, EPA defines water transfers in the following manner: ''Water transfer means an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use.'' In order to constitute a ''water transfer'' under this rule, and, therefore, be exempt from the requirement to obtain an NPDES permit, the water being conveyed must be a water of the U.S.[2] prior to being discharged to the receiving waterbody. If the water that is being conveyed is not a water of the U.S. prior to being discharged to the receiving body, then that activity does not constitute a water transfer under today's rule. Additionally, the water must be conveyed from one water of the U.S. to another water of the U.S. Conveyances that remain within the same water of the U.S., therefore, do not constitute water transfers under this rule, although movements of water within a single water body are also not subject to NPDES permitting requirements. As the rule makes clear, in order to be a water transfer under the rule, the water must be conveyed without being subjected to an intervening industrial, municipal, or commercial use.

Consider water that is being moved from Reservoir A to Reservoir B in a different watershed. In order to get from Reservoir A to Reservoir B, the water must first be released through a dam. The water then travels down River A, which is considered a water of the U.S. Next, the water is conveyed from River A to River B through a tunnel. Finally, the water travels down River B, also a water of the U.S., and flows into Reservoir B. There are several points in this example where water is conveyed from one body to another, but not all of those points would themselves constitute a ''water transfer'' because they are not the conveyance of ''waters of the United States to another water of the United States.'' The first example is the release from Reservoir A to River A. This does not constitute a water transfer under EPA's definition because the water on both sides of the dam is part of the same water of the U.S.[3] The next movement is the release from River A into River B, through a tunnel. This release constitutes a water transfer under the scope of this rule because it conveys water from one water of the U.S. to another water of the U.S. without subjecting the water to an intervening industrial, municipal or

[1] At the time of this rulemaking, the District Court has stayed its proceedings until resolution of a similar case in the same District Court, *Friends of the Everglades* v. *South Florida Water Management District.*

[2] Waters of the U.S. are defined for purposes of the NPDES program in 40 CFR 122.2 and this rulemaking does not seek to address what is within the scope of that term.

[3] It should be noted, however, that this release would still not require an NPDES permit because EPA and the Federal courts have determined that a discharge from a dam does not result in an ''addition'' of a pollutant unless the dam itself discharges a pollutant such as grease into the water passing through the dam. See *National Wildlife Fed'n* v. *Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982); *National Wildlife Fed'n* v. *Consumers Power Company*, 862 F.2d 580 (6th Cir. 1988). Cf. *S.D. Warren Co.* v. *Maine Board of Environmental Protection*, 126 S.Ct. 1843 (2006) (Certification under CWA section 401 may be needed in some instances).

commercial use. Therefore, unless this conveyance itself introduces pollutants into the water being conveyed, the release will not require an NPDES permit under today's rule. River B's subsequent flow into Reservoir B, which is formed by a dam on Reservoir B, does not constitute a water transfer because it is merely movement within the same water of the U.S., and, as discussed above, would not require an NPDES permit for such movement.

The remainder of the preamble to this final rule is organized as follows. Section III discusses the rationale for the final rule based on the language, structure, and legislative history of the Clean Water Act. Section IV summarizes and responds to the major comments received in response to the scope of the proposed rule. Section V reviews statutory provisions and various executive orders.

## III. Rationale for the Final Rule

On June 7, 2006, EPA published a proposed rule that would exclude from NPDES permit requirements discharges from water transfers that do not subject the water to an intervening industrial, municipal, or commercial use, so long as pollutants are not introduced by the water transfer activity itself. This proposal, like EPA's August 5, 2005, interpretive memorandum, explained that no one provision of the Act expressly addresses whether water transfers are subject to the NPDES program but described the indicia of Congressional intent that water transfers not be so regulated. Therefore, today's rule appropriately defers to congressional concerns that the statute not unnecessarily burden water quantity management activities and excludes water transfers from the NPDES program. This section will review the legal framework for evaluating EPA's interpretation of the CWA, explain the Agency's interpretation of the CWA, including a brief survey of prior litigation over the relevant statutory terms, and outline the relevant legislative history.

### *A. Legal Framework*

Under what is traditionally viewed as *Chevron* analysis, a court examining the legality of an agency's interpretation of a statute is to first ask whether the statute speaks clearly to the precise question at issue and must give effect to the unambiguously expressed intent of Congress if such unambiguous intent can be discerned. *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 842–843 *(Chevron); National Ass. of Homebuilders, et al.* v. *Defenders of Wildlife, et al.*, 127 S.Ct. 2518, 2534 (2007) (*NAHB*). To the extent that a statute does not speak clearly to the specific issue, the Agency interpretation must be upheld if it is based on a permissible construction of the statute. *Chevron*, 467 U.S. at 843; *NAHB*, 127 S.Ct. at 2534. Courts are required to accept an agency's reasonable interpretation of a statute, even if this interpretation differs from what the court believes is the ''best'' statutory interpretation. *National Cable and Telecommunications Ass'n, et. al.* v. *Brand X, et al.*, 545 U.S. 967, 980 (2005) (*Brand X*).

Deference to an agency interpretation of a statute under *Chevron* is appropriate where Congress has authorized an agency to make rules carrying the force of law, and such authorization is apparent where the agency is empowered to make rules or adjudicate issues or there are other indications of comparable congressional intent. *United States* v. *Mead Corp.*, 533 U.S. 218 (2001). Congress has expressly authorized EPA to prescribe regulations as are necessary to administer the CWA, and today's rule has been promulgated to address the question whether water transfers require NPDES permits. CWA section 501(a); 33 U.S.C. 1361(a); 71 FR 32887 (June 7, 2006).

As discussed below, EPA has reviewed the language, structure and legislative history of the CWA and concludes that today's rule, which clarifies that NPDES permits are not required for transfers of waters of the United States from one water body to another, is a permissible construction of the statute. Taken as a whole, the statutory language and scheme support the conclusion that permits are not required for water transfers.

### *B. Statutory Language and Structure*

The Clean Water Act prohibits the discharge of a pollutant by any person except in compliance with specified statutory sections, including section 402. CWA section 301(a). The term ''discharge of a pollutant'' is defined as ''any addition of any pollutant to navigable waters from any point source.'' CWA section 502(12). The legal question addressed by today's rule is whether a water transfer as defined in the new regulation constitutes an ''addition'' within the meaning of section 502(12).

The term ''addition'' has been interpreted by courts in a variety of contexts that are relevant here. Several courts of appeals have determined that water flowing through dams and hydroelectric facilities does not constitute an addition of a pollutant under the CWA. Specifically, the Court of Appeals for the D.C. Circuit agreed with EPA that the term ''addition'' may reasonably be limited to situations in which ''the point source itself physically introduces a pollutant into a water from the outside world.'' *National Wildlife Fed'n* v. *Gorsuch*, 693 F.2d 156, 175 (D.C. Cir. 1982) (*Gorsuch*) (accepting EPA's view that the requirement for an NPDES permit ''is established when the pollutant first enters the navigable water, and does not change when the polluted water later passes through the dam from one body of navigable water (the reservoir) to another (the downstream river).'') The Court of Appeals for the Sixth Circuit reached the same conclusion with regard to a hydropower facilities operating on Lake Michigan. *National Wildlife Fed'n* v. *Consumers Power Co.* 862 F.2d 580, 584 (6th Cir. 1988) (*Consumers Power*) (agreeing with the *Gorsuch* Court's conclusion that EPA's construction of ''addition'' is a permissible one). Both the *Gorsuch* and *Consumers Power* courts accorded deference to EPA's interpretation of the CWA, and specifically to its interpretation of the term ''addition.'' *Gorsuch*, 693 F.2d at 166–167; *Consumers Power*, 862 F.2d at 584.

Three other Courts of Appeals, however, have concluded that where a water transfer involves distinct waters of the United States, the transfer constitutes an ''addition'' of pollutants. *Dubois* v. *U.S. Dept. of Agriculture, et al.*, 102 F.3d 1273, 1298–1300 (1st Cir. 1996); *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *City of New York*, 273 F.3d 481, 491–93 (2nd Cir. 2001) (*Catskill I*); *Miccosukee Tribe of Indians* v. *South Florida Water Management District*, 280 F.3d 1364 (11th Cir. 2002), *vacated* by *Miccosukee*, 541 U.S. at 112.[4] These three Courts of Appeals construed the term ''addition''

[4] EPA recognizes that the approach adopted by these three courts is at odds with today's rule. None of these three courts, however, viewed the question of statutory interpretation through the lens of *Chevron* deference. *DuBois*, 102 F.3d at 1285, n. 15 (*Chevron* does not apply because the court ''was not reviewing an agency's interpretation of the statute that it was directed to enforce.''); *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *City of New York*, 451 F.3d 77, 82 (2nd Cir. 2006) (*Catskill II*) (''The City concedes that this EPA interpretation is not entitled to *Chevron* deference.''); *Catskill I*, 273 F.3d at 490 (Declining to apply Chevron deference, but acknowledging that ''[i]f the EPA's position had been adopted in a rulemaking or other formal proceeding, deference of the sort applied by the Gorsuch and *Consumers Power* courts might be appropriate.''); *Miccosukee*, 280 F.3d at 1367, n. 4 (''The EPA is no party to this case; we can ascertain no EPA position applicable to [the water transfer at issue) to which to give any deference, much less *Chevron* deference.''). Moreover, the approaches adopted by the *Gorsuch* and *Consumers Power* courts is compatible with today's rule.

so as to include transfers of water from one body to another distinct body (*Catskill I*, 273 F.3d at 491 (''EPA's position * * * is that for there to be an 'addition,' a 'point source must introduce the pollutant into navigable water from the outside world.' We agree with this view *provided that 'outside world' is construed as any place outside the particular water body to which pollutants are introduced.*'') (internal citations omitted, emphasis added); *Catskill II*, 451 F.3d at 82–85) or transfers that cause water to move in a direction it would not ordinarily flow (*DuBois*, 102 F.3d at 1297; *Catskill I*, 273 at 493–94 (explaining *DuBois*); *Miccosukee*, 280 F.3d at 1368–69).

In pending litigation, on the other hand, the United States has taken the position that the Clean Water Act generally does not subject water transfers to the NPDES program:

> The statute defines '''discharge of a pollutant''' as ''any addition of any pollutant to navigable waters from any point source.'' 33 U.S.C. 1362(12). When the statutory definition of '''navigable waters'''—*i.e.*, ''the waters of the United States,'' 33 U.S.C. 1362(7)—is inserted in place of ''navigable waters,'' the statute provides that NPDES applies only to the ''*addition* of any pollutant *to the waters* of the United States.'' Given the broad definition of ''pollutant,'' transferred (and receiving) water will always contain intrinsic pollutants, but the pollutants in transferred water are already *in* ''the waters of the United States'' before, during, and after the water transfer. Thus, there is no ''addition''; nothing is being added ''*to*'' ''the waters of the United States'' by virtue of the water transfer, because the pollutant at issue is already part of ''the waters of the United States'' to begin with. Stated differently, when a pollutant is conveyed along with, and already subsumed entirely within, navigable waters and the water is not diverted for an intervening use, the water never loses its status as ''waters of the United States,'' and thus nothing is added to those waters from the outside world.

Brief for the United States in *Friends of the Everglades* v. *South Florida Water Management Dist.*, No. 07–13829–H (11th Cir.).

The Agency has concluded that, taken as a whole, the statutory language and structure of the Clean Water Act indicate that Congress generally did not intend to subject water transfers to the NPDES program. Interpreting the term ''addition'' in that context, EPA concludes that water transfers, as defined by today's rule, do not constitute an ''addition'' to navigable waters to be regulated under the NPDES program. Instead, Congress intended to leave primary oversight of water transfers to state authorities in cooperation with Federal authorities.

In interpreting the term ''addition'' in section 502(12) of the statute, EPA is guided by several principles. ''Addition'' is a general term, undefined by the statute. Partly for this reason, the courts have accorded substantial discretion to EPA in interpreting the term in the context of the ''dams'' cases. *Gorsuch*, 693 F.2d at 175 (finding the statute capable of supporting multiple interpretations, the legislative history unhelpful, and concluding that Congress would have given EPA discretion to define ''addition'' had it expected the meaning of the term to be disputed); *Consumers Power*, 862 F.2d at 584–85 (agreeing with the analysis in *Gorsuch*). Moreover, several alternative ways of interpreting the term ''addition'' have been proposed in the context of water transfers. As noted above, EPA's longstanding position is that an NPDES pollutant is ''added'' when it is introduced into a water from the ''outside world'' by a point source. *Gorsuch*, 693 F.2d at 174–175. Under one interpretation, advanced by the 2nd Circuit in *Catskill Mountain*, ''the outside world'' means anywhere outside the particular waterbody receiving the pollutant, and so a permit in that case was required for movement of pollutants between distinct waterbodies. *Catskill I*, 273 F.3d at 491. EPA does not agree with this understanding of the term ''outside world'' as evinced by its long-standing practice of generally not requiring NPDES permits for transfers between water bodies, which it has defended against court challenges asserting that such transfers do require such permits. Rather, EPA believes that an addition of a pollutant under the Act occurs when pollutants are introduced from outside the waters being transferred.

As noted above, various courts have reached different conclusions in determining when movement of waters of the United States containing pollutants constitutes an ''addition'' of a pollutant. To resolve the confusion created by these conflicting approaches, the Agency has looked to the statute as a whole for textual and structural indices of Congressional intent on the question whether water transfers that do not themselves introduce new pollutants require an NPDES permit.

Statutory construction principles instruct that the Clean Water Act should be interpreted by analyzing the statute as a whole. *United States* v. *Boisdore's Heirs*, 49 U.S. 113, 122 (1850). The Supreme Court has long explained ''in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and its object and policy.'' *Id. See also, Gustafond* v. *Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995), *Smith* v. *United States*, 508 U.S. 223, 233 (1993), *United States Nat'l Bank of Or.* v. *Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993). In general, the ''whole statute'' interpretation analysis means that ''a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.'' Norman J. Singer, *Statutes and Statutory Construction* vol. 2A § 46:05, 154 (6th ed., West Group 2000). As the Second Circuit has explained with regard to the CWA:

> Although the canons of statutory interpretation provide a court with numerous avenues for supplementing and narrowing the possible meaning of ambiguous text, most helpful to our interpretation of the CWA in this case are two rules. First, when determining which reasonable meaning should prevail, the text should be placed in the context of the entire statutory structure [quoting *United States* v. *Dauray*, 215 F.3d 257, 262 (2d Cir. 2000)]. Second, ''absurd results are to be avoided and internal inconsistencies in the statute must be dealt with.'' *United States* v. *Turkette*, 452 U.S. 576, 580 (1981).

*Natural Res. Def. Council* v. *Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). *See also*, Singer, vol. 3B § 77:4, at 256–258.

A holistic approach to the text of the CWA is needed here in particular because the heart of this matter is the balance Congress created between federal and State oversight of activities affecting the nation's waters. The purpose of the CWA is to protect water quality. Congress nonetheless recognized that programs already existed at the State and local levels for managing water quantity, and it recognized the delicate relationship between the CWA and State and local programs. Looking at the statute as a whole is necessary to ensure that the analysis herein is consonant with Congress's overall policies and objectives in the management and regulation of the nation's water resources.

While the statute does not define ''addition,'' sections 101(g), 102(b), 304(f), and 510(2) provide a strong indication that the term ''addition'' should be interpreted in accordance with the text of the more specific sections of the statute. In light of Congress' clearly expressed policy not to unnecessarily interfere with water resource allocation and its discussion of changes in the movement, flow or

circulation of any navigable waters as sources of pollutants that would not be subject to regulation under section 402, it is reasonable to interpret ''addition'' as not including the mere transfer of navigable waters.

The specific statutory provisions addressing the management of water resources—coupled with the overall statutory structure—provide textual support for the conclusion that Congress generally did not intend for water transfers to be regulated under section 402. The Act establishes a variety of programs and regulatory initiatives in addition to the NPDES permitting program. It also recognizes that the States have primary responsibilities with respect to the ''development and use (including restoration, preservation, and enhancement) of land and water resources.'' CWA section 101(b).

Congress also made clear that the Clean Water Act is to be construed in a manner that does not unduly interfere with the ability of States to allocate water within their boundaries, stating:

> It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by [the Act]. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water sources.

CWA section 101(g). While section 101(g) does not prohibit EPA from taking actions under the CWA that it determines are needed to protect water quality,[5] it nonetheless establishes in the text of the Act Congress's general direction against unnecessary Federal interference with State allocations of water rights.

Water transfers are an essential component of the nation's infrastructure for delivering water that users are entitled to receive under State law. Because subjecting water transfers to a federal permitting scheme could unnecessarily interfere with State decisions on allocations of water rights, this section provides additional support for the Agency's interpretation that, absent a clear Congressional intent to the contrary, it is reasonable to read the statute as not requiring NPDES permits for water transfers. *See United States* v. *Bass*, 404 U.S. 336, 349 (1971) (''unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.'')

An additional statutory provision, section 510(2), similarly provides:

> Except as expressly provided in this Act, nothing in this Act shall * * * be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

Like section 101(g), this provision supports the notion that Congress did not intend administration of the CWA to unduly interfere with water resource allocation.

Finally, one section of the Act—304(f)—expressly addresses water management activities. Mere mention of an activity in section 304(f) does not mean it is exclusively nonpoint source in nature. *See Miccosukee* 541 U.S. at 106 (noting that section 304(f)(2)(F) does not explicitly exempt nonpoint sources if they also fall within the definition of point source). Nonetheless, section 304(f) is focused primarily on addressing pollution sources outside the scope of the NPDES program. *See* H.R. Rep. No. 92–911, at 109 (1972), *reprinted in* Legislative History of the Water Pollution Control Act Amendments of 1972, Vol. 1 at 796 (Comm. Print 1973) (''[t]his section * * * on * * * *nonpoint sources* is among the most important in the 1972 Amendments'') (emphasis added)). This section directed EPA to issue guidelines for identifying and evaluating the nature and extent of *nonpoint* sources of pollution,[6] as well as processes, procedures and methods to control pollution from, among other things, ''changes in the *movement, flow or circulation of any navigable waters* or ground waters, including changes caused by the construction of *dams, levees, channels, causeways, or flow diversion facilities.*'' CWA 304(f)(2)(F) (emphasis added).

While section 304(f) does not exclusively address nonpoint sources of pollution, it nonetheless ''concerns nonpoint sources'' (*Miccosukee*, 541 U.S. at 106) and reflects an understanding by Congress that water movement could result in pollution, and that such pollution would be managed by States under their nonpoint source program authorities, rather than the NPDES program. Today's rule accords with the direction to EPA and other federal agencies in section 101(g) to work with State and local agencies to develop ''comprehensive solutions'' to water pollution problems ''in concert with programs for managing water resources.''

The text of these sections of the Act together demonstrate that Congress was aware that there might be pollution associated with water management activities, but chose to defer to comprehensive solutions developed by State and local agencies for controlling such pollution. Because the NPDES program focuses on discharges from point sources of pollutants, it is not the kind of comprehensive program that Congress believed was best suited to addressing pollution, which is the term used for the nonpoint source program. It is this type of non-point source pollution that may be associated with water transfers.

In several important ways, water transfers are unlike the types of discharges that were the primary focus of Congressional attention in 1972. Discharges of pollutants covered by section 402 are subject to ''effluent'' limitations. Water transfers, however, are not like effluent from an industrial, commercial or municipal operation. Rather than discharge effluent, water transfers convey one water of the U.S. into another. Additionally, the operators of water control facilities are generally not responsible for the presence of pollutants in the waters they transport. Rather, those pollutants often enter ''the waters of the United States'' through point and nonpoint sources unassociated with those facilities and beyond control of the project operators. Congress generally intended that pollutants be controlled at the source whenever possible. *See* S. Rep. No. 92–414, p. 77 (1972) (justifying the broad definition of navigable waters because it is ''essential that discharge of pollutants be controlled at the source'').[7] The pollution from transferred waters is more sensibly addressed through water resource planning and land use regulations, which attack the problem at its source. *See, e.g.*, CWA section 102(b) (reservoir planning); CWA section 208(b)(2)(F) (land use planning to

[5] *PUD No. 1 of Jefferson County.* v. *Wash. State Dep't. of Ecology*, 511 U.S. 700, 720 (1994) (''Sections 101(g) and 510(2) preserve the authority of each State to allocate water quantity as between users; they do not limit the scope of water pollution controls that may be imposed on users who have obtained, pursuant to state law, a water allocation.'').

[6] Sources not regulated under sections 402 or 404 are generically referred to as ''nonpoint sources.'' *See Consumers Power*, 862 F.2d at 582 ('''nonpoint source' is shorthand for and 'includes all water quality problems not subject to section 402''') (quoting *Gorsuch*, 693 F.2d at,166) (internal quotation marks omitted).

[7] Recognition of a general intent to control pollutants at the source does not mean that dischargers are responsible only for pollutants that they generate; rather, point sources need only convey pollutants into navigable waters to be subject to the Act. *See Miccosukee* at 105. Municipal separate storm sewer systems, for example, are clearly subject to regulation under the Act. CWA section 402(p).

reduce agricultural nonpoint sources of pollution); CWA section 319 (nonpoint source management programs); and CWA section 401 (state certification of federally licensed projects). Congress acknowledged this when it directed Federal agencies to co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water sources.

The Agency, therefore, concludes that, taken as a whole, the statutory language and structure of the Clean Water Act indicate that Congress generally did not intend to subject water transfers to the NPDES program. Interpreting the term ''addition'' in that context, EPA concludes that water transfers, as defined by today's rule, do not constitute an ''addition'' to navigable waters to be regulated under the NPDES program. Rather, Congress intended to leave primary oversight of water transfers to state authorities in cooperation with Federal authorities.

*C. Legislative History*

The legislative history of the Clean Water Act also supports the conclusion that Congress generally did not intend to subject water transfers to the NPDES program. First, the legislative history of section 101(g) reveals that ''[i]t is the purpose of this [provision] to insure that State [water] allocation systems are not subverted.'' 3 Congressional Research Serv., U.S. Library of Congress, Serial No. 95–14, A Legislative History of the Clean Water Act of 1977, at 532 (1978); *see PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology*, 511 U.S. 700, 721 (1994).

Notably, the legislative history of the Act discusses water flow management activities in the context of the nonpoint source program only. In discussing section 304(f), the House Committee Report specifically mentioned water flow management as an area where EPA would provide technical guidance to States for their nonpoint source programs, rather than an area to be regulated under section 402.

> This section and the information on such nonpoint sources is among the most important in the 1972 Amendments. * * * The Committee, therefore, expects the Administrator to be most diligent in gathering and distribution of the guidelines for the identification of nonpoint sources and the information on processes, procedures, and methods for control of pollution from such nonpoint sources as * * * *natural and manmade changes in the normal flow of surface and ground waters.*

H.R. Rep. No. 92–911, at 109 (1972) (emphasis added).

In the legislative history of section 208 of the Act, the House Committee report noted that in some States, water resource management agencies allocating stream flows are required to consider water quality impacts. The Report stated:

> [I]n some States water resource development agencies are responsible for allocation of stream flow and are required to give full consideration to the effects on water quality. To avoid duplication, the Committee believes that a State which has an approved program for the handling of permits under section 402, and which has a program for water resource allocation should continue to exercise the primary responsibility in both of these areas and thus provide a balanced management control system.

H.R. Rep. No. 92–911, at 96 (1972).

Thus, Congress recognized that the new section 402 permitting program was not the only viable approach for addressing water quality issues associated with State water resource management. The legislative history makes clear that Congress generally did not intend a wholesale transfer of responsibility for water quality away from water resource agencies to the NPDES authority. Rather, Congress encouraged States to obtain approval of authority to administer the NPDES program under section 402(b) so that the NPDES program could work in concert with water resource agencies' oversight of water management activities to ensure a ''balanced management control system.'' *Id.*

In sum, the language, structure, and legislative history of the statute all support the conclusion that Congress generally did not intend to subject water transfers to the NPDES program. Water transfers are an integral part of water resource management; they embody how States and resource agencies manage the nation's water resources and balance competing needs for water. Water transfers also physically implement State regimes for allocating water rights, many of which existed long before enactment of the Clean Water Act. Congress was aware of those regimes, and did not want to impair the ability of these agencies to carry them out. EPA's conclusion that the NPDES program does not apply to water transfers respects Congressional intent, comports with the structure of the Clean Water Act, and gives meaning to sections 101(g) and 304(f) of the Act.

Based on these reasons, today's rule is within EPA's authority and consistent with the CWA.

## IV. Public Comment

EPA received many comments from the public and a number of states stating that the Agency does not have authority to exclude from the requirement to obtain NPDES permits, a specific class of dischargers (in this case, water transfers). These commenters were concerned that the proposed rule could jeopardize the NPDES and water quality standards (WQS) programs. In particular, they feared that point source regulation of discharges from impoundments used to settle mining wastes might fall outside the scope of section 402 if the proposed rule were finalized. In response to these comments, the Agency believes that impoundments used to settle mining process water or waste water would generally constitute ''waste treatment systems'' designed to meet the requirements of the CWA and would be excluded from the definition of ''waters of the United States.'' See 40 CFR 122.2 (definition of ''Waters of the United States''). The addition of pollutants from a waste treatment system to a water of the United States triggers the permitting requirement, and today's rule therefore does not affect the permitting of such facilities.

Some commenters argued that the proposed rule is inconsistent with section 404 of the CWA (permits for dredged or fill material). They stated that dredged material is listed as a pollutant under section 502 of the CWA and that the proposed rule implies that dredged material never requires a permit unless the dredged material originates from a waterbody that is not a water of the U.S. EPA believes that today's final rule will not have an effect on the 404 program. The statutory definition of ''pollutant'' includes ''dredged spoil,'' which by its very nature comes from a waterbody. 33 U.S.C. 1362(6); 40 CFR 232.2; *United States* v. *Hubenka,* 438 F.3d 1026, 1035 (10th Cir. 2006); *United States* v. *Deaton,* 209 F.3d 331, 335–336 (4th Cir. 2000); *Borden Ranch Partnership* v. *United States,* 261 F.3d 810, 814 (9th Cir. 2001). Because Congress explicitly forbade discharges of dredged material except as in compliance with the provisions cited in CWA section 301, today's rule has no effect on the 404 permit program, under which discharges of dredged or fill material may be authorized by a permit. 33 U.S.C. 1344.

As explained above, EPA disagrees that Congress generally intended water transfers to obtain NPDES permits. EPA believes that this action will add clarity to an area in which judicial decisions have created uncertainty, and for reasons previously described in section III of this preamble, concludes that Congress generally intended to leave the

oversight of water transfers to authorities other than the NPDES program. Congress made clear that the CWA is to be construed in a manner that does not unduly interfere with the ability of States to allocate water within their boundaries. Specific statutory provisions in the CWA addressing the management of water resources denote that Congress generally did not intend for water transfers to be regulated under section 402 of the CWA. Rather, sections 101(b), 208, and 304(f), in particular, establish a variety of programs and regulatory initiatives that more appropriately address water transfers. EPA's conclusion that the NPDES program does not apply to water transfers respects Congressional intent and comports with the structure of the CWA.

*Definition of a Water Transfer*

In the proposed rule, EPA specifically requested comment on whether the proposed definition of a water transfer properly achieves the Agency's objective. Many commenters supported the Agency's proposed definition, either generally or explicitly. On the other hand, some commenters found the proposed definition too narrow and suggested that the Agency defer to state law. Others found the definition overly broad and suggested that it may encompass too many activities. These concerns, among others, are addressed in the following discussions.

In response to the comment suggesting that the proposed definition of a water transfer is too narrow and should also include transfers between waterbodies defined as waters of the State, even where they do not constitute waters of the United States under the CWA, EPA believes that making such a change would not be appropriate because the NPDES program only applies to waters of the U.S. The same commenter also suggested that EPA defer to state law in defining a water transfer. In response, the Agency finds that a definition applicable nationwide is important to provide consistency in the application of this rule. However, nothing in this rule precludes a State, under State law, from regulating water transfers that are not subject to section 402 of the Clean Water Act. States may not exclude from NPDES permit requirements sources that are point sources under Federal law, including those that do not meet the definition of a water transfer in today's rule. For example, a point source that subjects waters of the United States to an intervening industrial, municipal or commercial use could not be exempted from NPDES permitting requirements under State law.

This rule expressly states that ''discharges from a water transfer'' are not subject to NPDES permitting. The Agency defines a water transfer as ''an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use.'' A water transfer is an engineered activity that diverts a water of the U.S. to a second water of the U.S. Thus, commenters who read the natural convergence of two rivers as being a water transfer are incorrect, though such natural convergences also do not require NPDES permits.

Some commenters sought clarification of certain elements of the term ''water transfer'' while others suggested changes they believed would either clarify or improve the scope of the term. Commenters suggested that EPA change the use of the term ''activity'' to either ''occasion,'' ''instance,'' or ''occurrence,'' such that the definition would read: ''water transfer means an instance in which waters of the U.S. are conveyed * * *.'' The commenters' concern is that the term ''activities'' narrows the rule to only human directed or controlled events rather than any instance in which water supplies are moved. The Agency disagrees that the change is necessary. By ''activity,'' the Agency means any system of pumping stations, canals, aqueducts, tunnels, pipes, or other such conveyances constructed to transport water from one water of the U.S. to another water of the U.S. Such a system may consist of a single tunnel or pumping station or it may require the use of multiple facilities along the course of the transfer to reach the second water of the U.S.

*Intervening Industrial, Municipal, or Commercial Use*

A discharge of a pollutant associated with a water transfer resulting from an intervening commercial, municipal, or industrial use, or otherwise introduced to the water by a water transfer facility itself would require an NPDES permit as any discharge of a pollutant from a point source into a water of the U.S. would. The most frequent comment on the proposed definition was that the phrase ''intervening industrial, municipal, or commercial use'' was unclear or overbroad.[8] EPA disagrees that this phrase is unclear or overbroad, and provides clarification and examples of intervening uses below.

For example, if the water is withdrawn to be used as cooling water, drinking water, irrigation, or any other use such that it is no longer a water of the U.S. before being returned to a water of the U.S., the water has been subjected to an intervening use.[9] In contrast, a water pumping station, pipe, canal, or other structure used solely to facilitate the transfer of the water is not an intervening use.

The reintroduction of the intake water and associated pollutants from an intervening use through a point source is an ''addition'' and has long been subject to NPDES permitting requirements. *See, e.g.*, 40 CFR 122.2 (definition of process wastewater); 40 CFR 125.80 through 125.89 (regulation of cooling towers); 40 CFR 122.45(g) (regulations governing intake pollutants for technology-based permitting); 40 CFR Part 132, Appendix F, Procedure 5–D (containing regulations governing water quality-based permitting for intake pollutants in the Great Lakes). Moreover, a discharge from a waste treatment system, for example, to a water of the United States, would not constitute a water transfer and would require an NPDES permit. *See* 40 CFR 122.2. In these situations, the reintroduction of water and that water's associated pollutants physically introduces pollutants from the outside world and, therefore, is an ''addition'' subject to NPDES permitting requirements. The fact that some of the pollutants in the discharge from an intervening use may have been present in the source water does not remove the need for a permit, although, under some circumstances, permittees may receive ''credit'' in their effluent limitations for such pollutants. See 40 CFR 122.45(g) (regulations governing intake pollutants for technology-based permitting); 40 CFR Part 132, Appendix F, Procedure 5–

[8] EPA's discussion of intervening uses is not intended to address or exclude any other activity that is currently subject to NPDES permitting. For example, this rule does not affect EPA's longstanding position that, if water is withdrawn from waters of the U.S. for an intervening industrial, municipal or commercial use, the reintroduction of the intake water and associated pollutants is an ''addition'' subject to NPDES permitting requirements. Nor does this rule change EPA's position, upheld by the Supreme Court in *Miccosukee,* that the definition of ''discharge of a pollutant'' in the CWA includes coverage of point sources that do not themselves generate pollutants. The Supreme Court stated, ''A point source is, by definition, a 'discernible, confined, and discrete *conveyance*' section 1362(14) (emphasis added). That definition makes plain that a point source need not be the original source of the pollutant; it need only convey the pollutant to 'navigable waters,' which are, in turn, defined as 'the waters of the United States.' Section 1362(7).'' *Miccosukee,* 541 U.S. at 105.

[9] Note that return flows from irrigated agriculture are exempt from the requirement to obtain a NPDES permit under both the Act itself and 40 CFR 122.3. Today's rule does not affect that exemption.

D (containing regulations governing water quality-based permitting for intake pollutants in the Great Lakes).

Similarly, an NPDES permit is normally required if a facility withdraws water from a water of the U.S., removes preexisting pollutants to purify the water, and then discharges the removed pollutants (perhaps in concentrated form) back into the water of the U.S. while retaining the purified water for use in the facility. An example of this situation is a drinking water treatment facility which withdraws water from streams, rivers, and lakes. The withdrawn water typically contains suspended solids, which are removed to make the water potable. The removed solids are a waste material from the treatment process and, if discharged into waters of the U.S., are subject to NPDES permitting requirements, even though that waste material originated in the withdrawn water. *See, e.g., In re City of Phoenix, Arizona Squaw Peak & Deer Valley Water Treatment Plants,* 9 E.A.D. 515, 2000 WL 1664964 (EPA Envtl. App. Bd. Nov. 1, 2000) (rejecting, on procedural grounds, challenges to NPDES permits for two drinking water treatment plants that draw raw water from the Arizona Canal, remove suspended solids to purify the water, and discharge the solids back into the Canal); *Final NPDES General Permits for Water Treatment Facility Discharges in the State of Massachusetts and New Hampshire,* 65 FR 69,000 (2000) (NPDES permits for discharges of process wastewaters from drinking water treatment plants).

The Clean Water Act also clearly imposes permitting requirements on publicly owned treatment works, and large and medium municipal separate storm sewer systems. *See* CWA sections 402(a), 402(p)(1)–(4). Congress amended the Clean Water Act in 1987 specifically to add new section 402(p) to better regulate stormwater discharges from point sources. Water Quality Act of 1987, Public Law 100–4, 101 Stat. 7 (1987). Again, this interpretation regarding water transfers does not affect EPA's longstanding regulation of such discharges. These examples are mentioned to illustrate what is meant by ''intervening industrial, municipal, or commercial use,'' and are situations not associated with water transfers.

*Hydroelectric Operations*

Some commenters, including State agencies with hydroelectric resources, utilities, and water districts expressed concern that if hydroelectric operations incidental to a water transfer were considered an intervening use, the water transfer would be disqualified from the exemption. Utilities often take advantage of the change in elevation over the course of a water transfer by installing hydroelectric facilities. The California State Water Resources Control Board highlighted in their comment that the Central Valley Project includes eleven power plants and that the State Water Project, the Los Angeles Aqueduct, and the All American Canal also contain hydroelectric power plants.

Today's rule does not affect the longstanding position of EPA and the Courts that hydroelectric dams do not generally require NPDES permits. See *Gorsuch,* 693 F.2d 156; *Consumers Power* 862 F.2d 580. EPA agrees that the transfers described in California are excluded from NPDES permitting requirements unless, as discussed below, the hydroelectric facility itself introduces a pollutant such as grease into the water passing though the dam.

*When Water Transfers Introduce Pollutants*

Comments were also submitted regarding pollutants that were added by the water transfer. Commenters expressed concern that water transfers may have significant impacts on the environment, including (1) the introduction of invasive species, toxic blue-green algae, chemical pollutants, and excess nutrients; (2) increased turbidity; and (3) alteration of habitat (e.g., warm water into cold water or salt water into fresh water). In response to these comments, EPA notes that today's rule does not interfere with any of the states' rights or authorities to regulate the movement of waters within their borders. Rather, this rule merely clarifies that NPDES permits are not required for water transfers. States currently have the ability to address potential in-stream and/or downstream effects of water transfers through their WQS and TMDL programs. Nothing in today's rule affects the ability for states to establish WQS appropriate to individual waterbodies or waterbody segments.

The final rule, consistent with the proposed rule, would require NPDES permits for ''pollutants introduced by the water transfer activity itself to the water being transferred.'' Water transfers should be able to be operated and maintained in a manner that ensures they do not themselves add pollutants to the water being transferred. However, where water transfers introduce pollutants to water passing through the structure into the receiving water, NPDES permits are required. *Consumers Power,* 862 F.2d at 588; *Gorsuch,* 693 F.2d at 165, n. 22.

In those instances where a water transfer facility does itself introduce pollutants into the water being transferred, the scope of the required NPDES permit would only be for those added pollutants. Such a permit would not require the water transfer facility to address pollutants that may have been in the donor waterbody and are being transferred.[10] Furthermore, EPA expects these additions will probably be rare. EPA considers the likelihood of such additions to be similar to the frequency of additions of leaks of oil from the turbines at hydroelectric dams. In a review of the NPDES permits issued to dams, EPA was able to identify only a minimal number of permits issued to address this concern.

*Pollutants Incidental to Water Transfers*

Many utilities and water districts commented that it was unclear whether naturally occurring changes to the water would require a permit. For example, as water moves through dams or sits in reservoirs along the transfer, chemical and physical factors such as water temperature, pH, BOD, and dissolved oxygen may change. The Agency views these changes the same way it views changes to water quality caused by water moving through dams (*National Wildlife Fed'n* v. *Gorsuch,* 693 F.2d 156 (D.C. Cir. 1982)); they do not constitute an ''addition'' of pollutant subject to the permitting requirements of section 402 of the Act.

EPA would also like to make clear that this rule does not change the Agency's position regarding the application of pesticides directly to waters of the United States. See 71 FR 68483; 40 CFR 122.3(h). Ditches and canals are commonly treated with pesticides to control pest species such

[10] Because water transfers simply change the flow, direction or circulation of navigable waters, they would not themselves cause the waters being moved to lose their status as waters of the United States. See *Consumers Power,* 862 F.2d at 589. Hence, pollutants moved from the donor water into the receiving water, which are contained in navigable waters throughout the transfer, would not be ''added'' by the facility and would therefore not be subject to NPDES permitting requirements. This differs from a situation in which, for example, an industrial facility takes in water for the purpose of cooling some part of the facility itself. In such cases, the water used for cooling loses its status as a water of the United States when subjected to an intervening industrial use and, therefore, is subject to NPDES permit requirements for all the pollutants it contains when it is discharged back into a navigable water, generally including those that were in the source water originally. See *Consumers Power,* 862 F.2d at 589. Likewise, discharges from a concentrated aquatic animal production facility, such as excess food provided to animals in net pens (e.g., food that was added to water but not eaten by the fish) would require a NPDES permit because the uneaten, waste food would be considered an ''addition'' of a pollutant from the facility.

as algae to facilitate flow, and today's rule has no effect on the exclusion provided to such activities from NPDES permit requirements set forth in 40 CFR.122.3(h).

*Designation Authority*

In the preamble to the proposed water transfers rule, EPA solicited public comment on an option that would provide an additional provision allowing the NPDES authority to designate particular water transfers as subject to NPDES permit requirements on a case-by-case basis. EPA received nearly sixty comments from states, municipalities, environmental groups, water districts, industry and others regarding EPA's consideration of this ''designation authority'' approach. Comments addressing EPA's discussion of such designation authority were mixed regarding their opposition to, or agreement with, this approach. The following paragraphs provide additional details regarding comments the Agency received on this option.

Commenters who opposed the designation option generally believed that this provision would be legally unsupportable and practically unworkable. The most frequently cited reason for opposing this approach was a belief that the Clean Water Act provides no authority to regulate water transfers on a case-by-case basis. Other commenters were concerned that designating some water transfers, but not others, as subject to NPDES permit requirements would result in states treating water transfers in an inconsistent manner. Several commenters stated that the existence of an impairment is not an appropriate or relevant test for determining whether or not an activity should be subject to the NPDES program. Some commenters also stated that EPA already has regulations in place with regard to use impairments, at 40 CFR 131.10, which afford flexibility in responding to unique factual circumstances where uses may be impacted by pollutants not subject to NPDES permitting under section 402.

Other commenters supported inclusion of the designation authority provision in the final rule. Some of these commenters thought this approach would be helpful in instances where the transfer involves interstate waters because NPDES permits would provide a tool to protect receiving water quality—especially in situations in which water quality standards differed in the two relevant states. In addition, several states indicated that being allowed the option of designating water transfers as requiring an NPDES permit on a case-by-case basis was important to them and cited the following three reasons for supporting this approach: (1) The designation option is consistent with Congress's general direction against unnecessary federal interference with state allocation of water rights and states' flexibility on handling water transfers; (2) states would be unable to require NPDES permits for water transfers on a case-by-case basis in the absence of the designation option; and (3) some water transfers should be considered discharges of pollutants, so it is important to retain NPDES authority in these cases.

Some commenters suggested additional programs and authorities that states can use as an alternative to NPDES permitting such as the 401 water quality certification program or a memorandum of understanding or agreement.

After considering these comments, EPA has decided not to include a mechanism in 123.3 for the permitting authority to designate water transfers on a case-by-case basis as needing an NPDES permit. This conclusion is consistent with EPA's interpretation of the CWA as not subjecting water transfers to the permitting requirements of section 402. Moreover, as discussed elsewhere in this preamble, states currently have the ability to address potential in-stream and/or downstream effects of water transfers through their WQS and TMDL programs and pursuant to state authorities preserved by section 510, and today's final rule does not have an effect on these state programs and authorities.

## V. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden because this final rule generally excludes water transfers from requiring an NPDES permit. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR 122.21 and 123.25 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0086, EPA ICR number 0226.18.

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. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant adverse economic impact on a substantial number of small entities. Because EPA is simply codifying the Agency's longtime position that Congress did not generally intend for the NPDES program to regulate the transfer of one water of the

United States into another water of the United States, this action will not impose any requirement on small entities.

*D. Unfunded Mandates Reform Act*

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

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. EPA is simply codifying the Agency's longtime position that Congress did not generally intend for the NPDES program to regulate the transfer of a water of the United States into another water of the United States. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule does not change the relationship between the government and the States or change their roles and responsibilities. Rather, this rule confirms EPA's longstanding practice consistent with the Agency's understanding that Congress generally intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. EPA received comments from States that favored and opposed the rule. States that favored the rule were primarily drier, Western states. These States argued that their State laws provide adequate and appropriate authority to address the impacts from water transfers and that permitting would negatively impact State water rights allocations. This latter point was also raised by water districts, which are quasi-governmental entities, and by local governments. States that were opposed to the rule argued that they had an interest in using their NPDES authority to prevent potential water quality impairments caused by water transfers and disagreed with EPA's analysis of the Clean Water Act.

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

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Today's rule clarifies that Congress did not generally intend for the NPDES program to regulate the transfer of waters of the United States into another water of the United States. Nothing in this rule prevents an Indian Tribe from exercising its own authority to deal with such matters. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited additional comments on the proposed rule from tribal officials. Comments from tribal

governments were considered in the development of this final rule. Since the issues identified by tribal governments were not unique to their concerns, EPA has addressed these issues generally in its response to comments.

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

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

This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866, and because the Agency does not have reason to believe that it addresses environmental health and safety risks that present a disproportionate risk to children. Today's rule would simply clarify Congress' intent that water transfers generally be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Today's rule would simply clarify Congress' intent that water transfers generally be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the permitting program under section 402 of the CWA.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 12, 2008.

**List of Subjects in 40 CFR Part 122**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 9, 2008.

**Stephen L. Johnson,**

*Administrator.*

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

## PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Section 122.3 is amended by adding paragraph (i) to read as follows:

**§ 122.3 Exclusions.**

* * * * *

(i) Discharges from a water transfer. Water transfer means an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.

[FR Doc. E8–13360 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2007–0596; FRL–8367–7]**

### (Z)-7,8-epoxy-2-methyloctadecane (Disparlure); Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the (Z)-7,8-epoxy-2-methyloctadecane on all food and feed crops when used to treat trees, shrubs, and pastures resulting in unintentional spray and drift from application as well as unintentional

spray and drift to non-target vegetation including non-food, food, and feed crops. Aberdeen Road Company d/b/a Hercon Environmental submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of (Z)-7,8-epoxy-2-methyloctadecane. This active ingredient (AI) is also known as Disparlure.

**DATES:** This regulation is effective June 13, 2008. Objections and requests for hearings must be received on or before August 12, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0596. 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. All documents in the docket are listed in the docket index available in 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, 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 a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0596 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0596, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of August 1, 2007 (72 FR 42070) (FRL–8141–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7141) by Aberdeen Road Company d/b/a Hercon Environmental, P.O. Box 453, Emigsville, PA 17318–0435. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of (Z)-7,8-epoxy-2-methyloctadecane. This notice included a summary of the petition prepared by the petitioner Aberdeen Road Company d/b/a Hercon Environmental.

There was only one comment received in response to the notice of filing. The commenter suggested that there should not be an exemption for (Z)-7,8-epoxy-2-methyloctadane because the commenter felt that ''plants should not have to grow with toxic chemicals on them;'' that the Agency ''is not protecting the public health of the American public which is dying from all kinds of cancers;'' and further of not properly evaluating pesticides in general.

Agency Response: (Z)-7,8-epoxy-2-methyloctadecane is a naturally

occurring substance produced by the female gypsy moth (*Lymantria dispar*) as a pheromone to attract the male gypsy moth. The activity of this pesticide is specific to the Gypsy moth, and when applied to forests, it confuses the male gypsy moth searching for a mate; this reduces the moth population's ability to successfully reproduce itself without killing individuals in the population. The Agency's assessment of the naturally occurring pheromone's specific, non-toxic mode of action, its low acute toxicity and exposure profiles (see Unit III.), and its intended non-food uses indicate negligible dietary risks associated with the unintended application of (Z)-7,8-epoxy-2-methyloctadecane to areas adjacent to agricultural areas (Refs. 2 and 3).

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The AI, (Z)-7,8-epoxy-2-methyloctadecane (also known as Disparlure), is an aliphatic hydrocarbon compound containing 19 carbons and a single epoxide bond. It is a naturally occurring lepidopteran pheromone produced by female gypsy moths (*Lymantria dispar*) to attract males. When used as a pesticide, the pheromone is intended to disrupt mating by disorienting males during their in-flight search for females. (Z)-7,8-epoxy-2-methyloctadecane was registered by the Agency in 1986 as a non-food use pesticide to lower the incidences of gypsy moth mating in residential, municipal, and shade tree areas; recreational areas such as campgrounds, golf courses, parks and parkways; ornamental and shade tree forest planting; shelter belts, rights of way and other easements. While (Z)-7,8-epoxy-3-methyloctadecane is not intended to be sprayed directly on food or feed crops, the Agency has expressed concern that there may be a potential for regular and significant exposure from residues of the pesticide on food and feed crops as a result of unintentional spray or drift. Therefore, at the recommendation of the Agency, a request to establish an exemption for the requirement of a tolerance has been made by the applicant.

This tolerance exemption is supported by toxicity data on a structurally related substance, epoxylated soybean oil (ESO), in anticipation of frequent and significant exposure to food and feed crops near treated areas. All the data normally required to support a tolerance exemption are not available for (Z)-7,8-epoxy-2-methyloctadecane; therefore, the data on ESO was submitted to address concerns about inadvertent residues on food or feed crops. The Agency has agreed to consider the toxicity data on epoxylated soybean oil, since it is chemically similar to (Z)-7,8-epoxy-2-methyloctadecane (Disparlure), and the data requirements normally required for a food use can support an assessment of potential dietary risks associated with possible residues of the pesticide from spray drift (Refs. 1, 2 and 3).

Historically the AI, (Z)-7,8-epoxy-2-methyloctadecane, has been used as a non food use pesticide and, therefore, no data that address the data requirements required by the Agency in support of food use pesticides have been generated using this AI. Therefore, in order to satisfy these data requirements and address the issue of whether or not food and feed crops that are inadvertently affected by residues of (Z)-7,8-epoxy-2-methyloctadecane are safe, the Agency has bridged from toxicity data generated on a structurally related substance, epoxylated soybean oil, to both satisfy the food use toxicity data requirements for (Z)-7,8-epoxy-2-methyloctadecane and to conduct a risk assessment. As stated in this Unit, data normally required for a food use can support an assessment of potential dietary risks associated with possible residues of the pesticide from spray drift (Refs. 1 and 3).

ESO is a compound that is structurally related to (Z)-7,8-epoxy-2-methyloctadecane and has already been fully assessed by the Agency as an inert ingredient. ESO and (Z)-7,8-epoxy-2-methyloctadecane are similar, from a structural perspective, in that both compounds contain one or more epoxide bonds, thus the basis for the Agency's decision to allow the bridging of toxicity data from ESO to (Z)-7,8-epoxy-2-methyloctadecane. Epoxide bonds are three-membered rings, made up of 2 carbons and 1 oxygen, bonded together in a triangular shape. The epoxide bond is very unstable in the environment and this instability makes the bond very reactive such that it reacts to whatever is in the environment (i.e. proteins, nucleophiles) (Refs. 3 and 4). This information is key in determining the potential risks to the (Z)-7,8-epoxy-2-methyloctadecane compound since it is the reactive epoxide groups in both compounds that mostly contribute to the toxicological activity itself (Refs. 3 and 4). Epoxides in general are formed outside of the body (environmental epoxides) or they are synthesized in the body. Environmental epoxides are generally less toxic than epoxides that are synthesized in the body (Refs. 3 and 4). Both epoxides behave in the environment in the same way. The epoxide content of (Z)-7,8-epoxy-2-methyloctadecane is double that of ESO. While this information does suggest that (Z)-7,8-epoxy-2-methyloctadecane could be more reactive than ESO, this potential toxicity is essentially attributed to the fact that (Z)-7,8-epoxy-2-methyloctadecane has more epoxide groups (16%) than ESO (8%). Even

though there are more reactive epoxide groups that belong to (Z)-7,8-epoxy-2-methyloctadecane, these reactive epoxides are environmental epoxides (i.e. found outside the body), and based on the literature, and as stated in Unit IV., the second paragraph, environmental epoxides are less toxic than those synthesized in the body (Refs. 3 and 4).

As stated in this Unit, environmental epoxides, such as (Z)-7,8-epoxy-2-methyloctadecane react in the environment. When the AI is released into the environment the epoxide groups of the AI will most likely interact with nucleophilic sites in the environment, such as proteins in food, and will not be absorbed in their active form (Refs. 3 and 4). Based on the behavior of environmental epoxides, such as this AI, the Agency has extrapolated the potential risks (if any) to humans and animals from consuming food and/or feed commodities the contain residues of (Z)-7,8-epoxy-2-methyloctadecane as a result of indirect or unintended spray or drift. The Agency has determined that even if residues of the AI were to occur on food/feed commodities, the reaction of epoxides in (Z)-7,8-epoxy-2-methyloctadecane (Disparlure) would in all probability react with proteins (such as those already found in foods) during digestion and would not be absorbed in their active form to cause any toxicological effects (Refs. 3 and 4). Additionally, there are also a number of ways the body can detoxify epoxides like Disparlure if they are absorbed in an active form (Ref. 4). These are:

1. Spontaneous decomposition,
2. Nonenzymatic reaction with glutathione,
3. Reaction with glutathione catalyzed by glutathione transferase,
4. Hydration by epoxide hydrolase, and
5. Minor mechanisms such as cytochrome P450 hydrolysis (Refs. 3 and 4).

Further, acute oral toxicity studies on both substances indicated that their toxicity is low (Toxicity Category IV) which is consistent with these general characteristics of environmental epoxides. Therefore, use of toxicity data on ESO to define endpoints for the assessment of dietary exposure estimates associated with inadvertent treatment of food or feed crops with (Z)-7,8-epoxy-2-methyloctadecane (Disparlure) is reasonable. ESO data - including application of maximum uncertainty factors - define endpoints used in risk characterization for (Z)-7,8-epoxy-2-methyloctadecane, and data requirements to support the petition for exemption from the requirement of tolerances for the AI have been waived by the Agency based on the negligible risks described in this Unit.

*A. Acute Toxicity*

Acute oral toxicity (rat) (OPPTS GLN 870.1100): Based on acute oral toxicity studies in rats, (Z)-7,8-epoxy-2-methyloctadecane has very low toxicity and is classified into Toxicity Category IV. No adverse effects or deaths were seen in rats that received an oral dose of undiluted (Z)-7,8-epoxy-2-methyloctadecane at 5,000 milligram per kilogram of bodyweight (mg/kg/bw) (Master Record Identification (MRID) Number 45529801). ESO also has very low acute oral toxicity lethal dose $(LD)_{50}$ > 5,000 mg/kg (Toxicity Category IV; Refs. 2 and 3).

*B. Chronic Toxicity and Carcinogenicity (OPPTS GLN 870.3100; 870.4100 and 870.4200)*

Information from *The Scientific Panel on Food Additives (European Commission on Food Safety)* was considered which included a two–year chronic oral toxicity study in rats given diets containing up to 5% ESO. The no observed adverse effect level (NOAEL) was approximately 140 mg/kg/day and the lowest observed adverse effect level (LOAEL) was approximately 1,400 mg/kg/day. Observed effects were slight changes in liver, kidney and uterus weights. The published summary also concluded that ESO was not carcinogenic when fed to rats. Based on the data, a tolerable daily intake of 1 mg/kg/day was determined for ESO (Refs. 1, 2, and 3).

*C. Developmental Toxicity (OPPTS GLN 870.3700 and 870.3800)*

The European Food Safety Authority (EFSA) report (2004) also described a developmental toxicity study in which ESO was given to pregnant rats during gestation at daily oral doses of 0, 100, 300 or 1,000 mg/kg/day (Ref. 1). No maternal or developmental effects were noted at any dose level according to the summary submitted (Ref. 3).

*D. Reproductive Toxicity (OPPTS GLN 870.3800)*

The EFSA review indicated that ESO was administered daily by oral gavage to rats at the 100, 300 and 1,000 mg/kg bw/day dose levels for 71 and 15 days before mating in males and females, respectively, until day 21 post-partum of F1 litters; no toxic effects were noted in parental animals or their offspring (Ref. 1). Under the experimental conditions, the highest tested dose of 1,000 mg/kg bw/day was found to be the NOAEL, and no LOAEL was reported (Ref. 3).

*E. Genotoxicity (OPPTS GLN 870.5000; MRID 45309502)*

A bacterial reverse mutation assay using *Salmonella typhimurium* and *Escherichia coli* was conducted on (Z)-7,8-epoxy-2-methyloctadecane with and without activation. The study concluded that (Z)-7,8-epoxy-2-methyloctadecane was not mutagenic in bacteria under the conditions of the study.

*F. Hazard Characterization*

In assessing the hazard associated with (Z)-7,8-epoxy-2-methyloctadecane, its has been characterized in terms of epoxylated soybean oil. All toxicological effects were observed at or above limit doses (≥5,000 mg/kg/bw for acute oral toxicity and ≥1,000 mg/kg/bw/day for reproductive, developmental and chronic toxicity studies) (Ref. 3). Based upon the Agency's standard hazard assessment protocol, if there is an incomplete data set for assessment of developmental toxicity (studies in two species) and a one-generation reproduction toxicity study (rather than a multi-generation reproduction study), an uncertainty factor of 3X is retained for consideration of the sensitivity of infants and children (Ref. 3). Moreover, there is uncertainty regarding the structure-activity relationship between Disparlure and ESO (16% versus 7–8% epoxide by weight, respectively) and the lack of repeated-dose studies on both substances to adequately support bridging from ESO data to Disparlure (at least one repeated-dose study on both substances) for purposes of assessing the dietary risks associated with use of the mating disruptor (Ref. 3). To account for this, an additional 10X uncertainty factor is applied (Ref 3). Therefore, the 1,000 mg/kg/day endpoint was divided by 1,000 for general population risk characterizations (uncertainty factors of 10X for interspecies extrapolation, 10X for intraspecies variation, and 10X for uncertainties regarding bridging from data on a surrogate substance) to determine a reference dose (RfD) of 1 mg/kg/day; a population adjusted dose (PAD) of 0.33 mg/kg/day for infants and children is determined when the FQPA safety factor (3X) is retained (Ref. 3).

Comparing this with the maximum estimated exposure for pesticidal use of Disparlure, the result does not exceed the Agency's level of concern (LOC) because the estimated exposure is less than 1% of the RfD (Ref. 3). Based on the behavior of epoxides in the environment and during ingestion, we conclude that toxicologically significant

residues will not result (refer to Unit III.; Refs. 3 and 4). Even when the maximum potential for inadvertent residues from the non-food uses of this pesticide are compared with the most conservative estimate of hazard, there is reasonable certainty that no harm will result to the U.S. population from exposure to this pesticide when used according to label instructions (Ref. 3). In the event that a food-use is requested, the Agency would require repeated-dose studies such as a 90–day subchronic feeding study (OPPTS 870.3100) and a prenatal developmental toxicity study (OPPTS 870.3700) on Disparlure.

**IV. Aggregate Exposures**

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

In general, the epoxide (oxirane ring formed by an oxygen and two carbon atoms) is the reactive group in (Z)-7,8-epoxy-2-methyloctadecane and other epoxides, and is expected to contribute the most to biological or toxicological activity of (Z)-7,8-epoxy-2-methyloctadecane (Ref. 4; see Ref. 3). The unstable oxirane ring can open and react with DNA, protein, or other nucleophilic substances. This means that if (Z)-7,8-epoxy-2-methyloctadecane were to be ingested then most likely the epoxide would react with the proteins in food during digestion (i.e. it would be digested). As stated in the literature (deBethizy and Hayes (Ref. 4), epoxides formed in animals are apparently more toxic than those present in the environment because they react with proteins and DNA in the animal's tissue (Refs. 3 and 4). If the AI were to result on food/feed commodities, the epoxide or reactive group of that AI is more likely to break down and react with nucleophiles and proteins that are found in food and would not be absorbed in their active form (Refs. 3 and 4). However, even if they are absorbed in their active form, epoxides can be detoxified in the human body via:

1. Spontaneous decomposition,
2. Nonenzymatic reaction with glutathione,
3. Reaction with glutathione catalyzed by glutathione transferase,
4. Hydration by epoxide hydrolase, and
5. Minor mechanisms such as cytochrome P450 hydrolysis (Ref.s 3 and 4).

In general, these considerations are expected to reduce the potential risk.

*A. Dietary Exposure*

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and on all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Given the use pattern of this AI, residues of the AI on food/feed crops as a result of unintentional spray or drift, as stated throughout this document, is not expected. However, the Agency has determined that even if residues of the AI were to occur on food/feed commodities, the reactive groups of the active would not be absorbed in their active form to cause any toxicological effects. While it is reasonable to assume that no toxicological effects would occur given the unliklihood of absorption and the low toxicity of the AI, the EPA has further examined the potential for dietary exposure from unintentional spray or drift and absorption and has estimated the potential risks (if any) to humans, including infants and children, from the consumption of food commodities that have been inadvertently treated with the AI. Assuming that dietary exposure has occurred the Agency considered potential exposure estimates for two representative scenarios including pasture grass and apple orchards.

1. *Food* — i. *Apples*. The Agency used apples as one representative in conducting its food assessment since apples are a significant commodity by a sensitive subpopulation (infants and children). For the apple exposure analysis, the Agency obtained a kg apples/A value from U.S. Department of Agriculture (USDA) statistics and used the worst-case application rate of 60 grams (g) (Z)-7,8-epoxy-2-methyloctadecane/Acre (A) (two applications of 30 g/A per season) for an apple orchard (unintentional application). The maximum potential concentration of (Z)-7,8-epoxy-2-methyloctadecane was estimated to be 6 mg/AI/kg of apples (i.e., 6 parts per million (ppm); Ref 3). This 6 ppm value is an overestimate because its determination assumes: All the (Z)-7,8-epoxy-2-methyloctadecane is directly applied to an apple orchard (a misuse) and all of the AI applied will be on or in the apples (not sticking to foliage or other inedible plant parts). (Z)-7,8-epoxy-2-methyloctadecane residues are also likely to be reduced by their reactivity, the AI's physical/chemical properties, and washing or processing treated apples before their consumption (Ref. 3).

Based on the amount of the AI/kg of crop it was determined that the amount of (Z)-7,8-epoxy-2-methyloctadecane consumed from treated apples for the general population, children, and adults would be 0.005, 0.03 and 0.002 mg/A.I./kg/bw per day, respectively (Ref. 3). As noted in the introduction to this Unit IV. Aggregate Exposures, by the time Disparlure-treated apples are consumed, the epoxides in the AI are likely to have broken down or reacted with nucleophiles such as proteins in the apples and would not be absorbed in their active form (Refs. 3 and 4).

ii. *Pasture*. A pasture grass exposure analysis was presented in the applicant's petition, which was based on maximum recommended single application rates (30 g/AI/A) and a model for estimating potential exposure for grazing cattle (described at *http://www.epa.gov/oppefed1/ecorisk_ders/toera_analysis_exp.htm*). The largest estimate was determined to be 0.14 mg Disparlure/kg cattle body weight per day (Ref. 3). This estimate of the potential exposure was based on the assumption that all the Disparlure applied to an acre of short grass would be consumed as if the AI was intentionally applied to the pasture rather than drifting from a nearby treated area (Ref. 3). A more realistic assumption in the exposure analysis was that 10% or less of the pasture grass would be impacted by spray drift, thereby reducing the exposure estimate to 0.014 mg Disparlure/kg cattle bw/day (Ref. 3). Also, applications in any given area would not be done more than one or two days each year which further reduces the potential exposure to cattle. As noted in the second paragraph of Unit IV., the metabolic pathways that break down epoxides in animals are expected to further reduce the potential for dietary exposure preventing detection or bioaccumulation of Disparlure residues in cattle feeding on inadvertently treated pasture grass. Therefore, a dietary assessment for meat, milk and meat by-products was not conducted by the Agency (Ref 3).

2. *Drinking water exposure*. Exposure to residues of (Z)-7,8-epoxy-2-methyloctadecane in consumed drinking water is unlikely because of the reactivity of such epoxides in the environment (see discussion under Unit IV. Aggregate Exposure; Refs. 3 and 4),

and the AI is not directly applied to water. Therefore, drinking water exposure is not expected to pose any quantifiable risks due to a lack of residues of toxicological concern.

*B. Other Non-Occupational Exposure*

There are no residential, school, or day care uses proposed for (Z)-7,8-epoxy-2-methyloctadecane (Disparlure). Since the proposed use is for agricultural non-food crops the potential for non-occupational, non-dietary exposures to (Z)-7,8-epoxy-2-methyloctadecane by the general population, including infants and prolonged inhalation exposure to non-sticking flakes in unlikely (Ref. 2).

**V. Cumulative Effects**

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish an exemption from a tolerance, the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children. EPA has considered the potential for cumulative effects of (Z)-7,8-epoxy-2-methyloctadecane and other substances in relation to common mechanism of toxicity. Common mechanisms of toxicity are not relevant to a consideration of cumulative exposure to (Z)-7,8-epoxy-2-methyloctadecane because it is not toxic to mammalian systems. Because, since Disparlure is an environmental epoxides (formed outside the body) which are generally considered less toxic than epoxides synthesized inside the body (Ref. 4). The reactive epoxide in Disparlure's structure would most likely react with proteins in food during digestion and would not be absorbed in their active form to induce toxicological effects (Ref. 4). There are also a number of ways the body can detoxify epoxides like Disparlure if they are absorbed in an active form (Ref. 4). Also the acute oral toxicity study on Disparlure indicated that the toxicity is low (Toxicity Category IV). Thus, the Agency does not expect any cumulative or incremental effects from exposure to residues of (Z)-7,8-epoxy-2-methyloctadecane when applied/used as directed on the label and in accordance with good agricultural practices. Additionally, when comparing the most conservative estimate of hazard to the maximum potential for inadvertent residues from the non-food uses of Disparlure, the result does not exceed the Agency's LOC (i.e.: Estimated exposure is less than 1% of the RfD; Ref. 3). Margins of Exposure (MOE) based on estimated exposure and hazard (the 140 mg/kg/day NOAEL from a chronic toxicity study in rats) range from 4,600 to 65,000 (Ref. 3). When the resulting MOE is greater than 100, the Agency's LOC is not exceeded and there is reasonable certainty of no harm to human health (Ref. 3).

**VI. Determination of Safety for U.S. Population, Infants and Children**

1. *U.S. population*. The Agency has determined that there is reasonable certainty that no harm will result to the U.S. Population from aggregated exposure to residues of (Z)-7,8-epoxy-2-methyloctadecane. This includes all dietary exposures and other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the chemicals low acute toxicity, it is a naturally occurring lepidopteran pheromone produced by female gypsy moths (*Lymantria dispar*), is similar in chemical structure to compounds of low chronic toxicity (ESO), and has a very low potential for human exposure. (Ref. 2).

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold MOE for infants and children in the case of threshold effects. Margins of exposure are often referred to as uncertainty or safety factors, and are used to account for potential prenatal and postnatal toxicity and any lack of completeness of the database. Based on available data and other information, EPA may determine that a different MOE will define a level of concern for infants and children or that a MOE approach is not appropriate. Based on all the available information the Agency reviewed on (Z)-7,8-epoxy-2-methyloctadecane, including a lack of threshold effects, the Agency concluded that (Z)-7,8-epoxy-2-methyloctadecane is practically non-toxic to mammals, including infants and children. Since there are no effects of concern, the provision requiring an additional margin of safety does not apply.

**VII. Other Considerations**

*A. Endocrine Disruptors*

There is no evidence to suggest that (Z)-7,8-epoxy-2-methyloctadecane functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

*B. Analytical Method*

Because this is an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

*C. Codex Maximum Residue Level*

There are no CODEX maximum residue levels for residues for (Z)-7,8-epoxy-2-methyloctadecane for unintentional spray or drift from application when treating trees and shrubs along or within pastures, as well as unintentional spray and drift to non-target vegetation including native and ornamental species, and food and feed crops.

**VIII. Conclusions**

Based on the low toxicity in animal testing, and the expected low exposure to humans, no risk to human health is expected from use of the chemical on food crops.

**IX. References**

1. EFSA. (2004) Opinion of the Scientific Panel on Food Additives, Flavorings, Processing Aids and Materials in Contact with Food (AFC) on a request from the Commission related to the use of Epoxidized soybean oil in food contact materials. EFSA Journal 64: 1–17.

2. Gonzales, A. (June 27, 2007) USEPA Memorandum - Tolerance Exemption Petition Review for (Z)-7,8-epoxy-2-methyloctadecane.

3. Gardner, R. & A. Gonzales (January 8, 2008) USEPA Memorandum - Dietary Risk Considerations Supporting a Petition for Exemption from the Requirement of a Tolerance for (Z)-7,8-epoxy-2-methyloctadecane.

4. de Bethizy, J.D., and J.R. Hayes. 2001. ''Metabolism: Determinant of Toxicity'' Ch. 3 in *Principles and Methods of Toxicology*, 4th Edition. A.W. Hayes, ed. Taylor & Francis. Philadelphia, PA. pp. 123–124.

**X. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 30, 2008.

**Marty Monell,**

*Acting Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1283 is added to subpart D to read as follows:

**§ 180.1283 (Z)-7,8-epoxy-2-methyloctadecane (Disparlure); exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of (Z)-7,8-epoxy-2-methyloctadecane on all food and feed crops that occur when it is used to treat trees, shrubs, and pastures and such use results in unintentional spray and drift to non-target vegetation including non-food, food, and feed crops. This active ingredient is also known as Disparlure.

[FR Doc. E8–13232 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2007–1107; FRL–8366–6]**

## Fenoxaprop-ethyl; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of fenoxaprop-ethyl and its metabolites in or on grass hay and forage. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on grasses grown for seed. This regulation establishes a maximum permissible level for residues of fenoxaprop-ethyl and its metabolites in these feed commodities. The time-limited tolerances expire and are revoked on December 31, 2010.

**DATES:** This regulation is effective June 13, 2008. Objections and requests for hearings must be received on or before August 12, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1107. 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. All documents in the docket are listed in the docket index available in 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).

• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, 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 a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1107 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–1107, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for combined residues of the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate], and its metabolites (2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one) in or on grass forage and hay at 0.05 parts per million (ppm). These time-limited tolerances expire and are revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Fenoxaprop-ethyl on Grasses Grown for Seed and FFDCA Tolerances

The Oregon Department of Agriculture (ODA) states that an emergency situation has arisen from weed problems that were once controlled with an older product, under Special Local Needs (SLN) registrations that were in effect from 1987 to 2002. Since 2002, the growers have been lacking a method to effectively control the problem weeds and the problem has continued to worsen since the SLNs were cancelled. The ODA states that none of the herbicides currently registered for use on grasses grown for seed are effective for controlling the weed species addressed by their request, or do not provide adequate control, due to timing of application, or spectrum of control. Cultural controls are not viable alternatives due to the soil type, steep terrain, density of grass stand; or adaptability of the weed species to various grass seed production systems, such as varying planting date, row spacing, or grass variety planted. In grass seed production, the presence of noxious weed seeds like wild oat, results in significant discounts to the sale prices, and certain states and countries completely prohibit sale of grass seed containing noxious weed species; thus, growers suffer losses of significant sales. Certain weed species can also cause yield losses of up to 50%

under moderate to high infestation levels. Therefore, ODA states that an urgent and non-routine situation has arisen, with significant economic losses expected. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of fenoxaprop-ethyl on grasses grown for seed for control of grassy weeds in Oregon.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of fenoxaprop-ethyl in or on grass forage and hay. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2010, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on grass forage and hay after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether fenoxaprop-ethyl meets FIFRA's registration requirements for use on grasses grown for seed or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of fenoxaprop-ethyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for persons in any State other than Oregon to use this pesticide on these crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for fenoxaprop-ethyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for combined residues of fenoxaprop-ethyl on grass forage and hay at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

### *A. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fenoxaprop-ethyl used for human risk assessment is discussed in Unit II. of the final rule published in the **Federal Register** of April 22, 1998 (63 FR 19829) (FRL–5782–1).

### *B. Exposure Assessment*

EPA believes that no changes need to be made as a result of this section 18 emergency exemption use on grasses grown for seed, to the conclusions of the risk assessment discussed in the final rule published on April 22, 1998 in the **Federal Register** (63 FR 19829) (FRL–5782–1) which established tolerances in barley commodities. EPA has used barley data to estimate residues which could occur on the hay and forage from grasses grown for seed, and this section 18 use is not expected to change the aggregate exposure estimates from the 1998 barley assessment. This conclusion is based upon the position that this section 18 use will not contribute to human dietary exposure for the following reasons:

1. This section 18 use does not involve use on human foods; and

2. This section 18 use is unlikely to alter the dietary burden for livestock (and corresponding residues in livestock tissues) because the resulting feed commodities do not comprise a significant part of livestock diet.

Therefore, because EPA has reasonable certainty of no harm from dietary exposure from the existing uses, and, that this use on grasses grown for seed pursuant to the emergency exemption would not increase dietary exposure, EPA is establishing these time-limited tolerances for grass hay and forage.

Since the time of the 1998 risk assessment, there has been a shift to (+) fenoxaprop-ethyl (the r-isomer enriched (95%) formulation of fenoxaprop-ethyl) as the primary active ingredient (also referred to as fenoxaprop-P-ethyl to denote the direction in which it rotates polarized light), rather than a 50:50 mix of (±)fenoxaprop-ethyl (the racemic mixture of the r- and s- isomers) both referred to in this document as the parent, fenoxaprop-ethyl. The current tolerance action is for fenoxaprop-ethyl, which covers both the ''+'' and ''-'' isomers. The analytical method used to determine residues of fenoxaprop-ethyl and its metabolites, expressed as the parent, is unable to distinguish between stereochemical isomers. Further, adequate data was provided (for barley) to indicate that comparable residue results are obtained from application of either the 50:50 mixture, or the so-called ''enriched'' mixture. At the time of the change in formulation, EPA determined that the established tolerances would protect human health and that the existing toxicology data supported the continued registration with the enriched formulation. EPA determined that there was a reasonable certainty of no harm from the continued registrations of the enriched formulation. EPA has determined that, for the purposes of this section 18 use only, the residue data for barley may be relied on for grass hay and forage, since the use patterns are nearly identical. For these reasons, as well as those given in Unit IV.B.1. and 2., the agency believes that the existing data are adequate to support these tolerances.

EPA concludes that establishing the tolerances for grass hay and forage, as set forth in this document, will not change the estimated aggregate risks, as discussed in the April 22, 1998 **Federal Register**. Refer to the April 22, 1998 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of April 22, 1998, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenoxaprop-ethyl residues.

## V. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (electron capture gas chromatography) is available to enforce the tolerance expression. The method is available in the Pesticide Analytical Manual (PAM) II, and may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

There are no established Codex tolerances for fenoxaprop-ethyl and its metabolites in or on grass forage or hay.

## VI. Conclusion

Therefore, time-limited tolerances are established for combined residues of fenoxaprop-ethyl [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid], and its metabolites (2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one), in or on grass hay and grass forage, both at 0.05 ppm. These tolerances expire and are revoked on December 31, 2010.

## VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 4, 2008.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.430 is amended by adding text to paragraph (b) to read as follows:

**§ 180.430 Fenoxaprop-ethyl; tolerances for residues.**

(a) * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid], and its metabolites (2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one), each expressed as fenoxaprop-ethyl, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA, in or on the food commodities in the following table. The tolerances expire and are revoked on the dates specified in the following table.

| Commodity | Parts per million | Expiration/ revocation date |
|---|---|---|
| Grass, forage | 0.05 | 12/31/10 |
| Grass, hay | 0.05 | 12/31/10 |

* * * * *

[FR Doc. E8–13372 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–HQ–SFUND–1989–0008, Notice 3; FRL–8578–7]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Notice of deletion of the Double Eagle Refinery Co. Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Double Eagle Refinery Co. Site (Site), located in Oklahoma City, Oklahoma County, Oklahoma from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0008, Notice 3, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: walters.donn@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 3. 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.

*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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following information repositories:

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm;* U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through

Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, Oklahoma 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bartolome Canellas (6SF–RL), Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6662 or 1–800–533–3508 or *canellas.bart@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Double Eagle Refinery Co. Site, Oklahoma City, Oklahoma County, Oklahoma from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as a list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in. 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at the deleted sites warrant such actions.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. Along with the direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Double Eagle Refinery Co. Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA actions to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health and the environment. In making a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Oklahoma prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete copublished today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Oklahoma Department of Environmental Quality, has concurred on the deletion of the Site from the NPL.

(3) Concurrent with the publication of this direct final Notice of Deletion, a notice of availability is being published in The Oklahoman and is being distributed to appropriate federal, state and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management of Superfund sites. As mentioned in section II of this document, Sec. 300.425 (e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL.

*Site Background and History*

The Site occupies the Southeast Quarter (SE ¼) of section 35, Township 12 North, Range 3 West, Indian Meridian, Oklahoma County, Oklahoma City, Oklahoma. Located at 301 N Rhode Island (generally South of NE 4th Street and West of Martin Luther King Boulevard), the Site extends over approximately 12 acres. The Double Eagle Refinery collected, stored, and re-refined used oils and distributed the

recycled product. The refinery was active as early as 1929.

In 1986 through 1988, EPA conducted investigations of the Site. The sampling results revealed elevated levels of volatile organic compounds, semi-volatile organic compounds, and metals found in surface water, soil, sediment, and ground water. The Site also was found to contain acidic sludges in on-site lagoons or pits.

The data from these sampling efforts resulted in the Site being proposed for the Superfund NPL on June 24, 1988, 53 FR 23978, and the Site was included on the NPL on March 31, 1989, 54 FR 10512.

*Response Actions*

The May 1992 Remedial Investigation (RI) reported potential additional lifetime cancer risks to on-site workers that may have access to the Site of 1.2 x 10E–04, which is two orders of magnitude higher than the criterion of acceptability. Due to the unsecured nature of the site, other unacceptable risks were possible to trespassers and the resident of one nearby house. The shallow ground water was not considered a potential source of drinking water and was reported of limited potential beneficial use due to the high value of Total Dissolved Solids (TDD), however concerns of potential contamination to the deeper Garber-Wellington aquifer, triggered further investigations into the ground water to ensure protection of this source. Regionally, Oklahoma City receives its public water supply from reservoirs surrounding the city.

The Site was divided into two operable units, a source control operable unit and a ground water operable unit. EPA issued a Record of Decision on September 28, 1992 for the source control operable unit. The remedial action activities for the source control operable unit, initiated in August 1997, consisted of asbestos abatement and demolition of existing structures, on-site neutralization and stabilization of wastes, and off-site disposal at a permitted landfill. The remedial action was completed in March 2000.

EPA issued a ground water Record of Decision on April 19, 1994. The remedial action activities for the ground water operable unit, initiated in December 1996, consisted of quarterly ground water monitoring for three years followed by semi-annual monitoring for three years. EPA issued an Explanation of Significant Difference in January 2006, and documented a final decision to discontinue further semi-annual monitoring.

EPA issued a Final Close Out Report on March 7, 2006, which affirmed that the remedial action activities for the source control operable unit and ground water operable unit had been completed and were consistent with CERCLA, as amended, and to the extent practicable, the NCP.

EPA issued a second Explanation of Significant in May 2008 to clarify the final decision for clean up levels and document the need for Institutional Controls and Five-Year Reviews.

*Institutional Controls*

An element of the selected remedy is to place notices to the property deed warning of the site hazards. These notices were filed pursuant to Oklahoma Statutes, Title 27A (2000 Supp.), Section 2–7–123(B), by the Oklahoma Department of Environmental Quality in 2001. These notices declare the sites considered appropriate for activities associated with industrial/commercial uses, the anticipated future land use according to the ROD. Furthermore, the Oklahoma City Zoning maps indicate the land use for the sites as classified for industrial.

A component of the ground water ROD is to ensure future potential users of the lower Garber-Wellington aquifer are not exposed to contaminants from the site. As part of Operation and Maintenance activities, the State maintains the institutional controls and reviews records of wells drilled in the area to ensure shallow ground water is not used, and additional wells are not installed in the area.

*Cleanup Goals*

The remedial action cleanup activities at the Double Eagle Refinery Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The source control operable unit cleanup goals were to provide for commercial/industrial reuse of the Site. During the remedial action confirmation samples were collected to ensure that all materials left at the Site were below the cleanup goals. The remedial action objectives for the ground water operable unit, to ensure that future potential users of the lower Garber-Wellington aquifer are not exposed to contaminants from the Site and to ensure that the North Canadian River is not impacted by contaminants from the Site, have also been met by the remedial actions at the Site.

The Remedial Investigation identified the shallow aquifer as a Class III aquifer (the water is not suitable for human consumption). As indicated through the ground water monitoring events, and the additional investigations conducted, it was confirmed that the shallow ground water in the alluvium is not usable as a drinking water source. During a 1996 investigation, additional wells were drilled below 200 feet in depth to document the presence of a shale aquitard, which is approximately 160+ feet deep. This shale within the Garber Sandstone acts as an ''aquitard'' to separate the upper and lower ground water aquifers, and provides protection to the lower aquifer from the migration of contaminants in the shallow ground water. The deeper ground water of the Garber-Wellington aquifer below the shale aquitard is below cleanup goals.

The remedial action objective ''to ensure future potential users of the deeper Garber-Wellington aquifer are not exposed to contaminants from the site'' is achieved through the State monitoring of the installation of any additional wells in the area.

*Operation and Maintenance*

The ODEQ has committed to performing Operation and Maintenance (O&M) activities at the Site. In March 2006, the ODEQ submitted the Site O&M Plan to EPA, which defines the long-term O&M activities for the Site. O&M activities consist of maintaining the institutional controls on the Site and semi-annual search of well drilling records to ensure that no drinking water wells are installed on or near the Site.

*Five-Year Review*

Hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Therefore, the EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA section 121(c), and as provided in the current guidance on Five-Year Reviews (OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Review Guidance, June 2001). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Five-year reviews for this Site were completed in July 29, 2002 and May 15, 2007. The reviews found that the remedy remains protective of human health and the environment, and that the Site appears to have been properly maintained during the period between reports. The next five-year review will occur no later than May 15, 2012.

*Community Involvement*

Public participation activities have been satisfied as required in CERCLA

section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

A Public Comment period was established when the site was proposed to the National Priorities List, and Public Meetings were conducted on July 1992 and August 1993 to discuss the proposed remedies for the soil and the groundwater operable units. With this Notice of Deletion, a 30-day public comment period is established before making this deletion final.

**V. Deletion Action**

The EPA, with concurrence of the State of Oklahoma, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 23, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

**Appendix B—[Amended]**

■ 2. Table 1 of appendix B to part 300 is amended under Oklahoma (''OK'') by removing the site name ''Double Eagle Refinery Co.'' and the city ''Oklahoma City.''

[FR Doc. E8–13338 Filed 6–12–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1989–0008, Notice 4; FRL–8579–1]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Notice of deletion of the Fourth Street Abandoned Refinery Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Fourth Street Abandoned Refinery Site (Site), located in Oklahoma City, Oklahoma County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0008, Notice 4, by one of the following methods:

- *http://www.regulations.gov* (Follow on-line instructions for submitting comments).
- *E-mail: walters.donn@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 4. 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.

*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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the information repositories.

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm;*

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733,

(214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, Oklahoma, 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Bartolome Canellas (6SF–RL), Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6662 or 1–800–533–3508 or *canellas.bart@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Fourth Street Abandoned Refinery Site, Oklahoma City, Oklahoma County, Oklahoma from the NPL. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as a list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in Sec. 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. Along with the direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Site and explains how the Site meets the deletion criteria. Section V discusses EPA actions to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health and the environment. In making a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Oklahoma prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Oklahoma Department of Environmental Quality, has concurred on the deletion of the Site from the NPL.

(3) Concurrent with the publication of this direct final Notice of Deletion, a notice of availability is being published in The Oklahoman and is being distributed to appropriate federal, state and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management of Superfund sites. As mentioned in section II of this document, Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

## IV. Basis for Intended Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL.

*Site Background and History*

The Site occupies the Southwest Quarter (SW ¼) of Section 36, Township 12 North, Range 3 West, Indian Meridian, Oklahoma County,

Oklahoma City, Oklahoma. Located at 2200 Block NE 4th Street (South of NE 4th Street and East of Martin Luther King Boulevard), the Site extends over approximately 27 acres. The Fourth Street Abandoned Refinery collected, stored, and re-refined used oils and distributed the recycled product. The refinery was active from the 1940s to the late 1960s or early 1970s.

In 1985 through 1988, EPA conducted investigations of the Site. The sampling results revealed elevated levels of volatile organic compounds, semi-volatile organic compounds, and metals found in surface water, soil, sediment, and ground water. The Site also was found to contain acidic sludges in on-site lagoons or pits.

The data from these sampling efforts resulted in the Site being proposed for the Superfund NPL on June 24, 1988, 53 FR 23978, and the Site was included on the NPL on March 31, 1989, 54 FR 10512.

*Response Actions*

The May 1992 Remedial Investigation report identified the Site as containing remnants of the dismantled refinery, including waste impoundments and an exposed tar mat. The potential additional lifetime cancer risks to the on-site workers were estimated at 3.0 × 10E–03, which are three orders of magnitude higher than the criterion of acceptability. The shallow ground water was not considered a potential source of drinking water and was reported of limited potential beneficial use due to the high value of Total Dissolved Solids (TDD), however concerns of potential contamination to the deeper Garber-Wellington aquifer, triggered further investigations into the ground water to ensure protection of this source. Regionally, Oklahoma City receives its public water supply from reservoirs surrounding the City.

The Site was divided into two operable units, a source control operable unit and a ground water operable unit. EPA issued a Record of Decision on September 28, 1992 for the source control operable unit. The remedial action activities for the source control operable unit, initiated in March 1995, consisted of on-site neutralization and stabilization of wastes, and off-site disposal at a permitted landfill. The remedial action was completed in April 1996.

EPA issued a ground water Record of Decision on September 30, 1993. The remedial action activities for the ground water operable unit, initiated in December 1996, consisted of quarterly ground water monitoring for three years followed by semi-annual monitoring for three years. EPA issued an Explanation of Significant Difference in January 2006, and documented a final decision to discontinue further semi-annual monitoring.

EPA issued a Final Close Out Report on March 7, 2006, which affirmed that the remedial action activities for the source control operable unit and ground water operable unit had been completed and were consistent with CERCLA, as amended, and to the extent practicable, the NCP.

EPA issued a second Explanation of Significant Difference in May 2008 to clarify the final decision for clean up levels and document the need for Institutional Controls and Five-Year Reviews.

*Institutional Controls*

An element of the selected remedy is to place notices to the property deed warning of the site hazards. These notices were filed pursuant to Oklahoma Statutes, Title 27A (2000 Supp.), Section 2–7–123(B), by the Oklahoma Department of Environmental Quality in 2001. These notices declare the sites considered appropriate for activities associated with industrial/commercial uses, the anticipated future land use according to the ROD. Furthermore, the Oklahoma City Zoning maps indicate the land use for the sites as classified for industrial.

A component of the ground water ROD is to ensure future potential users of the lower Garber-Wellington aquifer are not exposed to contaminants from the site. As part of Operation and Maintenance activities, the State maintains the institutional controls and reviews records of wells drilled in the area to ensure shallow ground water is not used, and additional wells are not installed in the area.

*Cleanup Goals*

The remedial action cleanup activities at the Fourth Street Abandoned Refinery Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The source control operable unit cleanup goals were to provide for commercial/industrial reuse of the Site. During the remedial action, confirmation samples were collected to ensure that all materials left at the Site were below the cleanup goals. The remedial action objectives for the ground water operable unit, to ensure that future potential users of the lower Garber-Wellington aquifer are not exposed to contaminants from the Site and to ensure that the North Canadian River is not impacted by contaminants from the Site, have also been met by the remedial actions at the Site.

The Remedial Investigation identified the shallow aquifer as a Class III aquifer (the water is not suitable for human consumption). As indicated through the ground water monitoring events, and the additional investigations conducted, it was confirmed that the shallow ground water in the alluvium is not usable as a drinking water source. During a 1996 investigation, additional wells were drilled below 200 feet in depth to document the presence of a shale aquitard, which is approximately 160+ feet deep. This shale within the Garber Sandstone acts as an ''aquitard'' to separate the upper and lower ground water aquifers, and provides protection to the lower aquifer from the migration of contaminants in the shallow ground water. The deeper ground water of the Garber-Wellington aquifer below the shale aquitard is below cleanup goals.

The remedial action objective ''to ensure future potential users of the deeper Garber-Wellington aquifer are not exposed to contaminants from the site'' is achieved through the State monitoring of the installation of any additional wells in the area.

*Operation and Maintenance*

The ODEQ has committed to performing Operation and Maintenance (O&M) activities at the Site. In March 2006, the ODEQ submitted the Site O&M Plan to EPA, which defines the long-term O&M activities for the Site. O&M activities consist of maintaining the institutional controls on the Site and semi-annual search of well drilling records to ensure that no drinking water wells are installed on or near the Site.

*Five-Year Review*

Hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Therefore, the EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA Section 121(c), and as provided in the current guidance on Five-Year Reviews (OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Review Guidance, June 2001). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Three five-year reviews for this Site have been conducted to date, the first one on October 18, 2000, the second one on July 29, 2002 and the third one on May 15, 2007. All the reviews found that the remedy remains protective of human

health and the environment, and that the Site appears to have been properly maintained during the period between reports. The next five-year review will occur no later than May 15, 2012.

*Community Involvement*

Public participation activities required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied, and documents which EPA generated and/or relied on are available to the public in the information repositories.

A Public Comment period was established when the site was proposed to the National Priorities List, and Public Meetings were conducted on July 1992 and August 1993 to discuss the proposed remedies for the soil and the groundwater operable units. With this Notice of Deletion, a 30 day public comment period is established before making this deletion final.

**V. Deletion Action**

The EPA, with concurrence of the State of Oklahoma, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 23, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to part 300 is amended under Oklahoma (''OK'') by removing the site name ''Fourth Street Abandoned Refinery'' and the city ''Oklahoma City.''

[FR Doc. E8–13369 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1983–0002, Notice 4; FRL–8579–4]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Notice of Deletion of the Old Inger Oil Refinery, Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Old Inger Oil Refinery Site (Site) located in Ascension Parish, Louisiana from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, Notice 4, by one of the following methods:

- *http://www.regulations.gov* (Follow on-line instructions for submitting comments).
- *E-mail: coats.janetta@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Janetta Coats, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7308 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1983–0002, Notice 4. 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.

*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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following information repositories:

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*;

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Louisiana Department of Environmental Quality, Public Records Center, Galvez Building, 1st Floor, 602 N. Fifth Street, Baton Rouge, Louisiana, Monday through Friday 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bartolome Canellas (6SF–RL), Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6662 or 1–800–533–3508 or *canellas.bart@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Introduction

The EPA Region 6 office is publishing this direct final Notice of Deletion of the Old Inger Oil Refinery Site, near Darrow, Ascension Parish, Louisiana from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as a list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e) (3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at the deleted sites warrant such actions.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effectiveAugust 12, 2008 unless EPA receives adverse comments by July 14, 2008. Along with the direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Old Inger Refinery Site and explains how the Site meets the deletion criteria. Section V discusses EPA's actions to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health and the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121 (c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Oklahoma prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Oklahoma Department of Environmental Quality, has concurred on the deletion of the Site from the NPL.

(3) Concurrent with the publication of this direct final Notice of Deletion, a notice of availability is being published in the Ascension Citizen and is being distributed to appropriate federal, state and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management of Superfund sites. As mentioned in section II of this document, section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

*Site Background and History*

The Site is located approximately 4.5 miles north of Darrow, Ascension Parish, Louisiana on the east bank of the Mississippi River on Highway 75. The Site extends over approximately 16 acres and is bounded to the north by the Louisiana Highway 75, the levees of the

Mississippi River to the south and to the east and west by vacant lots.

The Site is a former waste oil reclamation facility that began operation in 1967. During operations lagoons were used for disposal of waste sludges and oils. Periodically, the materials in the lagoons were pumped into the adjacent swamps to maintain storage capacity. Some of the Site problems included a large spill during unloading of used oil from a barge, tanks overfilling, and drums and construction debris being buried in lagoons. After the major spill in 1978, the property changed ownership. The new owners had intended to clean up the Site, but abandoned it in 1980.

From April 1983 through August 1988, five emergency removal actions were conducted to stabilize the Site including: Site security, migration control, excavation and containment of consolidated soils, sampling and analysis. These immediate actions reduced the potential for contact with Site contamination and the farther spread of contaminated materials to make the Site safer while long-term cleanup activities proceeded.

*Remedial Investigation and Feasibility Study (RI/FS)*

Investigations by both the EPA and LDEQ revealed the presence of contaminated waste oils, sludges, sediments, and water. From the investigations, it was determined that the types and concentrations of contaminants at the Site posed a potential hazard to human health and the environment. The Site was subsequently placed on the National Priorities List for remediation under CERCLA as the State's highest priority site.

*Record of Decision Findings*

The EPA, with concurrence from the State of Louisiana, signed the ROD on September 25, 1984. The major components of the selected remedy included:

- Closing and sealing of an ungrouted on-site well.
- Pumping and treatment of the shallow ground water aquifer via carbon adsorption.
- Carbon adsorption treatment and discharge of contaminated fluids.
- In situ containment and capping of slightly contaminated soils.
- On-site land treatment of heavily contaminated soils and sludges.
- Disposal of contaminated wood.
- Land Use Restrictions.

Remedial activities were implemented in phases.

The initial phase started in 1990 and was completed in 1992. During this phase, contaminated liquids and sludges were removed from the surface impoundment, and the wastewater treatment plant and the on-site land treatment unit were constructed.

A second phase was started in 1998 and completed in 2002. During this phase, contaminated soils were excavated, treated in the land treatment unit returned back to the excavation. Approximately 15,712,300 gallons of water were treated in the treatment plant; approximately 63,398 tons of soils were excavated and treated; the Site was graded and approximately 40,000 cubic yards of clay and 24,800 cubic yards of topsoil were applied to build a cap.

The final phase of remedial work involved the evaluation of the shallow groundwater. A network of monitoring wells was installed and a quarterly sampling and evaluation program was instituted to run for a period of two years.

In summary, the Site was remediated by removing the impoundments, tanks, associated refinery equipment and debris. Contaminated soils were treated by on-site bioremediation of the affected media in a land treatment unit, capped with a clay cap and revegetated with a topsoil layer and native grasses. Finally, the shallow ground water was investigated and no unacceptable risks were identified.

The Institutional Controls (ICs) at the Site include a lien on the property for the amount of the remedial costs, which shows that the property has contaminants, and has been subject to a remedial action; and a notice in the mortgage and conveyance records stating that residual contaminant concentrations remain at the Site but are below established remedial standards.

The EPA, with concurrence from the State of Louisiana, signed an Explanation of Significant Difference on September 12, 2006. This document explains why closing an onsite well, and further pumping and treatment of ground water, were not implemented after other remedial activities were implemented.

A Final Close Out Report was signed on September 12, 2006.

*Characterization of Risk*

The 1984 ROD identified that the most significant risk levels to public health and the environment were generated by the heavily contaminated soils and sludges and present a risk of migration of contaminated ground water and contaminating offsite drainageways.

*Response Actions*

EPA Region 6 and the State of Louisiana agree that carbon adsorption and discharge off site of contaminated fluids and land treatment for heavily contaminated soils and sludges were alternatives which effectively mitigated and minimized the most immediate risks to public health and the environment and limited future risk of the migration of contaminated ground water.

*Cleanup Standards*

Residual waste left in place does not allow for ''unlimited use and unrestricted exposure (uu/ue).'' Residual contaminant concentrations remain at the Site but are below established remedial standards. As indicated above, ground water monitoring was conducted quarterly for two years to confirm that shallow ground water does not represent an unacceptable risk and meets the requirements of the State under the Louisiana Risk Evaluation and Corrective Action Program (RECAP).

*Operation and Maintenance*

Long term O&M activities will be to maintain the cap and to ensure the fencing remains intact and secure. Activities conducted by the State include periodic mowing and tracking the maintenance of the Site cap, and the continuation of Five-Year reviews to be conducted by the EPA every five years.

*Five-Year Review*

The threshold for Five-Years Reviews is unlimited use/unrestricted exposure. Future Five-Year Reviews will continue to monitor the maintenance of the ICs, and the limited use of the Site at the toe of the Mississippi River levee, to ensure protection of human health and the environment. The most recent Five-Year Review was completed on July 23, 2007.

*Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

**V. Deletion Action**

The EPA, with concurrence of the State of Louisiana, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year

reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 12, 2008 unless EPA receives adverse comments by July 14, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect, and EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 22, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to part 300 is amended under Louisiana (''LA'') by removing the entry for ''Old Inger Oil Refinery'' in ''Darrow, Louisiana''.

[FR Doc. E8–13367 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## COMMISSION ON CIVIL RIGHTS

### 45 CFR Part 706

**RIN 3035–AA02**

### Employee Responsibilities and Conduct Residual Cross-References Regulation of the United States Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Final rule.

**SUMMARY:** The United States Commission on Civil Rights (Commission) is repealing its old employee conduct regulations, which have been superseded by the executive branch Standards of Ethical Conduct, financial disclosure and financial interests regulations issued by the Office of Government Ethics (OGE). In place of its old regulations, the Commission is adding a section of residual cross-references to those branchwide regulations as well as its new supplemental standards regulations and certain executive branchwide conduct rules promulgated by the Office of Personnel Management (OPM). The text of the rule was published in the **Federal Register** on August 30, 2006 at 71 FR 51546 as a proposed rule and provided that comments should have been received by September 29, 2006 to be considered in the formulation of the final rule. No comments were received.

**DATES:** *Effective Date:* July 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, Office of the Staff Director, United States Commission on Civil Rights, 624 Ninth Street, NW., Suite 621, Washington, DC 20425; Telephone: (202) 376–7796; Facsimile: (202) 376–1163.

**SUPPLEMENTARY INFORMATION:** In 1992, OGE issued a final rule setting forth uniform executive branch Standards of Ethical Conduct (generally effective on February 3, 1993) and an interim final rule on financial disclosure, and in 1996 issued a final rule on financial interests for executive branch departments and agencies of the Federal Government and their employees. Those three executive branchwide regulations, as corrected and amended, are codified at 5 CFR parts 2634, 2635 and 2640. Together those regulations have superseded the old Commission regulations, based on prior OPM standards, on employee responsibilities and conduct at 45 CFR part 706 which the Commission adopted in 1979. See 44 FR 75152, as revised in 2002 at 67 FR 70498. Accordingly, the Commission is removing its superseded regulations, and adds in place thereof, a new section containing residual crossreferences to the provisions at 5 CFR parts 2634, 2635 and 2640, as well as to the new Commission regulation supplementing the executive branchwide standards that is being separately published today elsewhere in this issue of the **Federal Register** for codification in a new chapter LXVIII of 5 CFR, to consist of part 7801 In addition, the Commission is including in its residual section a reference to the separate, specific executive branchwide provisions regarding gambling, safeguarding the examination process and conduct prejudicial to the Government which are set forth in 5 CFR part 735, as amended and reissued by OPM in 1992 and 2006. Those specific branchwide restrictions are not covered by OGE's Standards of Ethical Conduct regulation; furthermore, they are self-executing and do not require any department or agency republication. In this final rule, the Commission is also correcting the prior proposed residual cross-references section citation to read 706.1''. Otherwise, the Commission is adopting its proposed residual regulation as final without change.

**Matters of Regulatory Procedure**

*Executive Orders 12866 and 12988*

Because this rule relates to Commission personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

*Regulatory Flexibility Act*

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule does not have a significant economic impact on a substantial number of small entities because it primarily affects Commission employees.

*Paperwork Reduction Act*

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rulemaking document because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

*Congressional Review Act*

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

**List of Subjects in 45 CFR Part 706**

Conflict of interests, Government employees.

Dated: March 26, 2008.

**Robert Lerner,**

*Assistant Staff Director for the Office of Civil Rights Evaluation, Delegated Duties of the Staff Director, United States Commission on Civil Rights.*

Dated: March 26, 2008.

**Emma Monroig,**

*Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights.*

■ For the reasons set forth in this preamble, the Commission is revising 45 CFR part 706 to read as follows:

## PART 706—EMPLOYEE RESPONSIBILITES AND CONDUCT

**Authority:** 5 U.S.C. 7301; 42 U.S.C. 1975b(d).

**§ 706.1 Cross-references to employee ethical conduct standards, financial disclosure and financial interests regulations and other conduct rules.**

Employees of the United States Commission on Civil Rights are subject to the executive branch standards of ethical conduct contained in 5 CFR part 2635, the Commission regulations at 5 CFR part 7801 which supplement the executive branchwide standards, the executive branch financial disclosure regulations contained in 5 CFR part 2634, and the executive branch financial interests regulations contained in 5 CFR part 2640, as well as the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735.

[FR Doc. E8–13171 Filed 6–12–08; 8:45 am]

**BILLING CODE 6335–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[WT Docket No. 02–55; DA 08–1094]**

## Public Safety and Homeland Security Bureau Establishes Post-Reconfiguration 800 MHz Band Plan for the U.S.-Canada Border Regions

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB), on delegated authority, establishes reconfigured 800 MHz band plans in the U.S.-Canada border regions in order to accomplish the Commission's goals for band reconfiguration.

**DATES:** Effective August 12, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Brian Marenco, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order, DA 08–1094, released on May 9, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. However, the Commission deferred consideration of band reconfiguration plans for the border areas, noting that ''implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.'' The Commission stated that ''the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.''

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to PSHSB to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007.

3. In July 2007, the U.S. and Canada reached an agreement on a process that will enable the U.S. to proceed with band reconfiguration in the border region. Consequently, on November 1, 2007, PSHSB issued a Further Notice of Proposed Rulemaking seeking comment on specific proposals for reconfiguring the eight U.S.-Canada border regions. The Commission received ten comments and eight reply comments in response to the FNPRM

4. On May 9, 2008, PSHSB issued a Second Report and Order establishing reconfigured band plans in the U.S.-Canada border regions. The band plans adopted in the Second Report and Order are designed to separate-to the greatest extent possible-public safety and other non-cellular licensees from licensees that employ cellular technology in the band.

### Procedural Matters

*A. Final Regulatory Flexibility Analysis*

5. The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the Second Report and Order.

*B. Final Paperwork Reduction Act of 1995 Analysis*

6. The Second Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

**Final Regulatory Flexibility Analysis**

7. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (FNPRM), 72 63869, November 13, 2007, in WT Docket 02–55. PSHSB sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Proposed Rules*

8. This Second Report and Order continues the Commission's efforts to reconfigure the 800 MHz band to eliminate an ongoing and growing problem of interference to public safety and other land mobile communications systems in the 800 MHz band. Specifically, in this order, PSHSB adopts post-rebanding band plans for the regions of the U.S. immediately adjacent to the U.S.-Canada border. These post-rebanding band plans include region specific variations. The reconfiguration of the 800 MHz band in the U.S.-Canada border regions is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

9. No parties have raised significant issues in response to the IRFA.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

10. The RFA directs agencies to provide a description of and, where

feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities—applicants and licensees—-that may be affected by our action.

12. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

13. *Public Safety Radio Licensees.* Public safety licensees who operate 800 MHz systems in the U.S.-Canada border region will be required to relocate their station facilities according to the post-rebanding plans listed in this Second Report and Order. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

14. *Business, I/LT, and SMR licensees.* Business and Industrial Land Transportation (B/ILT) and Special Mobile Radio (SMR) licensees who operate 800 MHz systems in the U.S.-Canada border region will be required to relocate their station facilities according to the band plans proposed in this Second Report and Order. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees. Therefore we will use the SBA size standard for wireless firms, supra, and incorporate that analysis by reference here.

15. Also, Sprint Nextel Corporation (Sprint) will be affected by the post-rebanding band plans in this Second Report and Order but it is not a small carrier.

### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

16. We adopt no new reporting, recordkeeping or other compliance requirements in this Second Report and Order. As noted in Section B of the Second Report and Order, public safety, B/ILT, SMR licensees and wireless service providers who operate 800 MHz systems in the U.S.—Canada border region will be required to relocate their station facilities according to the post-rebanding band plans specified in this Second Report and Order. Also, Sprint Corporation will pay the cost of relocating incumbent licensees.

### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

17. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

18. *Non-NPSPAC Public Safety Systems in the 806–809/851–854 MHz Band.* In the FNPRM, we proposed that in the border areas, the 806–809/851–854 MHz block would be shared by non-NPSPAC public safety licensees that were originally licensed in the block and NPSPAC licensees relocating from the former NPSPAC block at 821–824/866–869 MHz. Because non-NPSPAC public safety systems operate on channels with 25 kHz spacing, while NPSPAC systems operate on 12.5 kHz-spaced channels, we sought comment on alternatives for accommodating both NPSPAC and non-NPSPAC public safety systems in the same spectrum block. Our proposed channel plan for this portion of the band provided for a combination of 25 kHz and 12.5 kHz spaced channels. The overwhelming majority of commenters in the record oppose non-uniform channelization of the 806–809/851–854 MHz band, and instead urge us to adopt a uniform band plan of 12.5 kHz-spaced channels for this block with the tighter emission masks applicable to NPSPAC channels. These commenters argue that a uniform band plan would improve spectrum efficiency, avoid the complexities caused by intermingling public safety licensees operating on differing channel plans with differing emission masks, and would be more compatible with the NPSPAC channelization plan in adjacent non-border regions. Commenters suggest that non-NPSPAC licensees operating with 25 kHz channel spacing should either be relocated above the 806–809/851–854 MHz bloc or should be converted to 12.5 kHz spacing.

19. Based on the comments received in response to our proposal, we have decided to create a uniform 12.5 kHz-spaced channel plan for the 806–809/851–854 MHz block in the border regions. Thus, public safety licensees will benefit from the increased spectrum efficiency created by a uniform channel plan for this portion of the band. Furthermore, Sprint will bear the cost of any changes needed to accommodate public safety licensees with equipment capable of operating according to the channel plan for the 806–809/851–854 MHz portion of the band.

20. *NPSPAC Facilities on Canada Primary Channels.* In the FNPRM, we

sought comment on how to accommodate U.S. NPSPAC licensees that currently operate on a secondary basis to licensees in Canada in the Canadian primary portion of the NPSPAC band. We suggested placing these licensees on the lowest available Canada primary channels in the band. Many NPSPAC commenters, however, advocate relocating these facilities to U.S. primary spectrum, i.e. , relocating them 15 megahertz downward to the 806–809/851–854 MHz band, which is U.S. primary spectrum. These commenters note that many NPSPAC licensees in the border regions use both U.S. primary and Canada primary NPSPAC channels in their systems and operate seamlessly across the entire NPSPAC block despite the fact that some of their channels are on Canada primary spectrum. Consequently, we have instructed the Transition Administer (TA) to accommodate these systems on U.S. primary spectrum in the 806–809/851–854 MHz portion of the band whenever possible. Relocating these systems to U.S. primary spectrum in the 806–809/851–854 MHz portion of the band will provide border area public safety NPSPAC licensees with the capability to interoperate with public safety NPSPAC licensees outside the border area. In addition, Sprint will bear the cost of relocating these systems.

21. *Separation of Non-ESMR (High-Site B/ILT and SMR) and ESMR Systems.* In the FNPRM, we sought to separate non ESMR (high-site B/ILT and SMR) from ESMR systems to the extent feasible, but noted that some continued interleaving of non-ESMR and ESMR systems might be necessary in the border regions (Regions 1–6) due to the limited amount of available U.S. primary spectrum. We sought comment on the degree to which the new band plan should accommodate such interleaving, and whether other technical rules would be required to mitigate potential interference. Commenters overwhelmingly oppose continued interleaving of B/ILT and high site SMR systems with ESMR systems. Consequently, we have instructed the Transition Administrator to assign replacement channels to B/ILT and high-site SMR licensees in Canada Border Regions 1 through 6 in a manner which separates these licensees from ESMR systems. B/ILT and high-site SMR licensees will benefit from our decision because these licensees will be subject to less interference then if they remained interleaved with ESMR systems. In making this decision, we have reminded Sprint of its obligation to provide all relocating licensees with comparable facilities including B/ILT and high site SMR licensees in the Canada border even if this means replacing some combiners in order to compensate for the decreased frequency separation between channels for these licensees.

22. *B/ILT, High-Site SMR and ESMR Operations on Canada Primary Channels.* U.S. licensees may continue to be licensed on Canada primary channels, provided the maximum power flux density (PFD) per 25 kHz from their systems does not exceed −107 dB(W/m2) at or beyond the border. Accordingly, B/ILT and high-site SMR licensees that currently use Canada primary channels in Regions 1 through 6 may remain on these channels subject to the above PFD limits. B/ILT and high-site SMR licensees will benefit from our decision here because these licensees will continue to have access to Canada primary spectrum along the border.

23. In the FNPRM, we also sought comment on whether Sprint should be permitted to remain on Canada primary spectrum below 817/862 MHz. Sprint states that it extensively relies on these channels to provide wireless services to its subscribers and to provide access to spectrum for its roaming partner in Canada TELUS. Other commenting parties state that they would not object to Sprint's continued operation in the Canadian primary portion below 817/862 MHz as long as full interference protection is provided to adjacent non-ESMR operations. We will permit Sprint to remain grandfathered on these channels in the non-ESMR portion of the band as long as they provide full interference protection to all non-ESMR licensees. Public safety, B/ILT and high-site SMR licensees will benefit from our decision because they will be eligible for interference protection from these grandfathered facilities.

24. *Mutual Aid Channels.* As proposed in the FNPRM, we establish new mutual aid channels with 25 kHz spacing in the new border area NPSPAC band plan to match the mutual aid channels in the non-border NPSPAC band plan. Public safety licensees in the Canada border will benefit from this decision because they will be able to interoperate with public safety licensees outside the Canada border region.

25. *TELUS Operations on U.S. Primary Channels.* In the FNPRM, we noted that Commission had reached an agreement with Industry Canada on a process that enables the U.S. to proceed with rebanding in the border region. As part of this agreement, we noted that the U.S. and Canada will discuss whether certain Canadian facilities authorized on U.S. primary spectrum under SCP can be grandfathered. Several commenting parties expressed concern about the impact to U.S. licensees from grandfathering stations in Canada on U.S. primary spectrum. Therefore, in this Second Report and Order, we clarify that once the TA has assigned replacement channels to all U.S. licensees, we will examine whether certain TELUS facilities operating today on U.S. primary spectrum under SCP can be grandfathered without negatively impacting U.S. licensees. Only those TELUS stations which would create no conflicts with reconfigured U.S. licensees will be considered for grandfathering. Consequently, the grandfathering of TELUS stations on U.S. primary spectrum will have no negative impact on public safety, B/ILT or high-site SMR licensees.

26. *Region-Specific Band Plans.* In the FNPRM, we sought comment on region specific band plans for reconfiguring the 800 MHz band in the Canada Border in order to eliminate an ongoing and growing problem of interference to public safety and other land mobile communications systems in this band. Commenting parties generally supported our band plan proposals. Consequently, in this Second Report and Order, we adopt reconfigured band plans for licensees in the 800 MHz band along the U.S.—Canada border. Under these band plans, public safety systems will relocate to U.S. primary spectrum in the lower portion of the band. Commenting parties supported relocating public safety systems to the lowest portion of the band to maximize the spectral separation between public safety and ESMR systems. In addition, B/ILT, high-site SMR and ESMR systems will relocate higher in the band on U.S. primary spectrum above 815/860 MHz. These band plans contain certain region-specific variations. Because the reconfiguration of the 800 MHz band in the U.S.—Canada border regions seeks to eliminate interference to public safety, B/ILT and high-site SMR licensees, these band plans will minimize the cost that these licensees would otherwise incur to resolve interference. Further, Sprint will pay the cost of relocating incumbent licensees.

27. *Planning, Negotiation, and Mediation.* In the FNPRM, we proposed establishing expedited timelines for planning, negotiations, and mediation similar to those established in the Commission's September 2007 Public Notice for non-border licensees. While some commenters supported a 12 month planning period, we are not persuaded that rebanding in the Border areas requires such a lengthy period that

could unduly delay rebanding implementation. We establish planning limits of 90, 100, and 110 days which correspond to the number of units in a licensee's system. We also establish a process under which licensees may request additional planning time. With regard to negotiation and mediation, we establish a 30 day period for licensees to negotiate Frequency Reconfiguration Agreements with Sprint and if necessary a 20 day period within which licensees and Sprint may mediate unresolved issues. If licensees are unable to resolve issues with Sprint after the 20 day mediation period, then the 800 MHz Transition Administrator shall transmit such matters to the Public Safety and Homeland Security Bureau for review within 10 days after the end of the mediation period. Sprint, however, bears the costs of band reconfiguration.

28. *Rebanding Implementation.* In the FNPRM, we sought comment on the sequence and timing of rebanding activity in the Canadian border region once a final band plan is adopted and the 800 MHz Transition Administrator issues replacement channel assignments to border area licensees. In this Second Report and Order, we envision the sequence of band reconfiguration in all Regions will occur in two-stage process that will take into account regional variations. All of the relocations will occur through spectrum swaps with Sprint and Sprint will bear the costs of reconfiguration.

*F. Report to Congress*

29. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the SBREFA. In addition, the Commission will send a copy of the Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

30. The Commission will send a copy of this Second Report and Order, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**Ordering Clauses**

31. Accordingly, *it is ordered*, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, this Second Report and Order *is adopted.*

32. *It is further ordered* that the amendments of the Commission's rules set forth in Appendix D are adopted, effective August 12, 2008.

33. *It is further ordered* that the Final Regulatory Flexibility required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth in Appendix A herein is adopted.

34. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR part 90**

Radio.

Federal Communications Commission.

**Timothy A. Peterson,**

*Chief of Staff, Public Safety and Homeland Security Bureau.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

■ 2. Section 90.619 is amended by revising paragraph (c) to read as follows:

**§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.**

* * * * *

(c) *Use of 800 MHz Band in Canada Border Region.* All operations in the 806–824/851–869 MHz band within 140 km (87 miles) of the U.S./Canada border (''U.S./Canada border area'') shall be in accordance with international agreements between the U.S. and Canada.

(1) The U.S./Canada border area is divided into the following geographical regions (''Canada Border Regions''). U.S. primary channels are shown in the table by region. The remaining channels are primary to Canada (''Canada Primary channels'').

TABLE C1.—GEOGRAPHICAL REGIONS

| Region | Location (longitude) | U.S. primary channels |
|---|---|---|
| 1 | 66° W–71° W (0–100 km from border) | 1–260, 561–710, 772–790 and 792–830. |
| 2 | 71° W–80°30′ W (0–100 km from border) | 1–170, 621–710 and 795–830. |
| 3 | 80°30′ W–85° W (0–100 km from border) | 1–320, 501–710, 729–730, 732–750, 752–770, 772–790 and 792–830. |
| 4 | 85° W–121°30′ W (0–100 km from border) | 1–260, 561–710, 772–790 and 792–830. |
| 5 | 121°30′ W–127° W (0–140 km from border) | 1–260, 561–710, 772–790 and 792–830. |
| 6 | 127° W–143° W (0–100 km from border) | 1–260, 561–710, 772–790 and 792–830. |
| 7A | 66° W–71° W (100–140 km from border) | 1–830. |
| 7A | 80°30′ W–121°30′ W (100–140 km from border) | 1–830. |
| 7B | 71° W–80°30′ W (100–140 km from border) | 1–830. |
| 8 | 127° W–143° W (100–140 km from border) | 1–830. |

(2) Stations authorized on U.S. primary channels in all Canada Border Regions, except Region 5, will be subject to the Effective Radiated Power (ERP) and Effective Antenna Height (EAH) limitations listed in Table C2. The Effective Antenna Height is calculated by subtracting the Assumed Average Terrain Elevation (AATE) listed in Table C3 from the antenna height above mean sea level.

TABLE C2.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO EFFECTIVE ANTENNA HEIGHTS (EAH) FOR REGIONS 1, 2, 3, 4, 6, 7 AND 8

| Effective Antenna Height (EAH) | | ERP watts (maximum) |
|---|---|---|
| Metres | Feet | |
| 0–152 | 0–500 | 500 |
| 153–305 | 501–1000 | 125 |
| 306–457 | 1001–1500 | 40 |
| 458–609 | 1501–2000 | 20 |
| 610–914 | 2001–3000 | 10 |
| 915–1066 | 3001–3500 | 6 |
| Above 1967 | Above 3501 | 5 |

TABLE C3.—ASSUMED AVERAGE TERRAIN ELEVATION (AATE) ALONG THE U.S.-CANADA BORDER

| Longitude (Φ) (°West) | Latitude (Ω) (°North) | Assumed Average Terrain Elevation | | | |
|---|---|---|---|---|---|
| | | United States | | Canada | |
| | | Feet | Metres | Feet | Metres |
| 65 ≤ Φ < 69 | Ω ≤ 45 | 0 | 0 | 0 | 0 |
| ″ | 45 ≤ Ω < 46 | 300 | 91 | 300 | 91 |
| ″ | Ω ≤ 46 | 1000 | 305 | 1000 | 305 |
| 69 ≤ Φ < 73 | All | 2000 | 609 | 1000 | 305 |
| 73 ≤ Φ < 74 | ″ | 500 | 152 | 500 | 152 |
| 74 ≤ Φ < 78 | ″ | 250 | 76 | 250 | 76 |
| 78 ≤ Φ < 80 | Ω ≤ 43 | 250 | 76 | 250 | 76 |
| ″ | Ω ≤ 43 | 500 | 152 | 500 | 152 |
| 80 ≤ Φ < 90 | All | 600 | 183 | 600 | 183 |
| 90 ≤ Φ < 98 | ″ | 1000 | 305 | 1000 | 305 |
| 98 ≤ Φ < 102 | ″ | 1500 | 457 | 1500 | 457 |
| 102 ≤ Φ < 108 | ″ | 2500 | 762 | 2500 | 762 |
| 108 ≤ Φ < 111 | ″ | 3500 | 1066 | 3500 | 1066 |
| 111 ≤ Φ < 113 | ″ | 4000 | 1219 | 3500 | 1066 |
| 113 ≤ Φ < 114 | ″ | 5000 | 1524 | 4000 | 1219 |
| 114 ≤ Φ < 121.5 | ″ | 3000 | 914 | 3000 | 914 |
| 121.5 ≤ Φ 127 | ″ | 0 | 0 | 0 | 0 |
| Φ ≥ 127 | 54 ≤ Ω < 56 | 0 | 0 | 0 | 0 |
| ″ | 56 ≤ Ω < 58 | 500 | 152 | 1500 | 457 |
| ″ | 58 ≤ Ω < 60 | 0 | 0 | 2000 | 609 |
| ″ | 60 ≤ Ω < 62 | 4000 | 1219 | 2500 | 762 |
| ″ | 62 ≤ Ω < 64 | 1600 | 488 | 1600 | 488 |
| ″ | 64 ≤ Ω < 66 | 1000 | 305 | 2000 | 609 |
| ″ | 66 ≤ Ω < 68 | 750 | 228 | 750 | 228 |
| ″ | 68 ≤ Ω < 69.5 | 1500 | 457 | 500 | 152 |
| ″ | Ω ≥ 69.5 | 0 | 0 | 0 | 0 |

(3) Stations authorized on U.S. primary channels in Canada Border Region 5 will be subject to the Effective Radiated Power (ERP) and Antenna Height Above Mean Sea Level limitations listed in Table C4.

TABLE C4.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHT ABOVE MEAN SEA LEVEL FOR REGION 5

| Antenna Height Above Mean Sea Level | | ERP Watts (maximum) |
|---|---|---|
| Metres | Feet | |
| 0–503 | 0–1650 | 500 |
| 504–609 | 1651–2000 | 350 |
| 610–762 | 2001–2500 | 200 |
| 763–914 | 2501–3000 | 140 |
| 915–1066 | 3001–3500 | 100 |
| 1067–1219 | 3501–4000 | 75 |
| 1220–1371 | 4001–4500 | 70 |
| 1372–1523 | 4501–5000 | 65 |
| Above 1523 | Above 5000 | 5 |

(4) Stations may be authorized on Canada Primary channels in the Canada Border Regions provided the maximum power flux density (PFD) per 25 kHz at or beyond the border does not exceed −107 dB(W/m2). Stations authorized on Canada Primary channels will be secondary to stations in Canada unless otherwise specified in an international agreement between the U.S. and Canada.

(5) Stations authorized to operate within 30 kilometers of the center city coordinates listed in Table C5 are considered to fall outside of the U.S./Canada border area and may operate according to the non-border band plan listed in § 90.617.

TABLE C5.—CITIES THAT ARE CONSIDERED TO FALL OUTSIDE THE CANADA BORDER REGION

| Location | Coordinates | |
|---|---|---|
| | Latitude | Longitude |
| Akron, Ohio | 41°05′00.2″ N. | 81°30′39.4″ W. |
| Youngstown, Ohio | 41°05′57.2″ N. | 80°39′01.3″ W. |
| Syracuse, New York | 43°03′04.2″ N. | 76°09′12.7″ W. |

(6) The channels listed in Table C6 and paragraph (c)(6)(i) of this section are available in the Canada Border Regions for non-cellular operations to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

TABLE C6.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

| Canada Border Region | Channel Nos. | Total |
|---|---|---|
| Regions 1, 4, 5 and 6 | 231–260 | 30 Channels. |
| Region 2 | See paragraph (c)(6)(i) of this section. | |
| Region 3 | 231–320, 501–508 | 90 Channels. |
| Regions 7A and 8 | 269, 289, 311, 399, 439, 270, 290, 312, 400, 440, 279, 299, 319, 339, 359, 280, 300, 320, 340, 360, 309, 329, 349, 369, 389, 310, 330, 350, 370, 390, 313, 353, 393, 441, 461, 314, 354, 394, 448, 468, 321, 341, 361, 381, 419, 328, 348, 368, 388, 420, 351, 379, 409, 429, 449, 352, 380, 410, 430, 450, 391, 392, 401, 408, 421, 428, 459, 460, 469, 470. | 70 Channels. |
| Region 7B | 231–260, 269, 289, 311, 399, 439, 270, 290, 312, 400, 440, 279, 299, 319, 339, 359, 280, 300, 320, 340, 360, 309, 329, 349, 369, 389, 310, 330, 350, 370, 390, 313, 353, 393, 441, 461, 314, 354, 394, 448, 468, 315, 355, 395, 435, 475, 316, 356, 396, 436, 476, 317, 357, 397, 437, 477, 318, 358, 398, 438, 478, 321, 341, 361, 381, 419, 328, 348, 368, 388, 420, 331, 371, 411, 451, 491, 332, 372, 412, 452, 492, 333, 373, 413, 453, 493, 334, 374, 414, 454, 494, 335, 375, 415, 455, 495, 336, 376, 416, 456, 496, 337, 377, 417, 457, 497, 338, 378, 418, 458, 498, 351, 379, 409, 429, 449, 352, 380, 410, 430, 450, 391, 392, 401, 408, 421, 428, 459, 460, 469, 470, 431, 432, 433, 434, 471, 472, 473, 474, 479, 480. | 170 Channels. |

(i) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in the Canada Border Regions. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: Channels 1, 39, 77, 115, 153.

(ii) [Reserved]

(7) The channels listed in Table C7 are available in the Canada Border Regions for the General Category. All entities will be eligible for licensing on these channels. 800 MHz high density cellular systems as defined in § 90.7 are permitted on these channels only as indicated in Table C7. The channels noted for Regions 1, 2, 3, 4, 5 and 6 where high density cellular systems are prohibited are all frequencies that are primary to Canada. Stations may be licensed on these Canada Primary channels according to paragraph (c)(4) of this section.

TABLE C7.—GENERAL CATEGORY 806–821/851–866 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

| Canada Border Region | General Category channels where 800 MHz high density cellular systems are prohibited | General Category channels where 800 MHz high density cellular systems are permitted |
|---|---|---|
| Regions 1, 4, 5 and 6 | 261–560 | 561–710. |
| Region 2 | 172–620 | 621–710. |
| Region 3 | 321–500 | 509–710. |
| Regions 7A and 8 | 231–260, 511–550 | None. |
| Region 7B | 511–550 | None. |

(8) The channels listed in Table C8 are available in the Canada Border Regions to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz cellular high density systems as defined in § 90.7 are prohibited on these channels.

TABLE C8.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

| Canada Border Region | Channel Nos. | Total |
|---|---|---|
| Regions 1, 2, 3, 4, 5 and 6 | None | 0 Channels. |
| Regions 7A, 7B and 8 | 261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308, 322, 362, 402, 442, 482, 323, 363, 403, 443, 483, 324, 364, 404, 444, 484, 325, 365, 405, 445, 485, 326, 366, 406, 446, 486, 327, 367, 407, 447, 487, 342, 382, 422, 462, 502, 343, 383, 423, 463, 503, 344, 384, 424, 464, 504, 345, 385, 425, 465, 505, 346, 386, 426, 466, 506, 347, 387, 427, 467, 507. | 100 Channels. |

(9) The channels listed in Table C9 are available in the Canada Border Regions to applicants eligible in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems, as defined in § 90.7, are prohibited on these channels.

TABLE C9.—SMR CATEGORY 806–816/851–861 MHZ CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN THE CANADA BORDER REGIONS

| Canada Border Region | Channel Nos. | Total |
|---|---|---|
| Regions 1, 2, 3, 4, 5 and 6 | None | 0 Channels. |
| Regions 7A and 8 | 315, 355, 395, 435, 475, 316, 356, 396, 436, 476, 317, 357, 397, 437, 477, 318, 358, 398, 438, 478, 331, 371, 411, 451, 491, 332, 372, 412, 452, 492, 333, 373, 413, 453, 493, 334, 374, 414, 454, 494, 335, 375, 415, 455, 495, 336, 376, 416, 456, 496, 337, 377, 417, 457, 497, 338, 378, 418, 458, 498, 431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510. | 80 Channels. |
| Region 7B | 481, 488, 489, 490, 499, 500, 501, 508, 509, 510 | 10 Channels. |

(10) The channels listed in Table C10 are available in the Canada Border Regions to applicants eligible in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees who employ 800 MHz high density cellular systems, as defined in § 90.7, are permitted to operate on these channels. Some of the channels listed in Table C10 are primary to Canada as indicated in paragraph (c)(1) of this section. ESMR systems may be authorized on these Canada Primary channels according to paragraph (c)(4) of this section.

TABLE C10.—ESMR CATEGORY 817–824/862–869 MHZ CHANNELS AVAILABLE FOR 800 MHZ HIGH DENSITY SYSTEMS

| Canada Border Region | Channel Nos. | Total |
|---|---|---|
| Regions 1, 2, 3, 4, 5 and 6 | 711–830 | 120 Channels. |
| Regions 7A, 7B and 8 | 551–830 | 280 Channels. |

(11) In Canada Border Regions 1, 2, 3, 4, 5 and 6, the following General Category channels are available for licensing to all entities except as described in paragraphs (c)(11)(i) and (c)(11)(ii) of this section: In Regions 1, 4, 5 and 6, channels 261–560; in Region 2, channels 172–620 and in Region 3, channels 321–500.

(i) In a given 800 MHz NPSPAC region, the General Category channels listed paragraph (c)(11) of this section which are vacated by licensees relocating to channels 711–830 and which remain vacant after band reconfiguration will be available for licensing as follows:

(A) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(B) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region; and

(C) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(ii) The General Category channels listed in paragraph (c)(11) of this section are primary to Canada. Stations may be authorized on these Canada Primary channels according to paragraph (c)(4).

(12) In Canada Border Regions 7A, 7B and 8, the following channels will be available as described in paragraphs (c)(12)(i) and (c)(12)(ii) of this section: for Canada Border Regions 7A and 8, channels 231–260 and channels below 471 in Tables C8 and C9; for Canada Border Region 7B all channels in Tables C8 and C9.

(i) In a given 800 MHz NPSPAC region, the channels listed paragraph (c)(12) of this section which are vacated by licensees relocating to channels 511–830 and which remain vacant after band reconfiguration will be available as follows:

(A) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region; and

(B) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice

announcing the completion of band reconfiguration in that region.

(ii) Five years after the release of a public notice announcing the completion of band reconfiguration in a given 800 MHz NPSPAC region, the channels listed in paragraph (c)(12) of this section will revert back to their original pool categories.

* * * * *

[FR Doc. E8–13352 Filed 6–12–08; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 40

**[Docket OST–2008–0184]**

**RIN OST 2105–AD67**

## Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Office of the Secretary (OST) is amending its drug and alcohol testing procedures to authorize employers to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. This rule also permits third-party administrators (TPAs) to provide the same information to State CDL licensing authorities where State law requires the TPAs to do so for owner-operator CMV drivers with CDLs.

**DATES:** The rule is effective June 13, 2008. Comments to this interim final rule should be submitted by August 12, 2008. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2008–0184 by any of the following methods:

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

*Instructions:* You must include the agency name and docket number DOT–OST–2008–0184 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For program issues, Bohdan Baczara or Patrice M. Kelly, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), *bohdan.baczara@dot.gov* or *patrice.kelly@dot.gov* (e-mail). For legal issues, Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–9310 (voice), (202) 366–9313 (fax) or *bob.ashby@dot.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

Confidentiality of an employee's test results is a cornerstone of the balance between public safety and employee privacy that is crucial to the Department of Transportation's testing program. Early in the Department of Transportation's drug testing program, we recognized the need for confidentiality of employee testing information and reflected this in our December 1, 1989 **Federal Register** notice (54 FR 49854). This rule required the Medical Review Officer (MRO) to disclose positive drug test result information only to employers. The rule also required laboratories to maintain employee test records in confidence, but permitted laboratories to disclose a positive drug test result to the employee, employer, or the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee as a result of the employee's positive drug test.

Congress passed the Omnibus Transportation Employee Testing Act of 1991, which directed the Department to implement significant changes to its substance abuse testing program, and specifically referenced providing for the confidentiality of employee test results. The Department amended its drug and alcohol testing regulations to implement these statutory requirements. (59 FR 7340; February 15, 1994). As provided in the original 1989 DOT rules and the 1994 amendments, Part 40 includes strict and specific provisions for maintaining the confidentiality of employee testing records. Specifically, employers are permitted to release employee drug and alcohol testing records to other employers only upon written consent from the employee, and only when the consent authorized the release to a specifically identified individual.

In 2000, the Department revised its drug and alcohol testing regulations (65 FR 79462). In this revision, the Department prohibited MROs from disclosing employee drug testing information to other employers and prohibited service agents and employers from using blanket releases. We intended in 2000 for State safety agencies with regulatory authority over employers to be provided with certain testing information about an individual employee with no signed releases necessary. In recent years, several States have passed legislation requiring the release of certain test result and refusal information for all CDL holders without the employees' consent. Specifically, the States have required employers and/or their service agents to report to their respective State CDL issuing and licensing authorities the drug and alcohol violations of employees who are CMV drivers with CDLs. We do not want our regulations to have the effect of prohibiting employers and TPAs of owner-operators from providing the drug and alcohol test results of CMV drivers with CDLs. Consequently, the Department must take rapid action to avoid any such conflict.

The Department believes that State action to suspend or revoke the CDLs of CMV drivers who violate DOT rules until they demonstrate that they have successfully completed the SAP process can have important safety benefits. We support State legislation that can reliably provide State CDL licensing authorities with the information they need to take such action. In particular, the Department is concerned that, in the absence of such action, CMV drivers with CDLs who do not seek required Substance Abuse Professional (SAP) evaluations, yet continue to perform safety-sensitive duties after they violate the Department's drug and alcohol regulations (so-called ''job hoppers''), pose an unacceptable safety risk to the public. We believe measures taken by States to suspend or revoke the CDL licenses of CMV drivers who violate DOT drug and alcohol rules will enhance the Department's efforts to ensure that such drivers are evaluated by SAPs and receive treatment or education before they resume safety-sensitive duties.

To be consistent with our policy in enforcing the existing regulations and because we want to ensure that 49 CFR Part 40 is supportive of such State

legislation, we are acting at this time to amend section 40.331. This amendment specifies that employers are authorized to respond—without conflict with Part 40 confidentiality requirements—to State law requirements by providing drug and alcohol violation information to State CDL licensing authorities on all CMV drivers with CDLs who are covered by DOT testing rules. This same authorization applies to TPAs for owner-operators, since they are the party in the best position to provide this data if owner-operators choose not to report their own violations. We note that this amendment does not authorize the release of individually identifiable testing information outside the scope of the State laws requiring its provision to a State agency for safety purposes. For example, if a State statute requires employers to provide information on positive tests and refusals to the DMV for purposes of taking action against the driver's CDL, it would be improper for the DMV to release the test information to other third parties without the written consent of the driver.

An employer, or a TPA for an owner-operator, is in the best position to provide this information reliably to State authorities because it is the only entity with knowledge and information about all drug and alcohol violations for an employee. For example, an MRO will not necessarily know that an employee refused to go to the collection site. Since MROs are not involved in the alcohol testing process, MROs will not have any information concerning an alcohol test. Likewise, a breath alcohol technician will not have any information about an employee's drug test result. A SAP will have no records on an employee who has not sought evaluation and treatment after a rule violation. Many service agents are located out of State and may not know of a State law requirement, and in any case they may not be readily subject to State law jurisdiction. Most have no way of knowing whether the employee is a CMV driver with a CDL or which DOT agency regulates the employee. Employers, on the other hand, have all this information, and are in-State employers subject to the State's jurisdiction.

This amendment is not a mandate to employers or TPAs for owner-operators to send information to State authorities. It simply authorizes them to comply with the specifics of State information collection requirements. For example, if State A requires only positive drug tests to be transmitted to its Department of Motor Vehicles, an employer or TPA could provide only records of the employee's positive drug test without written employee consent. The employer or TPA could not provide ''blanket'' information about refusals or alcohol tests to State A without written employee consent, since this was not required by State law. We note that enforcement of State laws that apply to a given employer or TPA would remain a State responsibility.

**Regulatory Analyses and Notices**

*Authority*

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

*Administrative Procedure Act*

The Department has determined that this rule may be issued without a prior opportunity for notice and comment because providing prior notice and comment would be unnecessary, impracticable, or contrary to the public interest. Because several States already have laws requiring the reporting of test result information and other States may be contemplating enacting such laws, it is important to clarify the status of employers and TPAs for owner-operators seeking to comply with these laws. As States work with drug testing program participants to implement their laws, it is essential that the Department work, without delay, to avoid any potential conflicts with Federal regulations that could impede such employers and TPAs from providing needed information to State agencies. It is important to resolve, as soon as possible, questions that States and other participants have already raised about the relationship of State law and DOT regulations in this area. Issuing the interim final rule should help to avoid confusion that could, to some extent, diminish the safety benefits that the combination of Federal and State requirements concerning persons who violate drug testing rules would otherwise have.

This rule clarifies that, in the interest of safety, employers and TPAs for owner-operators may comply with State reporting requirements to disclose to their State CDL authorities the DOT drug and alcohol violations of CMV drivers with CDLs. It would be inadvisable for the Department to delay issuing this rule and consequently to delay the safety benefits from continued compliance by employers with State laws. For the same reasons, the Department finds that there is good cause to make the rule effective immediately.

*Executive Order 12866 and Regulatory Flexibility Act*

The Department has determined that this action is not considered a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The interim final rule makes minor modifications to our rules to clarify that employers and TPAs for owner-operators are authorized to release employee-specific drug and alcohol testing information where required by State law.

This rule is being adopted solely to clarify that DOT rules do not conflict with State laws requiring employers to submit drug and alcohol test results to State safety agencies. As such, it imposes no compliance costs on any business or governmental entity. Any costs resulting from compliance of employers with State laws are attributable to those State laws, not to this rule. Given the absence of compliance costs to anyone, I certify that the interim final rule does not have a significant economic impact on a substantial number of small entities.

The benefits of this rule, which are not quantifiable, involve potential improvements to safety as the result of State procedures that could prevent violators of DOT rules from driving commercial vehicles for a time and in helping to prevent ''job hopping'' by drivers who test positive for one company and then seek a job at another company. It is important for the Department and States to begin realizing these benefits at this time.

*Executive Order 13132*

The Department has analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that, by explicitly facilitating the operation of State laws, the amendments is consistent with the Executive Order and that no consultation is necessary. It avoids the preemption of State laws with respect to the reporting of testing information by employers and third-party administrators providing services to owner-operators.

**List of Subjects in 49 CFR Part 40**

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued at Washington, DC, this 22nd day of May, 2008.

**Mary E. Peters,**

*Secretary of Transportation.*

■ For reasons discussed in the preamble, the Department of Transportation amends Title 49 of the Code of Federal Regulations, Part 40, as follows:

## PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

**Authority:** 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*; 49 U.S.C. 322.

■ 2. Amend 40.331 by adding a new paragraph (g) to read as follows:

**§ 40.331 To what additional parties must employers and service agents release information?**

* * * * *

(g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

* * * * *

[FR Doc. E8–13377 Filed 6–12–08; 8:45 am]

BILLING CODE 4910–62–P

# Proposed Rules

Federal Register
Vol. 73, No. 115
Friday, June 13, 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–2008–0470; Directorate Identifier 2008–CE–026–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

**SUMMARY:** We are revising an earlier NPRM 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:

An internal review evidenced that the flight controls tie rod bolts currently installed on the airplane are not in accordance with the design data. Indeed the bolt shank length has been determined too short and the material properties of the spacers have been found inadequate according to the prescribed torque value.

Therefore, bolts' threads could be subject to excessive wear, which might induce play in flight controls and consequently, induce vibrations in the control surfaces and reduce the airplane handling.

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 14, 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:** Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *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–2008–0470; Directorate Identifier 2008–CE–026–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on April 23, 2008 (73 FR 21851). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, we have determined that the applicability as stated in the NPRM does not include all serial numbers that could incorporate fibre carbon wing spars as stated in the applicability of the MCAI.

**Relevant Service Information**

APEX Aircraft has issued Service Bulletin No. 040206, dated September 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**Comments**

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

**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.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on the proposed AD.

**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 31 products of U.S. registry. We also estimate that it would take about 3 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 $100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,540, or $340 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:

**APEX Aircraft:** Docket No. FAA–2008–0470; Directorate Identifier 2008–CE–026–AD.

**Comments Due Date**

(a) We must receive comments by July 14, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following Model CAP 10 B airplanes, certificated in any category:

(1) Serial numbers 300 through 317; and

(2) All other serial numbers that incorporate APEX change 000302 (fibre carbon wing spars).

**Subject**

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

**Reason**

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

An internal review evidenced that the flight controls tie rod bolts currently installed on the airplane are not in accordance with the design data. Indeed the bolt shank length has been determined too short and the material properties of the spacers have been found inadequate according to the prescribed torque value.

Therefore, bolts' threads could be subject to excessive wear, which might induce play in flight controls and consequently, induce vibrations in the control surfaces and reduce the airplane handling.

To prevent this condition, the present Airworthiness Directive (AD) mandates replacement of the tie rod bolts and spacers.

**Actions and Compliance**

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

(1) Within 50 hours time-in-service after the effective date of this AD, remove tie rod bolts part number (P/N) 95.56.11.066 and spacers P/N 11.56.27.038 and replace them with tie rod bolts P/N 95.56.11.418 and spacers P/N 11.56.27.138, following APEX Aircraft Service Bulletin No. 040206, dated September 21, 2007.

(2) As of the effective date of this AD, do not install any tie rod bolts P/N 95.56.11.066 or spacers P/N 11.56.27.038.

**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, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; 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. 2008–0060, dated April 1, 2008; and APEX Aircraft Service Bulletin No. 040206, dated September 21, 2007, for related information.

Issued in Kansas City, Missouri, on June 6, 2008.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13319 Filed 6–12–08; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2008–0638; Directorate Identifier 2008–NM–035–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Lockheed Model 382, 382B, 382E, 382F, and 382G 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 all Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes. This proposed AD would require revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this 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.

**DATES:** We must receive comments on this proposed AD by July 14, 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 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063.

### 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:** Robert A. Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097.

**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–2008–0638; Directorate Identifier 2008–NM–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 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 proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

### Relevant Service Information

We have reviewed Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008. The service bulletin describes procedures for incorporating new airworthiness limitations for fuel tank systems into the operator's FAA-approved maintenance program. The airworthiness limitations for fuel tank systems include fuel system limitations (FSLs) and critical design configuration control limitations (CDCCLs). FSLs are modifications, design features, and periodic inspections of certain features for latent failures that could contribute to an ignition source. CDCCLs are limitation requirements to preserve a

critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Lockheed Service Bulletin 382–28–22 refers to the following service bulletins as additional sources of service information for accomplishing certain FSLs and CDCCLs:

- Lockheed Service Bulletin 382–28–9, dated May 13, 1983, which describes procedures for replacing the dump masts with new, improved dump masts and installing heavy duty ground clamps and jumper wires.
- Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, which describes procedures for (1) doing a visual inspection of the ground/bonding jumpers for corrosion and/or incorrect resistance, misplaced or inappropriately installed ground/bonding jumpers, and repairing as necessary, (2) installing new ground/bonding jumpers, (3) doing a visual inspection of the fuel system electrical wires, (4) doing a visual inspection of the fuel tanks for contamination, a visual inspection of all fuel tank internal wire conduits for evidence of temperature discoloration or arcing through the conduit wall, and replacing the wire conduit with new conduit if necessary, (5) installing color-coded cable markers or heat shrink sleeving on the fuel quantity indicating system (FQIS) wiring, and (6) doing a zonal inspection of the dry bay areas and other areas, which includes inspections of the electrical systems, all units essential to safe operation, lightning protection, pneumatic system failures, structural and non-electrical equipment bonding, fuel tank access panel bonding, fuel system pumps, and fuel level control valve bonding.
- Lockheed Service Bulletin 382–28–20, Revision 4, dated May 21, 2007, which describes procedures for replacing the vent lines of the fuel tank with improved vent line assemblies having flame arrestors, installing ground fault interrupters (GFIs) in the cargo compartment and modifying the wiring to protect the fuel system pumps from short-circuiting.
- Lockheed Service Bulletin 382–28–21, Revision 2, dated November 20, 2006, which describes procedures for installing lightning bonding jumpers across the fuel system fittings and fuel tube bulkhead feed-through joints.
- Lockheed Service Bulletin 382–28–24, Revision 1, dated November 5, 2007, which describes procedures for applying a certain sealant to the interior of fuel tanks 1 and 4 and to all external fuel tank nose caps, tail sections, and mid-section tank skins.

**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 revising the FAA-approved maintenance program to incorporate the FSLs and CDCCLs specified in Lockheed Service Bulletin 382–28–22. This proposed AD would also require the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive FSLs to phase in those inspections, and repair if necessary.

This proposed AD would also allow accomplishing the maintenance program revision in accordance with later revisions of Lockheed Service Bulletin 382–28–22 as an acceptable method of compliance if they are approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

**Differences Between the Proposed AD and Service Bulletin**

Paragraph 2.C.(1)(c) of Lockheed Service Bulletin 382–28–22 specifies to change the maintenance program to indicate that repetitive inspections of the lightning and static bonding jumpers must be done in accordance with Lockheed Service Bulletin 382–28–21. However, Lockheed Service Bulletin 382–28–21 does not contain inspection procedures. The applicable inspection procedures are contained in Lockheed Service Bulletin 382–28–19. Therefore, paragraph (g)(2) of the proposed AD specifies that the repetitive inspections must be done in accordance with Lockheed Service Bulletin 382–28–19.

Paragraph 2.C.(4)(c) of Lockheed Service Bulletin 382–28–22 specifies to install identification cable markers or sleeving on the FQIS wires in accordance with the Hercules wiring diagram manual. However, Table 1 of this proposed AD refers to Lockheed Service Bulletin 382–28–19 as an additional source of service information for accomplishing that action, since Lockheed Service Bulletin 382–28–19 refers to the Hercules wiring diagram manual.

Where Lockheed Service Bulletin 382–28–19 specifies to do a visual inspection, this proposed AD would require a general visual inspection. We have included Note 2 in this proposed AD to define this type of inspection.

Although Lockheed Service Bulletin 382–28–19 describes procedures for notifying Lockheed of any discrepancies found during inspection, this proposed AD would not require that action.

**Explanation of Compliance Time**

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using that same compliance date in this proposed AD.

**Explanation of Comment Period**

Operators should note that because of the critical need to prevent the potential for ignition sources inside fuel tanks, we have determined that a comment period of 30 days, rather than 45 days, is necessary in this case.

**Costs of Compliance**

We estimate that this proposed AD would affect 21 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Maintenance program revision | 1 | None | $80 | 21 | $1,680 |
| Installation of new, improved fuel dump masts | 12 | $10,288 | 11,248 | 21 | 236,208 |

ESTIMATED COSTS—Continued

| Action | Work hours | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Dry bay zonal inspection, inspection and repair of static ground terminals, marking of FQIS wiring, initial inspection of lightning and static bonding jumpers | 952 | None | 76,160 | 21 | 1,599,360 |
| Installation of GFIs and flame arrestors | 120 | 115,000 | 124,600 | 21 | 2,616,600 |
| Initial inspection of GFIs and flame arrestors | 8 | None | 640 | 21 | 13,440 |
| Installation of lightning bonding jumpers | 910 | 10,000 | 82,800 | 21 | 1,738,800 |
| Sealant application | 320 | None | 25,600 | 21 | 537,600 |

**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:

**Lockheed:** Docket No. FAA–2008–0638; Directorate Identifier 2008–NM–035–AD.

**Comments Due Date**

(a) We must receive comments by July 14, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes, certificated in any category.

**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 (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 a design review of the fuel tank systems. We are issuing this 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.

**Compliance**

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

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.

**Maintenance Program Revision**

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the fuel system limitations (FSLs) and the critical design configuration control limitations (CDCCLs) specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and except that the modifications and initial inspections specified in Table 1 of this AD must be done at the compliance time specified in paragraph (h) of this AD.

(1) For the CDCCLs specified in paragraphs 2.C.(3)(c), 2.C.(3)(h), 2.C.(4)(a), 2.C.(5)(c), 2.C.(7)(h), and 2.C.(8) of the service bulletin, do the applicable actions using a method approved in accordance with the procedures specified in paragraph (k) of this AD. Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, is one approved method.

(2) Where paragraph 2.C.(1)(c) of the service bulletin specifies to change the maintenance program to indicate that repetitive inspections of the lightning and static bonding jumpers must be done in accordance with Lockheed Service Bulletin 382–28–21, instead do the repetitive inspections in accordance with Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006.

(3) Where the service bulletin specifies to inspect, this AD requires doing a general visual inspection.

**Note 2:** For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or

opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**Fuel System Modifications, Initial Inspections, and Repair if Necessary**

(h) Within 24 months after the effective date of this AD, do the applicable actions specified in Table 1 of this AD, and repair any discrepancy before further flight, in accordance with the service bulletin.

TABLE 1.—MODIFICATIONS AND INITIAL INSPECTIONS

| Action | Additional source of service information for accomplishing the action |
|---|---|
| For airplanes having any serial number prior to 4962: Install new, improved fuel dump masts in accordance with paragraph 2.C.(1)(d) of the service bulletin. | Lockheed Service Bulletin 382–28–9, dated May 13, 1983. |
| Mark the fuel quantity indicating system (FQIS) wires in accordance with paragraph 2.C.(1)(a)*2*, 2.C.(4)(b), and 2.C.(4)(c) of the service bulletin. | Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006. |
| Do the dry bay zonal inspection and inspect the static ground terminals of the fuel system plumbing in accordance with paragraph 2.C.(1)(a) of the service bulletin. | Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006. |
| Install ground fault interrupters (GFIs) and flame arrestors for protection of the fuel system in accordance with paragraphs 2.C.(1)(b) and 2.C.(7)(c) of the service bulletin. | Lockheed Service Bulletin 382–28–20, Revision 4, dated May 21, 2007. |
| Inspect the GFIs for protection of the fuel system in accordance with paragraph 2.C.(1)(b)*1* of the service bulletin. | Paragraph 2.C.(2) of the service bulletin. |
| Install the lightning bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) and 2.C.(6)(a) of the service bulletin. | Lockheed Service Bulletin 382–28–21, Revision 2, dated November 20, 2006. |
| Inspect the lightning and static bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) of the service bulletin. | Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006. |
| Apply a certain sealant to the interior of the main wing fuel tanks; and apply a certain sealant to the all external fuel tank nose caps, mid sections, and tail sections; as applicable; in accordance with paragraphs 2.C.(1)(e)*1*, 2.C.(1)(e)*3*, and 2.C.(7)(i)*1* of the service bulletin. | Lockheed Service Bulletin 382–28–24, Revision 1, dated November 5, 2007, including the Errata Notice, dated January 7, 2008. |

**No Alternative Inspections, Inspection Intervals, or CDCCLs**

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of the service bulletin that is approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA; or unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (k) of this AD.

**No Reporting Requirement**

(j) Although Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, specifies to notify Lockheed of any discrepancies found during inspection, this AD does not require that action.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Atlanta ACO, FAA, ATTN: Robert A. Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097; 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 June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13322 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0649; Directorate Identifier 2008–CE–038–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; DG Flugzeugbau GmbH Model DG–500MB Powered Sailplanes

**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:

A DG–500MB experienced, after the engine shutdown, an uncommanded retraction of its powerplant.

Investigations revealed that some bolts of the extension retraction mechanism had fractured because of fatigue stress due to increasing push-pull loads acting on incorrectly tightened screws.

This condition, if not corrected, could lead to damage of the propeller and the fuselage, thereby reducing the structural integrity of the sailplane.

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 14, 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:** Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**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–2008–0649; Directorate Identifier 2008–CE–038–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. 2008–0095, dated May 16, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A DG–500MB experienced, after the engine shutdown, an uncommanded retraction of its powerplant.
>
> Investigations revealed that some bolts of the extension retraction mechanism had fractured because of fatigue stress due to increasing push-pull loads acting on incorrectly tightened screws.
>
> This condition, if not corrected, could lead to damage of the propeller and the fuselage, thereby reducing the structural integrity of the sailplane.
>
> To address this unsafe condition, this Airworthiness Directive mandates the replacement of eight bolts, the four connecting the fork 5M203 to the 5M204 adapter and those connecting the adapter 5M204 to the spindle drive, by new ones of higher strength and a rework of the coupling of the 5M203 fork to the 5M204 adapter as well as the coupling of the 5M204 adapter to the spindle drive, by glueing the parts together, in addition to the pre-existing bolts.

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

**Relevant Service Information**

DG Flugzeugbau GmbH has issued Technical Note No. 843/27, dated April 14, 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**

We estimate that this proposed AD would affect 4 products of U.S. registry. We also estimate that it would take about 3 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 $63 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,212, or $303 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:

**DG Flugzeugbau GmbH:** Docket No. FAA–2008–0649; Directorate Identifier 2008–CE–038–AD.

**Comments Due Date**

(a) We must receive comments by July 14, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to DG–500MB powered sailplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 71: Power Plant.

**Reason**

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

A DG–500MB experienced, after the engine shutdown, an uncommanded retraction of its powerplant.

Investigations revealed that some bolts of the extension retraction mechanism had fractured because of fatigue stress due to increasing push-pull loads acting on incorrectly tightened screws.

This condition, if not corrected, could lead to damage of the propeller and the fuselage, thereby reducing the structural integrity of the sailplane.

To address this unsafe condition, this Airworthiness Directive mandates the replacement of eight bolts, the four connecting the fork 5M203 to the 5M204 adapter and those connecting the adapter 5M204 to the spindle drive, by new ones of higher strength and, a rework of the coupling of the 5M203 fork to the 5M204 adapter as well as the coupling of the 5M204 adapter to the spindle drive, by glueing the parts together, in addition to the pre-existing bolts.

**Actions and Compliance**

(f) Unless already done, within the next 30 days after the effective date of this AD, modify the spindle drive assembly in accordance with DG Flugzeugbau GmbH Technical Note No. 843/27, dated April 14, 2008.

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

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008–0095, dated May 16, 2008; and DG Flugzeugbau GmbH Technical Note No. 843/27, dated April 14, 2008, for related information.

Issued in Kansas City, Missouri, on June 6, 2008.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13324 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408, 416, and 422

**[Docket No. SSA–2008–0005]**

**RIN 0960–AG75**

## Clarification of Evidentiary Standard for Determinations and Decisions

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** These proposed rules clarify that we apply the preponderance of the evidence standard when we make determinations and decisions at all levels of our administrative review processes. These proposed rules would not change our policy that the Appeals Council applies the substantial evidence standard when it reviews an administrative law judge's decision to determine whether to grant a request for review. We also propose to explicitly define substantial evidence and preponderance of the evidence in applying these rules.

**DATES:** To be sure that your comments are considered, we must receive them no later than August 12, 2008.

**ADDRESSES:** You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2008–0005 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov*. (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the ''Comment or Submission'' section of the Web page, type ''SSA–2008–0005'', select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

*Caution:* All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov*. Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 594–2128, for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site,

Social Security Online, at *http://www.socialsecurity.gov*.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

**Explanation of Changes**

**Our Administrative Review Process**

We currently decide claims for benefits using an administrative review process that consists of four levels. See 20 CFR 404.900, 408.1000, and 416.1400. We make our initial determination at the first level. In most States,[1] if an individual is dissatisfied with our initial determination, the individual may request reconsideration. If an individual is dissatisfied with the reconsidered determination, the individual may request a hearing before an administrative law judge (ALJ).[2] Finally, if an individual is dissatisfied with the ALJ's decision,[3] the individual may request that the Appeals Council review the ALJ's decision. Once an individual has completed these administrative steps and received our final decision, the individual may request judicial review of the final decision in Federal district court.

At the initial, reconsideration, and ALJ levels of the administrative review process, adjudicators make a new decision based on the evidence in the case record.[4] For example, ALJs do not review the State agency's initial and reconsideration determinations to determine whether they were supported or correctly made; rather, they make their own new decisions.

However, when an individual is dissatisfied with an ALJ's decision and asks the Appeals Council to ''review'' that decision, the Appeals Council first considers the ALJ's decision and the evidence before the ALJ to determine whether to grant the request for review. If the Appeals Council does not grant the request for review, the ALJ's decision becomes our final decision.[5] However, if the Appeals Council grants the request for review, it will generally either remand the case to an ALJ for additional proceedings and a new decision or issue its own decision affirming, modifying, or reversing the ALJ's decision.

**Our Standard of Evidence**

Adjudicators at each level of the administrative review process use an evidentiary standard called the ''preponderance of the evidence'' when they make a determination or decision. As we state in proposed §§ 404.901 and 416.1401 below, we define this standard as meaning ''such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.''

However, when the Appeals Council considers an ALJ's decision and whether to grant a request for review, it does not use a preponderance of the evidence standard. Instead, it considers four issues, including whether the action, findings, or conclusions of the ALJ are supported by substantial evidence. §§ 404.970 and 416.1470. The substantial evidence standard is different from the preponderance of the evidence standard and is more deferential to the findings of the ALJ.

While our policy has been that the preponderance of the evidence standard applies when we make determinations or decisions on claims under parts 404, 408, and 416, we do not have any regulations that say this clearly. The absence of explicit language in parts 404, 408, and 416 explaining the standards we use at each level of the administrative process has caused some confusion about the applicable standard.[6]

**Proposed Changes**

We propose to revise several regulation sections in parts 404, 408, 416, and 422 to explicitly state that we use the preponderance of the evidence standard to adjudicate claims at all levels of the administrative review process. We also propose to add definitions of the terms ''preponderance of the evidence'' and ''substantial evidence'' in §§ 404.901, 408.1001, and 416.1401.

The proposed definitions of ''preponderance of the evidence'' and ''substantial evidence'' are the same definitions we currently use in § 405.5. We believe these clarifications will improve the accuracy and consistency of the decision-making process.

Sections 205(a), 702(a)(5), 810(a), and 1631(d)(1) of the Act authorize the Commissioner of Social Security to prescribe these rule changes.

**Clarity of These Proposed Rules**

Executive Order (E.O.) 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these final rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

**Regulatory Procedures**

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic

[1] For claims for disability benefits, there are ten States that are participating in a ''prototype'' test under §§ 404.906 and 416.1406. In these States, the second step for individuals who are dissatisfied with their initial determinations in disability cases is a hearing before an ALJ. The ten States are: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

[2] In some cases, attorney advisors in our Office of Disability Adjudication and Review may make wholly favorable decisions before an ALJ hearing is conducted. See §§ 404.942 and 416.1442.

[3] The words ''determination'' and ''decision'' are terms that are defined in §§ 404.900 and 416.1400. At the initial and reconsideration levels of the administrative review process, we issue ''determinations.'' At the ALJ hearing and Appeals Council levels (when the Appeals Council makes a decision), we issue ''decisions.''

[4] In some States, adjudicators must consider, and sometimes adopt, certain findings made in prior adjudications under acquiescence rulings (ARs) we have issued to address circuit court holdings. See AR 97–4(9), 62 FR 64308, available at: *http://www.socialsecurity.gov/OP__Home/rulings/ar/09/AR97-04-ar-09.html*; AR 98–3(6), 63 FR 29770, available at: *http://www/socialsecurity.gov/OP__Home/rulings/ar/06/AR98-03-ar-06.html.*; AR–98–4(6), 63 FR 29771, corrected at 63 FR 31266, available at: *http://www.socialsecurity.gov/OP__Home/rulings/ar/06/AR98-04-ar-06.html*; and AR 00–1(4), 65 FR 1936, available at: *http://www.socialsecurity.gov/OP__Homing/rulings/ar/04/AR2000-01-ar-04.html.*

[5] The Appeals Council may also dismiss the request for review either with or without granting the request first. It may also review a case on its own motion; that is, without an individual asking it to do so. See §§ 404.967, 404.969, 404.984, 416.1467, 416.1469, and 416.1484. See also § 408.1050, which incorporates the relevant provisions of §§ 416.1467–416.1482 by reference.

[6] Federal courts also consider whether the Agency's findings are supported by substantial evidence or whether there is an error of law. 42 U.S.C. 405(g), 1009(b), and 1383(c)(3).

impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These rules would impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 408*

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI); Veterans.

*20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

*20 CFR Part 422*

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Dated: June 6, 2008.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we propose to amend subpart J of part 404, subpart J of part 408, subpart N of part 416, and subparts B and C of part 422 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

### Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.901 by adding the definitions for ''*Preponderance of the evidence*'' and ''*Substantial evidence*'' in alphabetical order to read as follows:

**§ 404.901 Definitions.**

* * * * *

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

* * * * *

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

* * * * *

3. Amend § 404.902 by revising the second sentence in the undesignated first paragraph to read as follows:

**§ 404.902 Administrative actions that are initial determinations.**

* * * The initial determination will state the important facts, give the reasons for our conclusions, and be based on the preponderance of the evidence. * * *

* * * * *

4. Amend § 404.917 by revising the second sentence of paragraph (b) to read as follows:

**§ 404.917 Disability hearing—disability hearing officer's reconsidered determination.**

* * * * *

(b) * * * The reconsidered determination must be based on the preponderance of the evidence offered at the disability hearing or otherwise included in your case file.

* * * * *

5. Revise § 404.920 to read as follows:

**§ 404.920 Reconsidered determination.**

After you or another person requests a reconsideration, we will review the evidence considered in making the initial determination and any other evidence we receive. We will make our determination based on the preponderance of the evidence.

6. Amend § 404.941 by revising the second sentence of paragraph (a) to read as follows:

**§ 404.941 Prehearing case review.**

(a) * * * That component will decide whether the determination may be revised based on the preponderance of the evidence. * * *

* * * * *

7. Amend § 404.942 by revising the second sentence of paragraph (a) to read as follows:

**§ 404.942 Prehearing proceedings and decisions by attorney advisors.**

(a) * * * If upon the completion of these proceedings, a decision that is wholly favorable to you and all other parties may be made based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue such a decision. * * *

* * * * *

8. Amend § 404.948 by revising the first sentence of paragraph (a) to read as follows:

**§ 404.948 Deciding a case without an oral hearing before an administrative law judge.**

(a) * * * If the evidence in the hearing record supports a finding in favor of you and all the parties on every issue, the administrative law judge may issue a hearing decision based on a preponderance of the evidence without holding an oral hearing. * * *

* * * * *

9. Amend § 404.953 by revising the second sentence of paragraph (a), the first sentence in paragraph (b), and the first sentence of paragraph (c) to read as follows:

**§ 404.953 The decision of an administrative law judge.**

(a) * * * The decision must be based on the preponderance of the evidence offered at the hearing or otherwise included in the record. * * *

(b) * * * The administrative law judge may enter a wholly favorable oral decision based on the preponderance of the evidence into the record of the hearing proceedings. * * *

(c) * * * Although an administrative law judge will usually make a decision, where appropriate, he or she may send the case to the Appeals Council with a recommended decision based on a preponderance of the evidence. * * *

10. Amend § 404.979 by adding a new third sentence to read as follows:

**§ 404.979 Decision of Appeals Council.**

* * * If the Appeals Council issues its own decision, the decision will be based upon the preponderance of the evidence. * * *

11. Amend § 404.984 by revising the last sentence in paragraph (a), the second sentence of paragraph (b)(3), and the last sentence in paragraph (c) to read as follows:

**§ 404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.**

(a) * * * The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, or remand the case to an administrative law judge for further proceedings.

(b) * * *

(3) * * * If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on the preponderance of the evidence in the entire record affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision. * * *

(c) * * * After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Commissioner based on the preponderance of the evidence affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

* * * * *

## PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

### Subpart J—[Amended]

12. The authority citation for subpart J of part 408 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

13. Amend § 408.1001 by adding the definition ''*Preponderance of the evidence*'' in alphabetical order to read as follows:

**§ 408.1001 Definitions.**

* * * * *

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

* * * * *

14. Amend § 408.1002 by adding a new third sentence to read as follows:

**§ 408.1002 What is an initial determination?**

* * * Initial determinations are based on the preponderance of the evidence.

15. Amend the second sentence in § 408.1020 by revising it to read as follows:

**§ 408.1020 How do we make our reconsidered determination?**

* * * We will make our determination based on the preponderance of the evidence in the record. * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart N—[Amended]

16. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

17. Amend § 416.1401 by adding the definitions for ''*Preponderance of the evidence*'' and ''*Substantial evidence*'' in alphabetical order to read as follows:

**§ 416.1401 Definitions.**

* * * * *

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

* * * * *

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

* * * * *

18. Amend § 416.1402 by revising the second sentence in the undesignated first paragraph to read as follows:

**§ 416.1402 Administrative actions that are initial determinations.**

* * * The initial determination will state the important facts, give the reasons for our conclusions, and be based on the preponderance of the evidence. * * *

* * * * *

19. Amend § 416.1417 by revising the second sentence of paragraph (b) to read as follows:

**§ 416.1417 Disability hearing—disability hearing officer's reconsidered determination.**

* * * * *

(b) * * * The reconsidered determination must be based on the preponderance of the evidence offered at the disability hearing or otherwise included in your case file.

* * * * *

20. Revise § 416.1420 to read as follows:

**§ 416.1420 Reconsidered determination.**

After you or another person requests a reconsideration, we will review the evidence considered in making the initial determination and any other evidence we receive. We will make our determination based on the preponderance of the evidence. The person who makes the reconsidered determination will have had no prior involvement with the initial determination.

21. Amend § 416.1441 by revising the second sentence of paragraph (a) to read as follows:

**§ 416.1441 Prehearing case review.**

(a) * * * That component will decide whether the determination may be revised based on the preponderance of the evidence. * * *

* * * * *

22. Amend § 416.1442 by revising the second sentence of paragraph (a) to read as follows:

**§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

(a) * * * If upon the completion of these proceedings, a decision that is wholly favorable to you and all other parties may be made based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue such a decision. * * *

* * * * *

23. Amend § 416.1448 by revising the first sentence of paragraph (a) to read as follows:

**§ 416.1448 Deciding a case without an oral hearing before an administrative law judge.**

(a) * * * If the evidence in the hearing record supports a finding in favor of you and all the parties on every issue, the administrative law judge may issue a hearing decision based on a preponderance of the evidence without holding an oral hearing. * * *

* * * * *

24. Amend § 416.1453 by revising the second sentence of paragraph (a), the first sentence of paragraph (b), and the first sentence of paragraph (d) to read as follows:

**§ 416.1453 The decision of an administrative law judge.**

(a) * * * The decision must be based on the preponderance of the evidence offered at the hearing or otherwise included in the record. * * *

(b) * * * The administrative law judge may enter a wholly favorable oral decision based on the preponderance of the evidence into the record of the hearing proceedings. * * *

* * * * *

(d) * * *Although an administrative law judge will usually make a decision, where appropriate, he or she may send

the case to the Appeals Council with a recommended decision based on a preponderance of the evidence. * * *

25. Amend § 416.1479 by adding a new third sentence to read as follows:

**§ 416.1479 Decision of Appeals Council.**

* * * If the Appeals Council issues its own decision, the decision will be based upon the preponderance of the evidence. * * *

26. Amend § 416.1484 by revising the last sentence in paragraph (a), the second sentence of paragraph (b)(3), and the last sentence in paragraph (c) to read as follows:

**§ 416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.**

(a) * * * The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, or remand the case to an administrative law judge for further proceedings.

(b) * * *

(3) * * * If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on the preponderance of the evidence in the entire record affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision. * * *

(c) * * * After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Commissioner based on the preponderance of the evidence affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

* * * * *

## PART 422—ORGANIZATION AND PROCEDURES

### Subpart B—[Amended]

27. The authority citation for subpart B of part 422 continues to read as follows:

**Authority:** Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

28. Amend § 422.130 by revising the first sentence of paragraph (c) to read as follows:

**§ 422.130 Claim procedure.**

* * * * *

(c) * * * In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, the Social Security Administration, after obtaining the necessary evidence, will make a determination based on the preponderance of the evidence (see §§ 404.901 and 416.1401) as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. * * *

### Subpart C—[Amended]

29. The authority citation for subpart C of part 422 continues to read as follows:

**Authority:** Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

30. Revise the last sentence of § 422.203(c) to read as follows:

**§ 422.203 Hearings.**

* * * * *

(c) * * * Hearing decisions must be based on the preponderance of the evidence of record, under applicable provisions of the law and regulations and appropriate precedents.

[FR Doc. E8–13282 Filed 6–12–08; 8:45 am]
BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 803

**[Docket No. FDA–2008–N–0310]**

## Medical Devices; Medical Device Reporting; Baseline Reports; Companion to Direct Final Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its medical device reporting regulations to remove a requirement for baseline reports that the agency deems no longer necessary. Currently, manufacturers provide baseline reports to FDA that include the FDA product code and the premarket approval or premarket notification number. Because most of the information in these baseline reports is also submitted to FDA in individual adverse event reports, FDA is proposing to remove the requirement for baseline reports. The removal of this requirement would eliminate unnecessary duplication and reduce the manufacturer's reporting burden. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

**DATES:** Submit written or electronic comments by August 27, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2008–N–0310, by any of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Written Submissions*

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions*: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see section IX of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Press, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr, Rockville, MD 20850, 240–276–3457.

**SUPPLEMENTARY INFORMATION:**

## I. Why Is This Companion Proposed Rule Being Issued?

This proposed rule is a companion to the direct final rule regarding baseline reporting requirements for medical devices that is published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comment and is withdrawn. We are publishing the direct final rule because we believe the rule is noncontroversial, and we do not anticipate receiving any significant adverse comments. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document within 30 days after the comment period ends confirming when the direct final rule will go into effect.

If we receive any significant adverse comment regarding the direct final rule, we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures under the Administrative Procedure Act (APA) (5 U.S.C. 552a *et seq*). The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule and vice versa. We will not provide additional opportunity for comment.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

In the **Federal Register** of November 21, 1997 (62 FR 62466), you can find additional information about FDA's direct final rulemaking procedures in the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance document may be accessed at *http://www.fda.gov/opacom/morechoices/industry/guidance.htm*.

## II. What Is the Background of the Proposed Rule?

In the **Federal Register** of December 11, 1995 (60 FR 63578), FDA published a final rule revising part 803 (21 CFR part 803) and requiring medical device manufacturers to submit certain reports relating to adverse events, including a requirement under § 803.55 to submit baseline reports on FDA Form 3417 or an electronic equivalent. Section 803.55 requires manufacturers to submit baseline reports when the manufacturer submits the first adverse event report under § 803.50 for a device model. In addition, § 803.55 requires annual updates of each baseline report.

The baseline report includes address information for the reporting and manufacturing site for the device, device identifiers, the basis for marketing for the device (e.g., the 510(k) number or PMA number), the FDA product code, the shelf life of the device (if applicable) and the expected life of the device, the number of devices distributed each year, and the method used to calculate that number. In the **Federal Register** of July 31, 1996 (61 FR 39868), FDA stayed the requirement for manufacturers to submit information on the number of devices distributed each year and the method used to calculate that number, because of questions raised about the feasibility of obtaining such information and the usefulness of such information once submitted to FDA.

With the requirement for these two data elements stayed, the data submitted in baseline reports largely overlapped with the data submitted in individual adverse event reports. That is, FDA had access to much of the information included in baseline reports through the individual adverse event reports submitted on the MedWatch mandatory reporting form (FDA Form 3500A). Two notable exceptions were the basis for marketing and the FDA product code, data elements that were included in the baseline reports but were not included in the FDA Form 3500A and its instructions.

The basis for marketing and the FDA product code were, however, subsequently incorporated into the FDA Form 3500A and its instructions. In the **Federal Register** of December 27, 2004 (69 FR 77256), FDA announced proposed modifications to FDA Form 3500A, which included adding an entry for the basis for marketing (PMA or 510(k) number). In the **Federal Register** of December 7, 2005 (70 FR 72843), FDA announced that the Office of Management and Budget (OMB) approved these modifications under the Paperwork Reduction Act of 1995. FDA also modified the instructions for FDA Form 3500A to state that manufacturers use the FDA product code when completing the entry for ''Common Device Name'' on FDA Form 3500A.

With the addition of these two data elements (basis for marketing and FDA product code) to FDA Form 3500A and its instructions, the information submitted in FDA Form 3500A largely replicates the information submitted in baseline reports. As a result, the agency deems the baseline reporting requirement in § 803.55 no longer necessary. The agency believes that removing § 803.55 would reduce the reporting burden for manufacturers without impairing the agency's receipt of device adverse event information.

## III. What Does This Companion Proposed Rule Do?

FDA proposes to remove § 803.55, which requires manufacturers to submit a baseline report when they submit the first report under § 803.50 involving a device model and provide annual updates thereafter. In addition, FDA proposes to make conforming amendments to §§ 803.1(a), 803.10(c), and 803.58(b) to remove references to baseline reports and to § 803.55. Finally, FDA proposes to remove the terms ''device family'' and ''shelf life'' from the definitions in § 803.3 because these terms are used only in the context of baseline reports.

## IV. What is the Legal Authority for This Proposed Rule?

FDA is issuing this proposed rule under the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360i, 371, and 374).

**V. What is the Environmental Impact of This Proposed Rule?**

The agency has determined under 21 CFR 25.30(h) and (i) 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.

**VI. What is the Economic Impact of This Proposed Rule?**

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule, if finalized, would not be a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule would amend the existing medical device reporting regulation to remove § 803.55, which requires that manufacturers submit baseline reports, and make conforming amendments to §§ 803.1(a), 803.3, 803.10(c), and 803.58(b) to remove references to baseline reports and to § 803.55 and to remove the terms ''device family'' and ''shelf life.'' The rule would not impose any new requirements but instead would remove a reporting requirement for manufacturers that FDA deems no longer necessary. The agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

**VII. How Does the Paperwork Reduction Act of 1995 Apply to This Proposed Rule?**

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

**VIII. What are the Federalism Impacts of This Proposed Rule?**

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

**IX. How Do You Submit Comments on This Proposed Rule?**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

**List of Subjects in 21 CFR Part 803**

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 803 as follows:

## PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR Part 803 continues to read as follows:

**Authority:** 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

**§ 803.1 [Amended]**

2. Section 803.1 is amended in paragraph (a), in the fourth sentence, by removing the phrase ''and baseline reports''.

**§ 803.3 [Amended]**

3. Section 803.3 is amended by removing the definitions for ''Device family'' and ''Shelf life''.

**§ 803.10 [Amended]**

4. Section 803.10 is amended by removing paragraph (c)(3) and redesignating paragraph (c)(4) as paragraph (c)(3).

**§ 803.55 [Removed]**

5. Section 803.55 is removed.

**§ 803.58 [Amended]**

6. Section 803.58 is amended in paragraph (b)(1) by removing ''803.55,''.

Dated: June 5, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–13349 Filed 6–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2008–0215]**

**RIN 1625–AA00**

## Safety Zones: Festival of Sail San Francisco, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary safety zones in support of the scheduled Festival of Sail Events from July 23, 2008, through July 27, 2008. The event will include a parade and mock cannon battles. The temporary safety zones are necessary to provide for the safety of spectators, participating vessels and crews.

**DATES:** Comments and related material must reach the Coast Guard on or before July 14, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket

number USCG–2008–0215 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0215), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0215) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The American Sail Training Association, in coordination with the local sponsor, Festival of Sail San Francisco, is sponsoring the 2008 Festival of Sail Event. This event is a part of the Tall Ships® Challenge race series transiting the Pacific Ocean along the west coast of North America. Between the races, the participating vessels will visit several ports, including San Francisco. Vessels will be docked along the waterfront offering the public the opportunity to tour vessels, sail, and learn. There are many activities on the water scheduled to take place; such as mock cannon battles and the parade. Safety zones will be established along with the issuance of marine event permits for this event. The temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Festival of Sail and are also necessary to protect other vessels and users of waterway.

### Discussion of Proposed Rule

The Coast Guard proposes to establish a moving safety zone extending 100 yards around each vessel participating in the Festival of Sail—Parade of Ships as each vessel transits through San Francisco Bay. The safety zones surrounding the participant vessels will be enforced on July 23, 2008. The parade route is as follows, it will commence at the Golden Gate Bridge, extend east to Alcatraz Island and then south to Pier 40, and will be bounded by a line connecting the following points: 37°48′40″ N and 122°28′38″ W, 37°49′10″ N and 122°28′41″ W, 37°49′31″ N and 122°25′18″ W, 37°49′06″ N and 122°24′08″ W, 37°47′53″ N and 122°22′42″ W, and 37° 46′54″ N and 122°23′09″ W.

The Coast Guard proposes to establish a temporary safety zone for the mock cannon battles taking place west of Alcatraz Island. This location will be called location ''alpha''. The safety zone will be bounded by a line connecting the following points: 37°49′18″ N and 122°25′40″ W, 37°49′24″ N and 122°25′18″ W, 37°49′45″ N and 122°25′42″ W, and lastly 37°49′37″ N and 122°26′05″ W; and will include all navigable waters from the surface to the seafloor. This safety zone will be in effect on July 25, 2008 and July 26, 2008.

The Coast Guard proposes to establish a temporary safety zone for the mock cannon battles taking place west of Treasure Island in Anchorage 7. This location will be called location ''bravo''. The safety zone will be bounded by a line connecting the following points: 37°48′55″ N and 122°23′03″ W, 37°49′07″ N and 122°22′32″ W, 37°49′28″ N and 122°22′53″ W, and lastly 37°49′18″ N and 122°23′28″ W; and will include all navigable waters from the surface to the seafloor. This safety zone will be in effect on July 24, 2008 and July 27, 2008.

These proposed safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Festival of Sail. Persons and vessels would be prohibited from entering into,

transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165–T11–025 to read as follows:

**§ 165–T11–025 Safety Zones; Festival of Sail, San Francisco, CA.**

(a) *Location*. These temporary safety zones are established for the Festival of Sail Events taking place in the following locations:

(1) For the Festival of Sail-Parade of Ships the moving safety zone extends 100 yards around each vessel participating in the Parade of Ships as each vessel transits through San Francisco Bay to its respective mooring site.

(2) For the mock cannon battles, the safety zone for location ''alpha'' will take place west of Alcatraz Island. The safety zone will be bounded by a line connecting the following points: 37[deg]49′18″ N and 122[deg]25′40″ W, 37[deg]49′24″ N and 122[deg]25′18″ W, 37[deg]49′45″ N and 122[deg]25′42″ W, and lastly 37[deg]49′37″ N and 122[deg]26′05″ W; and will include all navigable waters from the surface to the seafloor.

(3) For the mock cannon battles, the safety zone for location ''bravo'' will take place west of Treasure Island in Anchorage 7. The safety zone will be bounded by a line connecting the following points: 37[deg]48′55″ N and 122[deg]23′03″ W, 37[deg]49′07″ N and 122[deg]22′32″ W, 37[deg]49′28″ N and 122[deg]22′53″ W and lastly 37[deg]49′18″ N and 122[deg]23′28″ W; and will include all navigable waters from the surface to the seafloor. This safety zone will be in effect on July 24, 2008, and July 27, 2008.

(b) *Enforcement Period*. This section will be effective from July 23, 2008, to July 27, 2008. If the events conclude prior to their scheduled termination times, the Coast Guard will cease enforcement of these safety zones and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations*.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within these safety zones by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, San Francisco, or the designated representative.

(3) Designated representative means any commissioned, warrant, and petty officer of the Coast Guard onboard a Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessel who is authorized to act on behalf of the Captain of the Port, San Francisco.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Person and vessels may request permission to enter the safety zones on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of these safety zones by local law enforcement as necessary.

Dated: June 5, 2008.

**P.M. Gugg.**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. E8–13268 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2008–0257; FRL–8579–8]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of the Fine Particle Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area for the 1997 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the standard based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration and associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

**DATES:** Written comments must be received on or before July 14, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0257 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

*B. E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2008–0257, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2008–0257. 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.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.



## I. What Action Is EPA Taking?

EPA is proposing to determine that the Harrisburg-Lebanon-Carlisle, Pennsylvania $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and monitoring data that continue to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

## II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c)), the requirements for the Harrisburg-Lebanon-Carlisle, Pennsylvania $PM_{2.5}$ nonattainment area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

As further discussed below, the proposed determination would: (1) For the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area, suspend the requirements to submit an attainment demonstration and associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress plan (RFP), contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 $PM_{2.5}$ NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Harrisburg-Lebanon-Carlisle, Pennsylvania area based on the 2006 $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 $PM_{2.5}$ NAAQS.

In accordance with 40 CFR section 51.1004(c) (72 FR 20586, 20665), this proposed determination would suspend the requirement for the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area to submit an attainment demonstration and associated RACM, including RACT, related to the 1997 $PM_{2.5}$ NAAQS. Recently EPA noted that certain language in the preamble of its $PM_{2.5}$ implementation rule, 72 FR 20586, 20603 (April 25, 2007), contradicts the regulatory text in 40 CFR 51.1004(c). On May 22, 2008, EPA issued a memorandum ''to eliminate any confusion that could result from this erroneous statement.'' Memorandum from William T. Harnett, Director, Air Quality Policy Division to Regional Air Division Directors, ''$PM_{2.5}$ Clean Data Policy Clarification.'' This memorandum stated:

''Section 51.1004(c) provides that: 'Upon a determination by EPA that an area designated nonattainment for the $PM_{2.5}$ NAAQS has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the $PM_{2.5}$ NAAQS shall be suspended. * * *'

Section 51.1010 provides in part: 'For each $PM_{2.5}$ nonattainment area, the State shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.'

Thus the regulatory text defines RACT as included in RACM, and provides that it is only required insofar as it is necessary to advance attainment. See also section 51.1010(b). As a result, when an area is attaining the standard, the suspension of the RACM requirement pursuant to 51.1004(c) necessarily includes the suspension of the RACT requirement.

However, the preamble to the $PM_{2.5}$ implementation rule, including a response to comments, contains

language that is at odds with the explicit provisions of the regulatory text. The preamble states that 'The EPA wishes to clarify that the Clean Data Policy does not provide for suspension of the requirements for NSR nor for RACT.' 72 FR 20603 (April 25, 2007.)[1] Thus, the preamble erroneously states that SIP submissions to meet RACT obligations are not suspended, while the regulatory text provides that RACT, as a subset of RACM, is suspended when an area is attaining the standard.[2] The purpose of this section of the preamble was to correct a misstatement in the preamble to the proposed rule concerning the status of NSR requirements in areas subject to the Agency's Clean Data Policy and to respond to comments on that policy. When this preamble text was drafted, EPA was considering several formulations of RACT, some of which would have resulted in a freestanding RACT requirement beyond RACM for certain areas. 72 FR 20610–20612. Those options were not selected in the final rulemaking, which adopted the formulation found in section 51.1010. EPA thus adopted a combined approach to RACT and RACM. Accordingly, pursuant to section 51.1004(c), areas with clean data are not required to make a RACT submission. However, the contrary draft preamble language inadvertently was not revised to conform to the regulatory option that had been selected. Thus, the preamble language is irreconcilable with and was never intended to interpret the regulatory text that was chosen for the final rule.''

EPA further stated that its ''memorandum does not change the regulation published in the **Federal Register** on April 25, 2007. Because the promulgated regulation is clear, we believe it is clear that the preamble statement is an error. *National Wildlife Federation* v. *EPA,* 286 F.3d 554 (D.C. Cir. 2002) (a regulation is controlling over the language of a preamble.). Cf. *Association of American R.Rs.* v. *Costle,* 562 F.2d 1310, 1316 (D.C. Cir. 1977) (citing *Yazoo Railroad Co.* v. *Thomas,* 132 U.S. 174, 188 (1889)) ('Where the enacting or operative parts of a statute are unambiguous, the meaning of the statute cannot be controlled by language in the preamble.') However, because the preamble statement could cause confusion, we are issuing this memorandum to explain the misstatement in the preamble and that the regulatory text is controlling.''

Consequently, if this proposed determination is made final, the requirement for the Harrisburg-Lebanon-Carlisle, Pennsylvania $PM_{2.5}$ nonattainment area to make RACT submissions related to attainment of the 1997 $PM_{2.5}$ nonattainment NAAQS would be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist, and the area would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, that the air quality data show attainment of the 1997 $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 1997 $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Harrisburg-Lebanon-Carlisle, Pennsylvania $PM_{2.5}$ area has attained the 1997 $PM_{2.5}$ NAAQS. The 1997 $PM_{2.5}$ NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR section 50.7. The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR section 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 $PM_{2.5}$ NAAQS. EPA has not made any designation determination for the Harrisburg-Lebanon-Carlisle, Pennsylvania area based on the 2006 $PM_{2.5}$ NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 $PM_{2.5}$ NAAQS for the Harrisburg-Lebanon-Carlisle, Pennsylvania area. Conversely, any future designation determination of the Harrisburg-Lebanon-Carlisle, Pennsylvania area, based on the 2006 $PM_{2.5}$ NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Harrisburg-Lebanon-Carlisle, Pennsylvania area continues to demonstrate attainment with the 1997 $PM_{2.5}$ NAAQS, the requirements for the Harrisburg-Lebanon-Carlisle, Pennsylvania area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS would remain suspended, regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

## III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 μg/m3 based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Harrisburg-Lebanon-Carlisle, Pennsylvania (Cumberland, Dauphin, and Lebanon Counties) area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS (see 40 CFR part 81).

## IV. What Is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA

[1] On the same page, in a response to a comment, EPA states: ''The Clean Data Policy does not waive requirements for NSR nor for RACT.''

[2] The statement is accurate as to NSR requirements.

AQS database for the Harrisburg-Lebanon-Carlisle, Pennsylvania $PM_{2.5}$ nonattainment area from 2004 through the present time.

On the basis of that review, EPA has concluded that this area attained the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the NAAQS based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Under EPA regulations at 40 CFR Part 50, section 50.7:

(1) The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 μg/m3.

(2) The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 μg/m3.

Table 1 shows the design values for the 1997 24-hour $PM_{2.5}$ NAAQS for Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area monitors for the years 2004–2006 and 2005–2007. Table 2 shows the design values for the 1997 annual $PM_{2.5}$ NAAQS for these same monitors and the same 3-year periods.

TABLE 1.—DESIGN VALUES FOR THE 1997 24-HOUR $PM_{2.5}$ NAAQS FOR HARRISBURG-LEBANON-CARLISLE, PENNSYLVANIA IN MICROGRAMS PER CUBIC METER (μG/M3)

| Location | AQS site ID | 1997 24-Hour attainment standard | 2004–2006 design values | 2005–2007 design values |
|---|---|---|---|---|
| Carlisle/Cumberland County | 42–041–0101 | 65 | 38 | 36 |
| Harrisburg/Dauphin County | 42–043–0401 | 65 | 38 | 38 |

TABLE 2.—DESIGN VALUES FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS FOR HARRISBURG-LEBANON-CARLISLE, PENNSYLVANIA IN MICROGRAMS PER CUBIC METER (μG/M3)

| Location | AQS site ID | 1997 Annual attainment standard | 2004–2006 design values | 2005–2007 design values |
|---|---|---|---|---|
| Carlisle/Cumberland County | 42–041–0101 | 15.0 | 14.4 | 13.9 |
| Harrisburg/Dauphin County | 42–043–0401 | 15.0 | 15.0 | 14.6 |

EPA's reviews of these data indicate that the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area has met and continues to meet the 1997 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Proposed Action

EPA is proposing to determine that the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS and continues to attain the standard based on data through 2008. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks'' (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment

status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures otherwise satisfy the provisions of the CAA.

This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule, pertaining to Pennsylvania's determination of attainment of the fine particle standard for Harrisburg-Lebanon-Carlisle area, involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 4, 2008.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E8–13340 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1989–0008, Notice 4; FRL–8579–2]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Fourth Street Abandoned Refinery Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Fourth Street Abandoned Refinery Site (Site), located in Oklahoma City, Oklahoma County, Oklahoma, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ) have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL must be received by July 14, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 4, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail: walters.donn@epa.gov*.
- *Fax:* 1–214–665–6660.
- *Mail:* Donn Walters, Community Involvement, U.S. EPA, Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 4. 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.

*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 at *http://www.regulations.gov* or in hard copy at the following information repositories.

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*;

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.;

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.;

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, OK 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bartolome Canellas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, 6SF–RL, 1445 Ross Avenue, Dallas, Texas 75202–2733, *canellas.bart@epa.gov* or (214) 665–6662 or 1–800–533–3508.

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Fourth Street Abandoned Refinery Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information see the direct final Notice of Deletion located in

the *Rules* section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 23, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E8–13371 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–HQ–SFUND–1983–0002, Notice 4; FRL–8579–5]**

## National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Old Inger Oil Refinery Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Old Inger Oil Refinery Superfund Site (Site) located near Darrow, Ascension Parish, Louisiana, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL must be received by July 14, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, Notice 4, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail: coats.janetta@epa.gov*.
- *Fax:* 1–214–665–6660.
- *Mail:* Janetta Coats, Community Involvement , U.S. EPA, Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–7308 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002, Notice 4. 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.

*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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following information repositories: U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*; U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Louisiana Department of Environmental Quality, Public Records Center, Galvez Building, 1st Floor, 602 N. Fifth Street, Baton Rouge, Louisiana, Monday through Friday 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bartolome Canellas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, 6SF–RL, 1445 Ross Avenue, Dallas, Texas 75202–2733, *canellas.bart@epa.gov* or (214) 665–6662 or 1–800–533–3508.

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Old Inger Oil Refinery Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 22, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E8–13364 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1986–0008, Notice 3; FRL–8578–8]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Double Eagle Refinery Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Double Eagle Refinery Co. Superfund Site (Site) located in Oklahoma City, Oklahoma, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL must be received by July 14, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 3, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail: walters.donn@epa.gov*.
- *Fax:* 1–214–665–6660.
- *Mail:* Donn Walters, Community Involvement, U.S. EPA, Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008, Notice 3. 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.

*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 at *http://www.regulations.gov* or in hard copy at the following information repositories:

U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*;

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, (214) 665–6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.;

Ralph Ellison Library, 2000 Northeast 23, Oklahoma City, OK 73111, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.;

Oklahoma Department of Environmental Quality (ODEQ), 707 North Robinson, Oklahoma City, OK 73101, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bartolome Canellas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, 6SF–RL, 1445 Ross Avenue, Dallas, Texas 75202–2733, *canellas.bart@epa.gov* or (214) 665–6662 or 1–800–533–3508.

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Double Eagle Refinery Co. Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information see the direct final Notice of Deletion located in the *Rules* section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 23, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E8–13366 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 229

**[Docket No. 080204115–8135–01]**

**RIN 0648–AW48**

### List of Fisheries for 2009

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2009, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2009 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** Comments must be received by August 12, 2008.

**ADDRESSES:** Send comments by anyone of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

(2) Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to David Rostker, OMB, by fax to 202–395–7285 or by email to *David__Rostker@omb.eop.gov*.

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.

See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9328; Nancy Young, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/*, or from any NMFS Regional Office at the addresses listed below.

## Regional Offices

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

## What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

## How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

*Fishery Classification Criteria*

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

*Tier 1:* If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

*Tier 2, Category I:* Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

*Tier 2, Category II:* Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

*Tier 2, Category III:* Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers

fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the proposed rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

*Other Criteria That May Be Considered*

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the fishery qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

**How Does NMFS Determine which Species or Stocks are Included as Incidentally Killed or Seriously Injured in a Fishery?**

The LOF includes a list of marine mammal species or stocks incidentally killed or seriously injured in each commercial fishery, based on the level of mortality or serious injury in each fishery relative to the PBR level for each stock. To determine which species or stocks are included as incidentally killed or seriously injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of mortality or serious injury incidental to commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

In the absence of reliable information on the level of mortality or serious injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: Changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a fishery management plan or a take reduction plan). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or seriously injured.

**How Does NMFS Determine the Level of Observer Coverage in a Fishery?**

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF, including observer coverage. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resource's website at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

**How Do I Find Out if a Specific Fishery is in Category I, II, or III?**

This proposed rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists all U.S.-authorized fisheries on the high seas. A fourth table, Table 4, lists all fisheries managed under applicable take reduction plans or teams.

**Are High Seas Fisheries Included on the LOF?**

NMFS received public comments for the 2007 LOF (72 FR 14466, March 28, 2007, comment/response 9) and the 2008 LOF (72 FR 66048, November 27, 2007, comment/response 5) requesting NMFS include high seas fisheries on the LOF. In response to these comments, NMFS analyzed the relationship between MMPA sections 117 and 118 and the High Seas Fishing Compliance Act (HSFCA) and determined that it is appropriate to include U.S. fishers fishing on the high seas on the LOF. Beginning with the 2009 LOF, NMFS proposes to include high seas fisheries in Table 3 of the LOF. NMFS compiled information on vessels issued a HSFCA permit to identify fisheries operating on the high seas and to ensure that all high seas fisheries are included in the LOF, particularly those that do not have a component within waters under the jurisdiction of the United States (e.g., State waters, the U.S. territorial sea, and the U.S. Exclusive Economic Zone (EEZ); hereafter referred to as ''U.S. waters'').

NMFS acknowledges that many fisheries currently operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. NMFS has designated those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these U.S. waters fisheries do not necessarily represent additional fishers that are not accounted for in Tables 1 and 2. Many fishers holding these permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Table 1 and 2. For example, the fishers participating in the Category I ''CA/OR thresher shark/swordfish drift gillnet fishery'' may operate in both U.S. waters and the adjacent high seas, thus the high seas component of this fishery (listed in Table 3 as the ''Pacific Highly Migratory Species'' drift gillnet) is not a separate fishery, but an extension of the fishery operating within U.S. waters (listed in Table 1).

*How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?*

NMFS issues high seas fishing permits, valid for five years, under the HSFCA. To fish under a high seas permit, a fisherman must also possess any required permits issued under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (with the exception of the South

Pacific Tuna Treaty fisheries, the Pacific Tuna Fisheries (Eastern Tropical Pacific purse seine vessels) and the South Pacific Albacore Troll fishery), and any permits issued by NMFS to fish within the convention area of a Regional Fishery Management Organization. Under the current permitting system, however, a fisherman can obtain a high seas permit prior to obtaining any necessary MSA permits. Similarly, a fisherman may have a HSFCA permit that was issued prior to changes in permits issued under the MSA. Therefore, some fishers possess valid HSFCA permits without the ability to fish under the permit. For this reason, the number of HSFCA permits displayed in Table 3 of this proposed rule is likely higher than the actual fishing effort by U.S. vessels on the high seas.

As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). There are currently seven U.S.-authorized high seas fisheries: Atlantic Highly Migratory Species Fisheries, Pacific Highly Migratory Species Fisheries, Western Pacific Pelagic Fisheries, South Pacific Albacore Troll Fishing, Pacific Tuna Fisheries, South Pacific Tuna Fisheries, and Antarctic Marine Living Resources. The LOF will not include the ''Pacific (Eastern Tropical) Tuna Fisheries'' because these fisheries are managed under Title III of the MMPA, separate from those fisheries subject to the LOF under section 118. Permits obtained prior to 2004 for fisheries that are no longer authorized by the HSFCA, but for which the 5–year permit is still valid, are included on the LOF as ''unspecified.'' The ''unspecified'' fisheries will be removed from the LOF once those permits have expired, and the permit holder is required to renew the permit under one of the seven authorized fisheries.

The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. Therefore, the seven U.S.-authorized high seas fisheries, exclusive of the ''Pacific (Eastern Tropical) Tuna Fisheries'', are subdivided on the LOF based on gear types (e.g., trawls, longlines, purse seines, gillnets, etc.), as listed on each individual's permit application, to provide more detail on composition of effort within these fisheries.

*How Will NMFS Categorize High Seas Fisheries on the LOF?*

As discussed in the previous sections of this preamble, commercial fisheries operating within U.S. waters are categorized on the LOF based on the level of mortality and serious injury of marine mammal stocks incidental to commercial fishing as related to the stock's PBR level. PBR levels are calculated based on the stock's abundance using data presented in the SARs. Section 117 of the MMPA (16 U.S.C. 1386) requires NMFS to prepare SARs for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' NMFS does not develop SARs or calculate PBR levels for marine mammal stocks on the high seas; therefore, NMFS does not possess the same information to categorize high seas fisheries as is used to categorize fisheries operating within U.S. waters.

NMFS proposes to categorize the majority of high seas fisheries on the LOF as Category II. Category II is the appropriate category for new fisheries for which NMFS does not have adequate information to accurately categorize, unless there is reliable information to categorize it otherwise, or until further information becomes available. Categorizing a fishery as a Category II allows NMFS to place observers on vessels in that fishery, providing NMFS the opportunity to obtain information needed to most accurately catagorize a commercial fishery. For fisheries that operate both within U.S. waters and on the high seas, the fishery will be classified according to its status in U.S. waters. Therefore, for a Category I or Category III fishery within U.S. waters, the high seas component would also be classified as Category I or Category III, accordingly. For example, the ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery'' is a Category I fishery targeting highly migratory species within U.S. waters. Vessels in this fishery regularly cross into the high seas while fishing. Therefore, the high seas ''Atlantic Highly Migratory Species'' longline fishery would also be classified as Category I because it is the same fishery regardless of whether a vessel is fishing within U.S. waters or crosses the boundary into the high seas. Please see below under ''Summary of changes to the LOF for 2009'' for more details. NMFS will continue to gather available information on the authorized high seas fisheries and recategorize fisheries in Table 3, if necessary, as more information becomes available.

*How Will NMFS Determine which Species or Stocks to Include as Incidentally Killed or Seriously Injured in a High Seas Fishery?*

All serious injury and mortality of marine mammals incidental to commercial fishing operations, both in U.S. waters and on the high seas, must be reported to NMFS. High seas fishers are provided with Marine Mammal Take Reporting Forms to record such incidents. (Very few marine mammal takes by U.S. vessels participating in high seas fisheries, however, have been reported on these forms to date.) Observer programs for fisheries operating within U.S. waters also collect data on the high seas if the vessel should cross into high seas waters. Additionally, some fisheries that operate exclusively on the high seas have formal observer programs that provide data on interactions. In these cases, the MSA, NEPA, or ESA documents supporting the authorization of the seven U.S.-authorized high seas fisheries review observer documented interactions and list the marine mammal species taken in those fisheries. This information is used to identify marine mammals killed/injured in these fisheries in Table 3 on the LOF. For other fisheries without observer data, the MSA, NEPA, and ESA documents supporting the authorization of the seven U.S.-authorized high seas fisheries present information on marine mammal interactions from anecdotal and other reports, which do not always specify the marine mammal species involved in the interactions. Therefore, marine mammal species killed or injured in the high seas fisheries without observer data that are listed in Table 3 would be designated as ''undetermined'' until additional information on marine mammal populations and fishery interactions on the high seas become available.

For high seas fisheries with an associated fishery operating within U.S. waters, as discussed above, Table 3 would list the same marine mammal species killed or injured (excluding coastal species that would not be found on the high seas) as those killed or injured by that fishery operating within U.S. waters. For example, the ''CA/OR thresher shark/swordfish drift gillnet (≥14 in, mesh)'' lists Risso's dolphins as killed or injured in the fishery operating within U.S. waters. This species occurs both within U.S. waters and the adjacent high seas and vessels in this fishery often cross into the high seas to fish. NMFS assumes that these vessels pose the same risk to the species on both sides of the EEZ boundary. Therefore, NMFS will also list Risso's dolphins under the high seas component of this fishery, the ''Pacific Highly Migratory Species'' drift gillnet fishery. NMFS will add and delete

species from the LOF as additional information becomes available.

**Am I Required to Register Under the MMPA?**

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take a marine mammal incidental to commercial fishing. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

**How Do I Register?**

NMFS has integrated the MMPA registration process, the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for all Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and NMFS will issue vessel or gear owners an authorization certificate. Participants in these fisheries are not required to submit registration or renewal materials directly under the MMAP. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

**How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms?**

All vessel or gear owners will receive their authorization certificates and/or injury/mortality reporting forms via U.S. mail, except those vessel owners participating in the Northeast and Southeast Regional Integrated Registration Program. Vessel or gear owners participating in the Northeast and Southeast Regional Integrated Registration Program will receive their authorization certificates as follows:

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978–281–9300 x6505 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/prot_res/*) and following instructions for printing the necessary documents.

2. Southeast Region vessel or gear owners participating in Category I or II fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–824–5312 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/pr.htm*) and following instructions for printing the necessary documents.

**How Do I Renew My Registration Under the MMPA?**

Vessel or gear owners that participate in Pacific Islands, Southwest, or Alaska regional fisheries are automatically renewed and should receive an authorization certificate by January 1 of each new year. Vessel or gear owners in Washington and Oregon fisheries receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

Vessel or gear owners participating in Southeast or Northeast regional fisheries may receive their authorization certificates by calling the relevant NMFS Regional Office or visiting the relevant NMFS Regional Office Web site (see How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms).

**Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?**

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf*. Reporting requirements and procedures can be found in 50 CFR 229.6.

**Am I Required to Take an Observer Aboard My Vessel?**

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

**Am I Required to Comply With Any Take Reduction Plan Regulations?**

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. Refer to Table 4 in this document for a list of fisheries affected by take reduction teams and plans. Take reduction plan regulations can be found at 50 CFR 229.30–35.

**Sources of Information Reviewed for the Proposed 2009 LOF**

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS' SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, fishery management plans, ESA documents,

and other information that may not be included in the SARs.

The proposed LOF for 2009 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries, and the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), the final SARs for 2005 (71 FR 26340, May 4, 2006), the final SARs for 2006 (72 FR 12774, March 19, 2007), the final SARs for 2007 (73 FR 21111, April 18, 2008), and the draft SARs for 2008. All the SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

**Fishery Descriptions**

NMFS described each Category I and II fishery on the LOF for 2008 in the final 2008 LOF (72 FR 66048, November 27, 2007). Below, NMFS briefly describes each fishery listed as a Category I or II fishery appearing on the LOF for the first time. Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, Fishery Management Plans (FMPs), and Take Reduction Plans (TRPs), or through state agencies. Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

*High Seas Atlantic Highly Migratory Species Fisheries*

The Atlantic Highly Migratory Species (HMS) high seas fisheries are similar to fisheries targeting Atlantic HMS within U.S. waters, but primarily use pelagic longline gear. Atlantic swordfish and bigeye tuna are the primary target species on the high seas, with Atlantic yellowfin, albacore and skipjack tunas, and pelagic and some deepwater sharks also caught and retained for sale. Bluefin tuna are caught incidental to pelagic longline operations, both on the high seas and within U.S. waters, and may be retained subject to specific target catch requirements.

Within U.S. waters, HMS commercial fishers use several gear types. Authorized gear for tuna include speargun (except when targeting bluefin), rod and reel, handlines, bandit gear, harpoon, pelagic longline, trap (pound net and fish weir), and purse seine. Purse seines used to target bluefin tuna must have a mesh size of less than or equal to 4.5 in (11.4 cm) and at least 24–count thread throughout the net. Only rod and reel gear may be used to target billfish and commercial possession of Atlantic billfish is prohibited. Authorized gear for sharks includes rod and reel, handline, bandit gear, longline, and gillnet. Gillnets must be less than or equal to 2.5 km (1.6 mi) in length. Authorized gear for swordfish includes handline, handgear (including buoy gear), and longline for north Atlantic swordfish, and longline for south Atlantic swordfish. North Atlantic swordfish incidentally taken in squid trawls may be retained. The fishery management area for Atlantic HMS includes U.S. waters and the adjacent high seas.

Atlantic HMS are managed under regulations implementing the Consolidated Atlantic HMS FMP (2006), under the authority of the MSA and the Atlantic Tunas Convention Act (ATCA). Regulations issued under the MSA address the target fish species, as well as bycatch of species protected by the ESA, MMPA, and Migratory Bird Treaty Act. The MSA regulations (50 CFR part 635) require vessel owners and operators targeting Atlantic HMS with longline or gillnet gear to complete protected species (sea turtles and marine mammals) safe handling, release, and identification workshops. The regulations also require shark dealers to complete an Atlantic shark identification workshop.

The high seas components of Atlantic HMS fisheries are extensions of various Category I II, and III fisheries operating in U.S. waters (Tables 1 and 2). The longline fishery targeting Atlantic HMS in U.S. waters is the Category I, ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.'' NMFS is currently developing regulations to implement the Pelagic Longline Take Reduction Plan (PLTRP) for this fishery. The gillnet fishery targeting Atlantic HMS in U.S. waters is the Category II, ''Southeastern U.S. Atlantic shark gillnet'' fishery. This fishery is subject to the Bottlenose Dolphin TRP (BDTRP) (50 CFR 229.35), for coastal gillnetting only, and the Atlantic Large Whale TRP (ALWTRP) (50 CFR 229.32). The purse seine fishery targeting Atlantic HMS in U.S. waters is the Category III, ''Atlantic tuna purse seine fishery.''

For more information on the Atlantic HMS fisheries and details on the management and regulations of these fisheries, please see the Consolidated Atlantic HMS FMP (*http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htm*) and the regulations for Atlantic HMS fisheries in 50 CFR part 635.

*High Seas Pacific Highly Migratory Species Fisheries*

The Pacific HMS high seas fisheries are virtually the same as fisheries targeting Pacific HMS within U.S. waters. Pacific HMS fisheries target tunas (North Pacific albacore, yellowfin, bigeye, skipjack, and bluefin), billfish (striped marlin), sharks (common thresher, pelagic thresher, bigeye thresher, shortfin mako, and blue), swordfish, and dorado (i.e., dolphinfish) using several gear types. Authorized gear include surface hook-and-line (including troll, rod and reel, handline, albacore jig, and live bait), harpoon (non-mechanical), drift gillnet (14 in (35.5 cm) stretch mesh or greater), pelagic longline, and purse seine (including ring, drum, and lampara nets). Pacific HMS incidentally caught by unauthorized gear may be landed under certain circumstances. Species prohibited in Pacific HMS fisheries include any salmon species, great white shark, basking shark, megamouth shark, and Pacific halibut. The fishery management area for Pacific HMS covers U.S. waters from the U.S.-Mexico border to the U.S.- Canada border, and the adjacent high seas.

Pacific HMS are managed under regulations implementing the FMP for U.S. West Coast Fisheries for HMS, adopted in April 2004. The MSA regulations (50 CFR part 660, subpart K) address the target fish species as well as species protected by the ESA and MMPA. The MSA regulations lay out multiple restrictions for fishing for Pacific HMS with longline gear. Vessels fishing longline gear may not target HMS within U.S. waters. Targeting swordfish with shallow set longline gear or possessing a light stick on board the vessel west of 150° W. long. and north of the equator is prohibited. From April 1–May 31, longline gear is prohibited in the area bounded on the south by the equator, north by 15° N. lat., east by 145° W. long., and west by 180° long. Longline vessels must have a valid protected species workshop certificate onboard, along with safe handling and release tools for sea turtles and seabirds.

Along with the MSA requirements, including area closures for marine mammal and sea turtle protection, drift gillnet fishing for Pacific HMS is managed under the MMPA through the Pacific Offshore Cetacean Take Reduction Plan (POCTRP) (50 CFR 229.31). The POCTRP regulations require multiple gear modifications during the May 1–January 31 fishing season, including a requirement that all extenders (buoy lines) be at least 6 fathoms (36 ft; 10.9 m) in length, all

floatlines be fished at a minimum of 36 ft (10.9 m) below the surface, all nets have operational pingers to a water depth of a least 100 fathoms (600 ft; 182.9 m). Also, all drift gillnet vessel operators must attend skipper education workshops before each fishing season.

The high seas components of Pacific HMS fisheries are extensions of various Category I, II, and III fisheries operating within U.S. waters (Tables 1 and 2). The drift gillnet fishery targeting Pacific HMS, the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14in. mesh) fishery,'' is managed under the POCTRP. The purse seine fishery targeting Pacific HMS within U.S. waters is the Category II ''CA tuna purse seine fishery.'' While longline fishing for Pacific HMS is prohibited within U.S. waters, the LOF includes the Category II ''CA pelagic longline fishery'' to account for swordfish caught outside U.S. waters, but landed into the U.S. West coast. The troll fishery targeting Pacific HMS is an extension of U.S. waters Category III ''AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.''

For more information on the Pacific HMS fisheries and details on the management and regulations of these fisheries, please see the Pacific HMS FMP (*http://www.pcouncil.org/hms/hmsfmp.html#final*), the Pacific HMS FMP Biological Opinion (BiOp) (*http://swr.nmfs.noaa.gov/HMS__FMP__Opinion__Final.pdf*), and the regulations for Pacific HMS in 50 CFR part 660, subpart K.

*High Seas Western Pacific Pelagic Fisheries*

The Western Pacific pelagic high seas fisheries are virtually the same as fisheries targeting Wester Pacific pelagic species in U.S. waters. Western Pacific pelagic fisheries target tunas (albacore, bigeye, yellowfin, bluefin, and skipjack), billfish (Indo-Pacific blue marlin, black marlin, striped marlin, shortbill spearfish), sharks (pelagic thresher, bigeye thresher, common thresher, silky, oceanic whitetip, blue, shortfin mako, longfin mako, and salmon), swordfish, sailfish, wahoo, kawakawa, moonfish, pomfret, oilfish, and other tuna relatives. The main gears used to fish in the Western Pacific Pelagic fisheries are pelagic longline, troll, and handline. The Western Pacific Pelagic fisheries take place in the Western Pacific Fishery Management Area (including waters shoreward of the EEZ boundary around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands) and the adjacent high seas waters.

Western Pacific Pelagic fisheries are managed under regulations implementing the FMP for the Pelagic Fisheries of the Western Pacific Region developed by the Western Pacific Fishery Management Council (WPFMC). The MSA regulations (50 CFR part 665, subpart C) address target fish species as well as bycatch of species protected under the ESA, MMPA, and Migratory Bird Treaty Act. The MSA regulations outline restrictions on effort, observer coverage requirements, longline fishing prohibited areas, sea turtle and seabird bycatch mitigation measures, annual fleetwide limits on interactions with leatherback and loggerhead sea turtles, and a requirement for owners of longline vessels to participate in annual protected species workshops. Drift gillnet fishing in the fishery management area is prohibited, except where authorized by an experimental fishery permit.

The high seas components of the Western Pacific Pelagic longline fishery are extensions of the Category I ''HI deep-set (tuna target) longline/set line fishery'' and the Category II ''HI shallow-set (swordfish target) longline/set line fishery'' (proposed to be split into two fisheries from the ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' in this proposed rule) operating within U.S. waters. All requirements for vessels fishing longline gear within U.S. waters remain effective in high seas waters (as described in the above paragraph).

For more information on the Western Pacific Pelagic fisheries and details on the management and regulations of these fisheries, please see the Western Pacific Pelagic FMP BiOp (*http://www.fpir.noaa.gov/Library/PUBDOCs/*), the Western Pacific Pelagic FMP Environmental Impact Statement (EIS) (*http://www.fpir.noaa.gov/Library/PUBDOCs/*), and the regulations for Western Pacific Pelagic fisheries in 50 CFR 665, Subpart C.

*High Seas South Pacific Albacore Troll Fisheries*

The South Pacific albacore troll high seas fisheries target South Pacific albacore using mostly longline or troll gear in waters solely outside of any nation's EEZ. Longline gear, set with 1,000 or more hooks suspended from a horizontally buoyed mainline several miles long, accounts for 86 percent of the catch. Trolling vessels (including jigs or live bait) attach 10–20 fishing lines of various lengths to the vessel's outriggers on a slow-moving boat (5–6 knots). The total U.S. catch of South Pacific albacore has accounted for less than 5 percent of the total international catch in recent years.

U.S. vessels fish in the South Pacific albacore fishery from November/December-April. Many vessels then participate in the larger North Pacific albacore fishery from April-October. South Pacific albacore fishing occurs outside any nation's EEZ in an area bounded by approximately 110° W. long. and 180° W. long., and by 25° S. lat. and 45° S. lat. Most U.S. troll vessels depart from the U.S. West Coast or Hawaii and unload in American Samoa, Fiji, or Tahiti.

The South Pacific albacore troll fishery is not managed by regulations implementing any FMP. The WPFMC has concluded, and NMFS agrees, that conservation and management measures for this fishery are not warranted as the stock in not overfished and there are no known protected species interactions. Sea turtles and marine mammals do not prey on the bait species used by these vessels and vessels are typically slow-moving and would therefore likely able to avoid a collision with a whale. As of 2001, the HSFCA requires U.S. albacore troll vessel operators to file logbooks with NMFS for fishing in the South Pacific.

For more information on the South Pacific albacore troll fishery, please see the 2004 U.S. South Pacific albacore troll fishery Environmental Assessment (EA) (*http://www.fpir.noaa.gov/Library/PUBDOCs/*). There are no regulations governing these fisheries.

*High Seas South Pacific Tuna Fisheries*

The South Pacific Tuna Treaty (SPTT) manages access of U.S. purse seine vessels targeting tuna (skipjack and yellowfin) within the EEZs of 16 Pacific Island Countries in the Western and Central Pacific Ocean that are party to the Treaty. The SPTT Area includes the waters from north of 60° S. lat. and east of 90° E. long. subject to the fishing jurisdiction of Pacific Island parties, and all waters within rhumb lines connecting multiple geographic coordinates, and north along the 152° E. long. out to Australia's EEZ border. The Treaty Area includes portions of waters in the EEZs of most of the Pacific Island Countries included in the Treaty. The SPTT is intended to apply only to U.S. purse seine vessels; however, provisions have been made to accommodate high seas fishing by U.S. albacore tuna troll and U.S. longline vessels within the Treaty Area. Both a SPTT and a HSFCA permit are required to fish in SPTT waters.

Under the SPTT, observers are recruited from the Pacific Island Countries and then trained and deployed by the Forum Fisheries Agency (FFA) in Honiara in the Solomon Islands. Many of the FFA deployed observers serve in and have experience from domestic observer programs active in each observer's respective country. The target observer level coverage is 20 percent of U.S. purse seine vessels, the full costs of which are the responsibility of the U.S. purse seine vessel owners. Observers collect a range of data, including a form for recording information on interactions with seabirds, sea turtles, marine mammals, and sharks. Fishery observers undergo training in species identification for target and bycatch species; however, marine mammal species identification has only recently been placed as a priority matter for reporting. Observer data from January 1997–June 2002 show that 11 sets resulted in interactions with marine mammals. However, the data indicate only that the animals were ''unidentified whales, marine mammals, or dolphin/porpoise.'' The International Fisheries Division in the NMFS Pacific Islands Region is working with the FFA observer program to better train observers in marine mammal identification.

For additional information on the South Pacific Tuna Treaty and details on the management and regulations of these fisheries, see the South Pacific Tuna Treaty EA (*http://www.fpir.noaa.gov/Library/PUBDOCs/*) and the regulations for the South Pacific Tuna Treaty in 50 CFR 300, subpart D.

*High Seas Antarctic Living Marine Resources Fisheries*

The Commission for the Conservation of Antarctic Marine Living Resources (Convention or CCAMLR) conserves and manages Antarctic marine living resources (AMLR) in waters surrounding Antarctica. The Convention applies to AMLR in the waters from 60° S. lat. south to the Antarctic Convergence, with limited exceptions, covering 32.9 million square kilometers. Both an AMLR and a HSFCA permit are required to fish in CCAMLR waters. There are multiple gear types used to target multiple species in the Convention Area. Gear types include pelagic and bottom trawl, trap/pot, gillnet, and longline. Target species include krill and Antarctic finfish (rockcod species, toothfish species, icefish species, silverfish, cod, and lanternfish), mollusks, and crustaceans. CCAMLR Conservation Measures require or recommend several measures for fisheries in the Convention area. Mandatory measures include requirements for reporting; operating a Vessel Monitoring System while in the Convention area; longline gear modifications to reduce seabird interactions; mesh sizes restrictions for trawl gear. Recommendations include seal bycatch mitigation measures, such as a seal excluder device.

CCAMLR has identified two types of scientifically trained observers to collect information required in CCAMLR-managed fisheries, including information on entanglements and incidental mortality of seabirds and marine mammals. The first type of observer is a ''national observer,≥such as a U.S. observer placed on a U.S. vessel by the U.S. Government. The second type of observer is an ''international observer,'' or an observer operating in accordance with bilateral arrangements between the Nation whose vessel is fishing and the nation providing the observer. CCAMLR Conservation measures require all fishing vessels in the Convention area (except vessels fishing for krill) to carry at least one international observer and, where possible, an additional observer. The United States requires all of its vessels fishing in the CCAMLR area, for any target species and with any gear, to carry an observer. In certain exploratory toothfish fisheries, the vessel must carry two observers, with at least one being an international observer.

For additional information on the fishing activities in the CCAMLR region and details on the management and regulations of these fisheries, see the CCAMLR Programmatic EIS http://www.nmfs.noaa.gov/sfa/domes__fish/news__of__note.htm#ccamlr), the CCAMLR Schedule of Conservation Measures in Force (http://www.ccamlr.org), and the regulations for the harvesting of AMLR in 50 CFR 300, subpart D.

*CA spot prawn pot*

The ''CA spot prawn pot fishery'' (proposed to be listed as a Category II in this rule) operates from Central CA southward to the Mexican border. Strings of 10–50 oblong cylindrical traps are commonly fished at depths usually greater than 100 fathoms. This is a limited access fishery managed by the state of CA. A tiered permit system has been implemented allowing a maximum of 150 or 500 traps to be fished at one time depending on the fishing history associated with the permit. A maximum of 300 traps may be located within state waters (inside 3 miles), regardless of permit tier. North of Point Arguello, the season is open from August 1–April 30. South of Point Arguello, the season runs from February 1–October 30.

*CA Dungeness crab pot*

The ''CA Dungeness crab pot fishery'' (proposed to be listed as a Category II in this rule) operates along the central and northern coastal waters of CA in depths typically from 10–40 fathoms. The cylindrical or rectangular pots used in the fishery are buoyed, or fished, individually, although fishing strings of multiple traps are allowed in the central region. There is no limit on the number of traps which may operated by a fisherman at one time. This is a limited access fishery managed in part by the State of California and the Tri-State Committee agreement for Dungeness crab, which also includes the states of OR and WA. The fishery is divided into two management areas. The central region (south of the Mendocino-Sonoma county line) is open November 15–June 30. The northern region (north of the Mendocino-Sonoma county line) can open on December 1, but may be delayed by the California Department of Fish and Game (CDFG) based on the condition of market crabs, and continues until July 15.

*OR Dungeness crab pot*

The ''OR Dungeness crab pot fishery'' (proposed to be listed as a Category II in this rule) operates along the coastal waters of OR in depths typically from 10–40 fathoms. This is a limited access fishery managed by the OR Department of Fish and Wildlife (ODFW) in conjunction with the Tri-State Committee agreement for Dungeness crab, which also includes the states of CA and WA. The Dungeness crab season runs from December 1–August 14, although the state may delay the opening based on the condition of the crabs. Additionally, the state may close the season after the end of May if catch rates are still high to protect molting crab. A three-tiered pot limitation system has been implemented allowing a maximum 200, 300, or 500 pots to be fished at once depending on previous landing history. Logbook reporting of effort and catch data to the state is now required. The cylindrical or rectangular pots used in the fishery are fished individually by law.

*WA/OR/CA sablefish pot*

The ''CA/OR/WA sablefish pot fishery'' (proposed to be listed as a Category II in this rule) sets gear in waters past the 100 fathom curve off the West coast of the U.S. In CA, gear is set outside 150 fathoms, with an average depth of 190 fathoms. There are two separate trap fisheries, open access and

limited entry, and both have quotas. Open access fishers will usually fish 1 to 8 strings of 3–4 pots, each with a float line and buoy stick. The gear sometimes soaks for long periods. Fishers in the limited entry fishery will normally fish 20–30 pot strings. The fishery operates year round and effort varies from southern CA to the Canadian border.

This fishery is managed under regulations implementing the West Coast Groundfish FMP developed by Pacific Fishery Management Council. Access to the limited entry fishery is granted under a limited entry permit system, in addition to gear endorsements required by the individual states. Open access privileges are currently available to any fisherman with the requisite state gear endorsement, but involve much more restrictive limitations in catch quotas and additional area closures than the primary limited entry permit. Open access quotas vary based upon the area being fished. The limited entry fishery is open from April 1–October 31, while open access is available year-round. Limited entry permits are tiered based on the annual cumulative landings allowed by each permit. Permits are transferable, but the tier category remains fixed. Up to three limited entry permits may be stacked on a single vessel. As with most pot gear fished out in deeper waters, sablefish traps are set in strings of multiple traps.

**Summary of Changes to the LOF for 2009**

The following summarizes changes to the LOF for 2009 in fishery classification, fisheries listed in the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2009 are identical to those provided in the LOF for 2008 with the proposed changes discussed below. State abbreviations used in the following paragraphs include: AK (Alaska), AL (Alabama), CA (California), DE (Delaware), FL (Florida), GA (Georgia), HI (Hawaii), LA (Louisiana), MA (Massachusetts), ME (Maine), MS (Mississippi), NC (North Carolina), NJ (New Jersey), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), TX (Texas), VA (Virginia), and WA (Washington).

*Commercial Fisheries on the High Seas*

NMFS proposes to add high seas fisheries to the LOF, beginning with the 2009 LOF. NMFS is soliciting public comments on the proposed process for including high seas fisheries on the LOF (presented in the preamble under the section ''Are high seas fisheries included on the LOF?''), the fishery descriptions for the authorized high seas fisheries (presented in the preamble under the section ''Fishery descriptions''), and the proposed fishery additions described below.

Addition of Fisheries to the LOF

*High Seas Atlantic Highly Migratory Species Fisheries*

NMFS proposes to add the U.S.-authorized high seas Atlantic HMS fisheries to the LOF. The Atlantic HMS high seas fisheries include all fisheries using multiple gear types to target Atlantic HMS (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and marine mammal-fishery interactions on the high seas, NMFS proposes to categorize all fisheries targeting Atlantic HMS on the high seas with gear other than longline and purse seine (e.g., gillnet, trawl, handline, and troll gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification. NMFS proposes to categorize the longline component of this fishery as a Category I because it is an extension of the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline'' fishery operating within U.S. waters. The gear used, fishing methods, and target species are the same, and longline vessels targeting Atlantic HMS regularly cross into the high seas, and back, when fishing. NMFS proposes to categorize the purse seine component of this fishery as a Category III because it is an extension of the Category III ''U.S. Atlantic tuna purse seine fishery'' operating within U.S. waters. There are 88 valid HSFCA permits for fishers targeting Atlantic HMS on the high seas with all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species interacting with Atlantic HMS fisheries operating in U.S. waters also inhabit the high seas. Observer coverage for the Category I pelagic longline fishery extends into the high seas, so information is available on which marine mammal stocks are incidentally taken by this fishery on the high seas. For this reason, NMFS proposes to list the marine mammal species that have been documented killed or injured in the Category I high seas longline component of Atlantic HMS fisheries in Table 3.

Similar observer data are not available for the high seas Atlantic HMS drift gillnet fishery, which is an extension of the Category II ''Southeastern U.S. Atlantic shark gillnet fishery''; or the purse seine fishery, which is an extension of the Category III ''Atlantic tuna purse seine fishery.'' For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3. Specifically, NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''Southeastern U.S. Atlantic shark gillnet fishery'' (operating within U.S. waters) as injured or killed in the Category II drift gillnet component of the Atlantic HMS fisheries (operating on the high seas). Also, NMFS proposes to list all non-coastal marine mammal species killed or injured in the Category III purse seine component of the Atlantic HMS fisheries (operating within U.S. waters) as injured or killed in the Category III ''Atlantic tuna purse seine fishery'' (operating on the high seas).

There is little information on interactions between marine mammals and fishing gear used to target Atlantic HMS on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Atlantic HMS fisheries (excluding the longline, drift gillnet, and purse seine components), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

*High Seas Pacific Highly Migratory Species Fisheries*

NMFS proposes to add the U.S.-authorized high seas Pacific HMS fisheries to the LOF. The Pacific HMS fisheries include all fisheries using multiple gear types to target Pacific HMS (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and interactions with Pacific HMS high seas fisheries, NMFS proposes to categorize all fisheries targeting Pacific HMS on the high seas with gear other than drift gillnet and

troll (e.g., longline, gillnet, trawl, purse seine, and handline gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification as described in the definition for ''Category II'' in 50 CFR 229.2. NMFS proposes to categorize the drift gillnet component of this fishery as a Category I because it is an extension of the Category I ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh) fishery'' operating within U.S. waters. The gear used, fishing methods, and target species are the same in U.S. waters and on the high seas. Similarly, NMFS proposes to categorize the troll component of this fishery as a Category III because it is an extension of the Category III ''AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries'' operating within U.S. waters.

There are 344 valid HSFCA permits for fishers targeting Pacific HMS on the high seas using all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species interacting with Pacific HMS fisheries operating in U.S. waters also inhabit the high seas. Thus, fishing vessels that cross into the high seas are also likely to interact with these marine mammals once they cross into the high seas. For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3.

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category I ''CA/OR thresher shark/swordfish drift gillnet (>14 in mesh) fishery'' (operating within U.S. waters) as injured or killed in the associated drift gillnet component of Pacific HMS fisheries (operating on the high seas).

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''CA tuna purse seine fishery'' (operating within U.S. waters) as injured or killed in the associated purse seine component of the Pacific HMS fisheries (operating on the high seas).

NMFS proposes to list all marine mammal species killed or injured in the Category II ''CA pelagic longline fishery'' as injured or killed in the associated longline component of the Pacific HMS fisheries (operating on the high seas). This fishery is currently prohibited within U.S. waters, but remains listed on Table 1 because catch is landed on the U.S. West coast. Therefore, the marine mammal species listed as killed or injured in this fishery were observed taken on the high seas.

There is little information on interactions between marine mammals and fishing gear used to target Pacific HMS on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Pacific HMS fisheries (excluding the longline, drift gillnet, and purse seine components), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

*High Seas Western Pacific Pelagic Fisheries*

NMFS proposes to add the U.S.-authorized high seas Western Pacific pelagic fisheries to the LOF. The Western Pacific pelagic fisheries include all fisheries using multiple gear types to target Western Pacific pelagic species (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). Due to the lack of specific information on marine mammal abundance and interactions with fisheries on the high seas, NMFS proposes to categorize all fisheries targeting Western Pacific pelagic species on the high seas with gear other than longline (e.g., trawl, purse seine, pot, handline, and troll gear) as Category II. Category II is the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification, as described in the definition for ''Category II'' in 50 CFR 229.2. NMFS proposes to categorize the deep-set longline component of this fishery in U.S. waters as Category I, and the shallow-set longline component of this fishery in U.S. waters as Category II, because they are extensions of the Category I '' HI deep-set (tuna target) longline/set line fishery'' and the Category II ''HI shallow-set (swordfish target) longline/set line fishery,'' respectively. (The ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' is proposed to be split into these two fisheries in this proposed rule, as stated below). The gear used, fishing methods, and target species are the same, and longline vessels targeting Western Pacific pelagic species regularly cross over into the high seas when fishing.

There are 219 valid HSFCA permits for fishers targeting Western Pacific pelagic species with all gear types on the high seas. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

Many marine mammal species are also found on the high seas and the Western Pacific pelagic fishery operates the same on both sides of the EEZ boundary. Fishing vessels that cross into the high seas are likely to also interact with these marine mammal stocks once they cross the EEZ boundary. For those fisheries where no interaction data (observer or other data) exist on the high seas, NMFS proposes to list all the non-coastal marine mammal species/stocks killed or injured in the portion of the fishery that operates in U.S. waters as injured or killed in the same fishery operating on the high seas in Table 3.

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category I ''HI deep-set (tuna target) longline/set line fishery'' (operating within U.S. waters) as injured or killed in the Category I ''Western Pacific Pelagic fishery (deep-set component)'' (operating on the high seas).

NMFS proposes to add all non-coastal marine mammal species killed or injured in the Category II ''HI shallow-set (swordfish target) longline/set line fishery'' (operating within U.S. waters) as injured or killed in the Category II ''Western Pacific Pelagic fishery (shallow-set component)'' (operating on the high seas).

There is little information on interactions between marine mammals and fishing gear used to target Western Pacific pelagic species on the high seas, other than that listed in the previous paragraphs. Given the lack of data on marine mammal abundance and interactions with high seas Western Pacific pelagic fisheries (excluding longline effort), NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3.

*High Seas South Pacific Albacore Troll Fisheries*

NMFS proposes to add the high seas South Pacific albacore troll fisheries to the LOF. While the main gear types used are troll and longline, the South Pacific albacore troll fisheries include

all fisheries using multiple gear types to target South Pacific albacore tuna. While marine mammals are unlikely to be injured or killed in troll gear because of the nature of trolling methods and the bait used (South Pacific Albacore Troll EA), there is no official observer program for this fishery. Therefore, NMFS proposes to categorize all fisheries targeting South Pacific albacore on the high seas with trawl, purse seine, pot, longline, handline, and troll gear as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are 83 valid HSFCA permits for vessels participating in the South Pacific albacore troll fisheries on the high seas with all gear types. As noted in the preamble, the number of valid permits may not accurately account for annual fishing effort on the high seas. Please see the discussion on the HSFCA permitting process under the section ''Are high seas fisheries included on the LOF?'' in the preamble of this proposed rule for additional details.

There are no records of incidental mortality or serious injury of marine mammals in the South Pacific albacore troll fisheries. While there is little indication of marine mammal interactions with South Pacific albacore troll fishing, NMFS proposes to list the marine mammal species killed or injured in these fisheries as ''undetermined'' in Table 3 due to the lack of an observer program covering these fisheries.

*High Seas South Pacific Tuna Fisheries*

NMFS proposes to add the high seas South Pacific tuna fisheries, as authorized under the South Pacific Tuna Treaty, to the LOF. While a formal observer program exists for fishing in the Treaty area, information on marine mammal stock abundance in the area is scarce and observer reports of fishery interactions are not yet specific enough to determine the level of marine mammal serious injury and mortality. Therefore, NMFS proposes to categorize all fisheries participating in the South Pacific tuna fishery as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are 26 valid HSFCA permits for vessels participating in the South Pacific tuna fishery. This number is considered to accurately reflect the effort by U.S. vessels in the SPTT area because it closely matches the number of U.S. vessels with a valid SPTT license.

Under the SPTT, U.S. purse seine vessels are observed with a target of 20 percent coverage. While observer data document interactions with marine mammals, the data only currently identify the animals as unidentified whales, marine mammals, or dolphin/porpoise. For this reason, Table 3 lists the marine mammal species killed/injured in these fisheries as ''undetermined.''

*High Seas Antarctic Living Marine Resources Fisheries*

NMFS proposes to add the high seas Antarctic Living Marine Resources (or CCAMLR) fisheries to the LOF. The CCAMLR fisheries include all fisheries using multiple gear types to target living marine resources in the CCAMLR region (described in the ''Fishery Descriptions'' section in the preamble of this proposed rule). While a formal observer program exists for fishing under CCAMLR, specific information on marine mammal abundance and fishery interactions levels has not been calculated in the manner necessary to categorize the fisheries based on a marine mammal stock's PBR (as described in the preamble). Therefore, NMFS proposes to categorize all fisheries operating in the CCAMLR region as Category II (the appropriate classification for new fisheries on the LOF for which there is little information on which to base classification). There are no valid HSFCA permits for vessels participating in the CCAMLR fisheries for the 2008 fishing season, which accurately reflects effort by U.S. vessels in the CCAMLR area. Therefore, CCAMLR fisheries do not appear on Table 3 (Commercial Fisheries on the High Seas) in this proposed rule. When a HSFCA permit is requested and granted for a U.S. vessel to participate in the CCAMLR fisheries, this information will appear in Table 3 of the LOF.

In fishing seasons prior to 2004, Antarctic fur seals have been observed incidentally injured and killed by U.S. vessels in the CCAMLR trawl fishery for krill. These takes were drastically reduced in the 2004/2005 fishing season due to a requirement to include a seal excluder device on all trawls (CCAMLR EA). Due to the large population size of Antarctic fur seals, the current low rate of serious injury and mortality is likely not a conservation risk. There are no documented interactions between other marine mammal species and U.S. vessels when using other gear types in the CCAMLR region.

*Commercial Fisheries in the Pacific Ocean*

Fishery Classification

*HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery*

NMFS proposes to split the Category I ''HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery'' (hereinafter the current HI-based longline fishery) and list it in the 2009 LOF as two separately managed commercial fisheries: (1) The ''HI deep-set (tuna target) longline/set line fishery≥; and (2) the ''HI shallow-set (swordfish target) longline/set line fishery.'' NMFS believes such a split is warranted because the shallow-set and deep-set fisheries have different target species, operating patterns, management regimes, and marine mammal interaction rates. See the Fishery Descriptions section in the Final 2008 LOF for additional information (72 FR 66048; November 27, 2007). NMFS has split other fisheries in prior LOFs based upon similar factors.

The current HI-based longline fishery is listed as a Category I fishery as a result of the fishery's serious injuries or mortalities to false killer whales (*Pseudorca crassidens*), which currently exceed the stock's PBR. NMFS proposes that splitting the current HI-based longline fishery into two fisheries for purposes of the LOF would result in a Category I deep-set fishery and a Category II shallow-set fishery. The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2) and in the preamble of this proposed rule.

The ''HI deep-set (tuna target) longline/set line fishery'' will remain a Category I fishery because the fishery's serious injuries or mortalities to false killer whales currently exceed the stock's PBR. Observer coverage in the deep-set fishery is approximately 20 percent annually.

The ''HI shallow-set (swordfish target) longline/set line fishery'' was closed from 2001 to 2004. Since 2004, this fishery has been subject to strict management measures including: prescribed use of large circle hooks and fish bait, restricted annual effort, annual limits on turtle captures, and 100–percent onboard observer coverage because of sea turtle interactions. NMFS considered data from 2004 to 2007 in the tier analysis, which takes into account operation of the shallow-set fishery under this new management regime. While there were no documented interactions with false

killer whales in the shallow-set fishery during this period, there have been observed serious injuries or mortalities to the following marine mammal stocks: Risso's dolphin (*Grampus griseus*) (one serious injury in 2005; one serious injury and one mortality in 2006; three serious injuries in 2007); bottlenose dolphin (*Tursiops truncatus*) (one serious injury in 2006; three serious injuries in 2007); and humpback whale (*Megaptera novaeangliae*) (one serious injury in 2006). There was also an interaction with a Bryde's whale (*Balaenoptera edeni*) in 2005 that did not result in a serious injury or mortality.

Each of these serious injuries or mortalities occurred outside U.S. waters. Section 117(a) of the MMPA requires NMFS to prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment must include, among other things, an estimate of the PBR level for the stock. Because the serious injuries and mortality of Risso's dolphins and bottlenose dolphins occurred outside U.S. waters, there is no PBR for these stocks upon which to conduct a tier analysis (as described in the preamble of this proposed rule). However, there is a high degree of certainty that the humpback whale from the 2006 interaction was from the Central North Pacific stock of humpback whales, which migrates seasonally between breeding grounds in HI and foraging areas in AK. The PBR of this stock is 12.9; the annual mortality and serious injury of this stock in the shallow set fishery is 1.94 percent of PBR (one animal during the four-year period 2004–2007, or 0.25 per year). Because the annual mortality and serious injury of this humpback whale stock is greater than 1 percent and less than 50 percent of the PBR level, NMFS has determined that the shallow-set portion of the longline fishery merits recategorization as a Category II fishery.

*CA angel shark/halibut and other species set gillnet (>3.5 in mesh)*

NMFS proposes to reclassify the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size) fishery'' (proposed to be renamed ''CA halibut/white seabass and other species set gillnet (>3.5 in mesh) fishery'' in this proposed rule) from a Category I to a Category II fishery. This fishery was classified as Category I due to serious injury and mortality to the Monterey Bay and Morro Bay stocks of central CA harbor porpoises. Since 2002, however, there has been a ban on set gillnetting in central CA. As a result, effort in this fishery shifted and is now concentrated in southern CA, south of the range of these harbor porpoise stocks. The elimination of this fishery from the stocks' range removed the threat of mortality and serious injury to the stocks. Because interactions ceased as of 2002, no tier analysis was conducted for the level of annual mortality and serious injury of these stocks in this fishery for this proposed reclassification. The mean annual mortality and serious injury of CA sea lions in this fishery is 1,138, or 13 percent of PBR (PBR=8,511); the mean annual mortality and serious injury of harbor seals (CA stock) is 386, which is 20 percent of PBR (PBR=1,896). Thus, the mean annual serious injury and mortality of CA sea lions and harbor seals (CA stock) in this fishery is greater than 1–percent and less than 50 percent of the stocks' PBR levels, thereby further supporting a Category II classification. Observer coverage in this fishery is approximately 5 percent.

*West Coast trap/pot fisheries*

NMFS proposes the recategorization of various West Coast trap and pot fisheries from Category III to Category II based on interactions with humpback whales (CA/OR/WA stock). Below, NMFS provides a review of the analysis conducted to support the proposed recategorizations. Comments are specifically requested from the public on the proposed recategorizations of these fisheries.

From January 1, 2002, through December 31, 2006, NMFS documented 13 sightings of free-swimming humpback whales entangled in trap gear, pot gear, or unidentified gear along the U.S. West Coast. Twelve of the thirteen observations occurred off the coast of CA and one was off the coast of OR. One stranded dead humpback whale was reported in OR, and it is believed that this humpback whale was one of the 13 free-swimming entangled whales reported to NMFS.

A review of the available data from the NMFS Large Whale Disentanglement Network (LWDN) was initiated to understand the nature of the 13 entangled humpback whales (Table 5). Four animals were observed with pots or traps on their bodies during the reported entanglement, including one with spot prawn gear and one with sablefish gear. Of these, three were not disentangled from the gear and, due to the amount of trailing gear reported on these animals, these three are considered seriously injured. One of the four observed entangled animals was disentangled from pot gear and released without injury; however, the animal would have been considered seriously injured if it had not been observed, tracked, and disentangled. One whale was observed off OR entangled in gear which has been identified as likely to have been Dungeness crab pot gear based upon photos of the animal. An additional three humpback whales were reported to NMFS as being entangled in crabpot line, although there is no way to determine if the line was actually from pot or trap gear. Five humpback whales were reported to NMFS entangled in line or netting, with no means of identifying the type of fishing gear involved. Details of these entanglements can be found in Table 5.

For this analysis, NMFS has been conservative in attributing records of entanglements to the pot and traps fisheries. It is difficult to identify fishing gear based upon observations of gear on animals; for most reports there are no photographs of the animals. Therefore, only confirmed and probable entanglements of humpback whales are attributed to a particular pot/trap fishery. Using this criterion, it is estimated that four humpback whales were seriously injured or killed between 2002 and 2006 due to entanglements with pot or trap gear. This number should be considered a minimum estimate of seriously injured animals because it is based upon opportunistic sightings reported to NMFS and thus do not represent observer data or comprehensive surveys. The entire record of seriously injured or killed humpback whales is used in the Tier 1 evaluation, but only the three confirmed serious injuries are used in the Tier 2 evaluation of the pot and trap fisheries.

*Tier 1 evaluation:* NMFS began by considering the total annual mortality and serious injury of the CA/OR/WA humpback whale stock across all U.S. fisheries. The draft 2008 SARs lists the total observed mortalities and serious injuries of humpback whales from 2002 through 2006 as 13 (this number includes one animal reported to the NMFS entangled in unidentified gillnet gear). This results in an annual mean take of 2.6 humpback whales per year, which exceeds 10 percent of the PBR level (2.5) for this stock.

*Tier 2 evaluation:* Three humpback whales (CA/OR/WA) have been positively identified as being entangled and seriously injured in pot/trap gear between January 1, 2002, and December 31, 2006. A single serious injury or mortality of a humpback whale in a trap/pot fishery results in a level of take of 0.2 animals per year, or 8 percent of the PBR (PBR=2.5 animals), which is consistent with a Category II categorization (the total estimated

annual serious injury of mortality is greater than 1 percent and less than 50 percent of PBR). Category II is also the appropriate category for fisheries for which reliable information on the frequency of marine mammal serious injury or mortalities is lacking. Fisheries are placed in Category II after evaluating such factors as the type of gear being used, stranding records, the distribution of marine mammals in the area of the fishery, and at the discretion of the Assistant Administrator for Fisheries (see 50 CFR 229.3). As described in the 2007 Final LOF (72 FR 14466, March 28, 2007), the available information from the LWDN alone is not sufficient to identify which of the numerous pot and trap fisheries may interact with humpback whales and cause serious injuries or mortalities. Therefore, other methods must be used to determine which pot and trap fisheries should be listed as Category II.

As described in the 2008 Final LOF (72 FR 66048, November 27, 2007), NMFS recently prepared, with assistance from the states, a characterization of the current commercial trap/pot fisheries off the CA, OR, and WA coasts. NMFS has also been working closely with the states to obtain the best available information on these trap/pot fisheries and has integrated this into its analysis. NMFS used the reported entanglement of humpback whales as the data that drives the recategorization of some fisheries. As part of the analysis, some assumptions were necessary and are outlined here. NMFS assumes that the time and area in which the entanglement was reported is the location where the entanglement occurred, as with a humpback whale entangled off San Francisco in December 2005. NMFS acknowledges that it is possible that a whale could travel from other areas carrying gear. NMFS also assumes that the reported entanglements are a fraction of the total mortalities and serious injury caused by trap/pot gear, and the reports are best used to represent areas where fisheries and humpback whales interact. Under this assumption, all entanglements characterized as confirmed entanglements in trap/pot gear and unconfirmed but probable entanglement with trap/pot gear (see Table 5) were used to determine which commercial fisheries are most likely to interact with humpback whales. Finally, NMFS assumed that the distribution of trap/pot fishing effort and the distribution of humpback whales are not likely to drastically change in the near future; therefore, past interactions are reasonable predictors of future events. NMFS acknowledges that environmental variability can change the distribution of fishing effort and marine mammals; NMFS will continue to monitor both and make recommendations for changes to the LOF as appropriate.

To determine which pot and trap fisheries should be listed as Category II, NMFS asked the following questions: (1) Has the fishery been identified as causing one of the entanglements of humpback whales?; and (2) Does the fishery operate in the area and time when a humpback was reported entangled in pot and trap gear? Fisheries that did not meet either of these criterion were eliminated from possibly causing humpback whale mortalities or serious injuries and remained Category III fisheries.

Once NMFS identified which fisheries met either of the criterion above, NMFS considered the following: (1) Does the fishery overlap, spatially and temporally, with the known distribution of the Eastern North Pacific stock of humpback whales?; and (2) Does the fishery currently have a substantial amount of effort and is there likely to be change in this level of effort in the future? These second two questions address whether future interactions, based upon observed entanglements, would be likely. NMFS considered these factors because while one observed interaction may be insufficient to recategorize a fishery; a likelihood of entanglement supports the recategorization of some fisheries.

Based on the analysis described above, the following are being proposed to be classified as Category II fisheries (all were Category III on the 2008 LOF or included within the Category III ''CA lobster, prawn, shrimp, rock crab, fish pot'' [proposed to be renamed the ''CA spiny lobster, coonstrip shrimp, finfish, rock crab, tanner crab pot or trap'']):

(1) The ''CA spot prawn pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications'') as a Category II fishery. A humpback whale was reported entangled and seriously injured in this gear type in September 2005 at Monterey. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''CA spot prawn pot fishery'' is 29.

(2) The ''WA/OR/CA sablefish pot fishery''. A humpback whale was reported entangled in this gear type in September 2006 off Monterey, CA. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''WA/OR/CA sablefish pot fishery'' is 155, including both limited and open access permits (there are 32 limited access permits).

(3) The ''OR Dungeness crab pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications''). A humpback whale was observed and photographed entangled in gear in May 2006 off the coast of OR. This animal is believed to be the same animal that stranded on a beach in OR with marks consistent with the type of entanglement observed. Based upon the gear observed on the animal in the field and in photographs, and the unusually high amount of Dungeness crab gear in the water during that time, it is most likely that this is the type of gear that entangled the animal. As described above, a single humpback whale serious injury or mortality is equal to 8 percent of the stock's PBR; therefore, a Category II categorization is appropriate. The estimated number of vessels or participants in the ''OR Dungeness crab pot fishery'' is 433 (433 permits exist, 364 landings were made in 2006).

(4) The ''CA Dungeness crab pot fishery'' (see name change explanation for this fishery described below under ''West Coast trap/pot fisheries'' discussion in section ''Fishery Name and Organizational Changes and Clarifications''). Two of the reported humpback whale entanglements (shown in Table 5) could not be identified to a type of pot or trap fishery by gear type, thus NMFS considered whether this fishery could be listed as Category II by analogy to other West Coast trap/pot fisheries proposed for Category II classification in this rule, because it operates with similar gear in the same location as confirmed humpback whale serious injury events. NMFS reviewed the entanglements and identified which pot and trap fisheries were operating in the time and area of the reported entanglements. The ''CA Dungeness crab pot'' and the ''CA spot prawn trap'' fisheries were both operating at the time and place of the two humpback whale entanglements, thus either of these could have caused the serious injury to the humpback whales. Therefore, NMFS

proposes to reclassify the ''CA Dungeness crab pot fishery'' as a Category II fishery by analogy. The estimated number of vessels or participants in the ''CA Dungeness crab pot fishery'' is 625 (625 permits exist, 435 landings were made in 2006).

NMFS acknowledges that other pot and trap fisheries may overlap in space and time with humpback whales feeding or migrating along the West Coast, but in the absence of evidence of interactions, NMFS cannot justify placing these fisheries in Category II at this time. If additional information becomes available, NMFS will consider recategorization of other trap/pot fisheries.

NMFS also reviewed the level of gray whale takes in all West coast commercial fisheries, including trap and pot fisheries, and determined that it was well below 10 percent of the stock's PBR, thus re-categorization of trap and pot fisheries based upon gray whale takes is not warranted. Entanglements of gray whales in trap and pot gear have been reported; however, NMFS has not yet determined which specific fisheries may be involved. Therefore, gray whales will remain listed under the Category III, ''CA lobster, prawn, shrimp, rock crab, fish pot fishery'' (proposed to be renamed as the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this proposed rule) and under the proposed Category II trap and pot fisheries discussed below (gray whales have been listed as injured or killed in these fisheries since the 2005 and 2007 LOFs, respectively). Data related to interactions with gray whales and the newly categorized Category II trap and pot fisheries will be reviewed and discussed in future LOFs.

Addition of Fisheries to the LOF

NMFS proposes to add the ''HI deep-set (tuna target) longline/set line fishery'' as a Category I (see the discussion in the previous section for details).

NMFS proposes to add the ''HI shallow-set (swordfish target) longline/set line fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''CA spot prawn trap fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''CA Dungeness crab pot fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''OR Dungeness crab pot fishery'' as a Category II (see the discussion in the previous section for details).

NMFS proposes to add the ''WA Dungeness crab pot fishery'' as a Category III (see the discussion in the previous section for details).

NMFS proposes to add ''AK statewide miscellaneous finfish pot fishery'' as a Category III fishery. There are 293 participants in this fishery and no documented takes of marine mammals.

NMFS proposes to add ''AK shrimp pot, except Southeast fishery'' as a Category III fishery. There are 15 participants in this fishery and no documented takes of marine mammals.

Removal of Fisheries from the LOF

NMFS propose to remove the Category II ''AK Metlakatla/Annette Island salmon drift gillnet'' fishery from the LOF. NMFS received a comment on the 2008 LOF stating that this fishery is an exclusively tribal fishery (72 FR 66048, November 27, 2007, comment/response 27). As an exclusively tribal fishery, this fishery is not subject to the LOF (Final rule implementing section 118 of the MMPA, 60 FR 45086, August 30, 1995, comment/response 68). Tribal governments have developed regulations for the management of tribal fishing under treaties. NMFS and other fisheries regulatory agencies have participated with the tribes during this regulatory development.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to change the name of the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size)'' fishery to the ''CA halibut/white seabass and other species set gillnet (>3.5 in. mesh) fishery'' to more accurately reflect the current target species of the fishery.

NMFS proposes to change the name of the Category III ''AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish'' to ''AK state-managed waters longline/set line (including sablefish, rockfish, lingcod, and miscellaneous finfish'' to more accurately reflect the current target species of the fishery.

NMFS proposes to change the name of the Category III ''AK North Pacific halibut handline and mechanical jig fishery'' to ''AK North Pacific halibut handline/hand troll and mechanical jig fishery'' to more accurately reflect the gear used in the fishery.

NMFS proposes to change the name of the Category III ''AK miscellaneous finfish handline and mechanical jig fishery'' to ''AK miscellaneous finfish handline/hand troll and mechanical jig fishery'' to more accurately reflect the gear used in the fishery.

NMFS proposes to remove the superscript ''1'' following Steller sea lion, Western U.S. stock, under the Category II ''AK Bristol Bay salmon drift gillnet fishery'' in Table 1. Although Steller sea lions (Western U.S. stock) were reported taken in this fishery in logbook entries prior to the 1996 LOF (2007 SAR, Appendix 7), there have been no reported interactions since 1993. Therefore, this Steller sea lion stock is not driving the categorization of this fishery. However, this fishery is classified as a Category II based on analogy with other Category II AK gillnet fisheries because it operates in the same manner as other AK gillnet fisheries and it has not been observed by the Alaska Marine Mammal Observer Program. Therefore, the superscript ''2'' will remain after the fishery's name in Table 1.

*West Coast trap/pot fisheries*

NMFS conducted a review of all West Coast commercial pot and trap fisheries in response to reports of humpback whale entanglements in this gear type and public comment requests for a review on previous LOFs. As described in the ''Fishery Classification'' section above, NMFS is proposing to recategorize a number of West Coast commercial pot and trap fisheries based upon interactions with humpback whales. The fisheries as currently named do not allow NMFS to categorize them appropriately, thus NMFS proposes to rename certain West Coast trap/pot fisheries by splitting and combining them based upon the probability of interactions with the gear and humpback whales and the current management structure.

NMFS proposes to split the prawn portion of the ''CA lobster, prawn, shrimp, rock crab, and fish pot fishery'' into a separate fishery, the ''CA spot prawn fishery,'' and rename the remaining portion of the fishery the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery.'' NMFS has determined that the current name of the fishery does not reflect the current fisheries and proposes to list the ''CA spot prawn trap fishery'' as a separate Category II fishery due to an observed entanglement with a humpback whale. Further, the ''CA spot prawn trap fishery'' operates in a time and area when humpback whales are found off of the coast of CA. NMFS proposes to rename the remaining portion of the fishery the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' because these fisheries are all managed

by the State of CA and the available data from the LWDN shows a low likelihood of interactions with humpback whales because of the areas and times in which fishery effort occurs and the amount of gear used in these fisheries. This fishery will remain a Category III fishery on the LOF.

NMFS proposes to list the ''CA spot prawn trap fishery'' as a separate Category II fishery due to an observed entanglement with a humpback whale. Further, this fishery operates in a time and area when humpback whales are found off of the coast of CA.

NMFS proposes to split the ''WA/OR/CA crab pot fishery'' into three fisheries, the ''CA Dungeness crab pot,'' ''OR Dungeness crab pot,'' and ''WA Dungeness crab pot'' fisheries. Each of these fisheries is managed and permitted by the individual states and each state has different regulations and regulatory capacity for their fishery. Also, as explained previously, humpback whale entanglements have occurred in Dungeness crab pot gear off the states of CA and OR, but not WA. Thus by splitting and re-naming this fishery, NMFS is able to appropriately categorize only those Dungeness crab pot fisheries that are of most concern due to marine mammal interactions (i.e., categorize the CA and OR Dungeness crab pot fisheries as Category II, and the WA Dungeness crab pot fishery as Category III).

Number of Vessels/Persons

NMFS proposes to update the estimated number of vessels or persons in the Category III ''CA lobster, prawn, shrimp, rock crab, and fish pot fishery'' (proposed to be renamed the ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this rule) from 608 to 530.

NMFS proposes to update the estimated number of vessels or persons in the Category III ''OR/CA hagfish pot or trap fishery'' from 25 to 54.

NMFS proposes to update the estimated number of vessels or persons in the majority of the AK Category II fisheries because the information has not been updated in recent LOFs: AK Southeast salmon drift gillnet fishery from 481 to 476; AK Yakutat salmon set gillnet from 170 to 166; AK Prince William Sound salmon drift gillnet from 541 to 537; AK Cook Inlet salmon drift gillnet from 576 to 571; AK Cook Inlet salmon set gillnet from 745 to 738; AK Peninsula/Aleutian Islands salmon drift gillnet from 164 to 162; AK Peninsula/Aleutian Islands salmon set gillnet from 116 to 115; AK Bristol Bay salmon drift gillnet from 1,903 to 1,862; AK Bristol Bay salmon set gillnet from 1,014 to 983; AK Southeast salmon purse seine fishery from 416 to 415; AK Bering Sea, Aleutian Islands pollock trawl from 120 to 95; AK Bering Sea, Aleutian Islands Pacific cod trawl from 114 to 54; AK Bering Sea, Aleutian Islands finfish trawl from 26 to 34.

NMFS proposes to update the estimated number of vessels or persons in the majority of the AK Category III fisheries because the information has not been updated in recent LOFs: AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet from 1,922 to 1,824 ; AK roe herring and food/bait herring gillnet from 2,034 to 986; AK miscellaneous finfish set gillnet from 3 to 0; AK salmon purse seine (except Southeast AK, which is Category II) from 953 to 936; AK salmon beach seine from 34 to 31; AK roe herring and food/bait herring purse seine from 624 to 361; AK roe herring and food/bait herring beach seine from 8 to 4; AK octopus/squid purse seine from 2 to 0; AK salmon troll from 2,335 to 2,045; AK North Pacific halibut/bottom fish troll from 1,530 (330 AK) to 1,302 (102 AK); AK state-managed waters groundfish longline/set line (including sablefish, rockfish, and miscellaneous finfish) from 731 to 1,448; AK Gulf of Alaska rockfish longline from 421 to 0; AK Gulf of Alaska sablefish longline from 412 to 291; AK Bering Sea, Aleutian Islands Greenland turbot longline from 12 to 29; AK Bering Sea, Aleutian Islands rockfish longline from 17 to 0; AK Bering Sea, Aleutian Islands sablefish longline from 63 to 28; AK halibut longline/set line (State and Federal waters) from 3,079 to 2,521; AK octopus/squid longline from 7 to 2; AK shrimp otter and beam trawl (statewide and Cook Inlet) from 58 to 32; AK Gulf of Alaska flatfish trawl from 52 to 41; AK Gulf of Alaska Pacific cod trawl from 101 to 62; AK Gulf of Alaska pollock trawl from 83 to 62; AK Gulf of Alaska rockfish trawl from 45 to 34; AK Bering Sea, Aleutian Islands Atka mackerel trawl from 8 to 9; AK Bering Sea, Aleutian Islands Pacific cod trawl from 87 to 93; AK Bering Sea, Aleutian Islands rockfish trawl from 9 to 10; AK miscellaneous finfish otter or beam trawl from 624 to 317; AK food/bait herring trawl from 3 to 4; AK Bering Sea, Aleutian Islands Pacific cod pot from 76 to 68; AK Bering Sea, Aleutian Islands crab pot from 329 to 297; AK Gulf of Alaska crab pot from unknown to 300; AK Southeast Alaska crab pot from unknown to 433; AK Southeast Alaska shrimp pot from unknown to 283; AK octopus/squid pot from 72 to 27; AK snail pot from 2 to 1; AK North Pacific halibut handline/hand troll and mechanical jig from 93 to 228; AK miscellaneous finfish handline/hand troll and mechanical jig from 100 to 445; AK octopus/squid handline form 2 to 0; AK Southeast herring roe/food/bait pound net from 3 to 6; AK dungeness crab (hand pick/dive) from 3 to 2; AK herring spawn on kelp (hand pick/dive) from 363 to 266; AK urchin and other fish/shellfish (hand pick/dive) from 471 to 570; AK commercial passenger fishing vessel from >7,000 (1,107 AK) to >7,000 (2,702 AK).

List of Species That are Incidentally Injured or Killed

NMFS proposes to remove the harbor porpoise (central CA) from the list of marine mammal species and stocks incidentally killed/injured in the ''CA angel shark/halibut and other species set gillnet (>3.5 mesh size) fishery'' (proposed for recategorization to a Category II, and renamed as the ''CA halibut/white seabass and other species set gillnet (>3.5 mesh size) fishery'' in this proposed rule). As described above, there has been a ban on set gillnetting in central CA since 2002, which has eliminated the threat to the Monterey Bay stock and Morro Bay stock of harbor porpoise in this fishery. This fishery is now concentrated in southern California, south of the range of these stocks of harbor porpoise.

NMFS proposes to remove the following marine mammals from the list of species/stocks incidentally killed/injured in the ''CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh) fishery≥: Dall's porpoise (CA/OR/WA), fin whale (CA/OR/WA), gray whale (Eastern North Pacific), humpback whale (CA/OR/WA), and sperm whale (CA/OR/WA). None of these species have been observed taken in the fishery from January 1, 2002 through December 31, 2006 (the most recent available information). This fishery has been observed by NMFS at approximately 20 percent annually during this five year period.

NMFS proposes to remove humpback whales (CA/OR/WA) from the list of species/stocks incidentally killed/injured in the Category II ''WA Dungeness pot fishery'' (proposed to be separated from the ''WA/OR/CA crab pot fishery'' in this proposed rule). There have been no recent interactions with this species.

NMFS proposes to remove humpback whales (CA/OR/WA) and sea otters (CA) from the list of species/stocks incidentally killed/injured in the Category III ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' (currently listed as the ''CA lobster,

prawn, shrimp, rock crab, fish pot fishery''). As described above in the discussion of West Coast trap/pot fisheries, NMFS analysis of the available information on humpback whale entanglements in pot and trap gear suggests that these gears are not likely to cause interactions. NMFS proposes to remove sea otter (CA) from the list of species/stocks incidentally killed/injured due to a lack of recent data to indicate that sea otters are seriously injured or killed in this fishery. The only available information of a sea otter taken in one of a these types of pots or traps is from November 1987. Sea otters (CA) will not be listed as incidentally killed/injured in the proposed Category II ''CA spot prawn trap'' fisheries (proposed to be separated out from the renamed ''CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap fishery'' in this proposed rule). The only available information of a sea otter taken in each of these types of pots or traps is from 1991. There have been no reports of interactions since 1987 or 1991, respectively.

NMFS proposes to change the stock name of humpback whales from humpback whales (Eastern North Pacific) to humpback whales (CA/OR/WA) for all fisheries in Table 1 in which this species is listed as incidentally killed or injured to match the stock name in the most current SARs. The stock name was changed in the Final 2007 SARs.

*Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

Addition of Fisheries to the LOF

NMFS proposes to add the ''U.S. Atlantic, Gulf of Mexico trotline fishery'' as a Category III fishery. Trotline gear can be described as longline which rests on the seafloor, attached to anchored floats or buoys at each end, to which a series of baited hooks are attached at intervals of 2–6 ft (0.6–1.8 m). The line is typically set parallel to the shore in water 5–12 ft (1.5–3.7 m) deep and the line can reach up to a mile (1.6 km) in length. Trotlines are typically worked from a boat where rollers are used to haul the line from the water. Target species include blue crab, catfish, and other finfish throughout the coastal Atlantic and Gulf of Mexico. ''Hook and line'' gear is defined at 50 CFR 600.10 as ''one or more hooks attached to one or more lines (can include a troll).'' Therefore, NMFS proposes to classify the ''U.S. Atlantic, Gulf of Mexico trotline fishery'' under ''Longline/Hook-and-Line Fisheries'' in Table 2 of the LOF. The number of participants in this fishery is unknown and there are no known takes of any marine mammal from trotline gear.

**Fishery Name and Organizational Changes and Clarifications**

*Northeast sink gillnet fishery*

NMFS proposes to clarify and correct the boundary definition of the Category I ''Northeast sink gillnet fishery.'' The current boundaries are defined as ''excluding Long Island Sound or other waters where gillnet fisheries are listed as Category III. At this time, these Category II and II fisheries include...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by replacing this with the following language: ''...excluding Long Island Sound and other waters where gillnet fisheries are listed as Category II and III. At this time, these Category II and III fisheries include...''

*Northeast anchored float gillnet fishery*

NMFS proposes to clarify the boundary definition of the Category II ''Northeast anchored float gillnet fishery.'' The current fishery boundary is defined as ''...from the U.S.- Canada border to Long Island, NY, at at 72° 30' W. long south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by adding the following language: ''...from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long south to 36° 33.03' N. lat. (corresponding with the VA/NC border) and east to the eastern edge of the EEZ...''

*Northeast drift gillnet fishery*

NMFS proposes to clarify the boundary definition of the Category II ''Northeast drift gillnet fishery.'' The current fishery boundary is defined as occurring ''...at any depth in the water column from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. and east to the eastern edge of the EEZ...'' (72 FR 66056, November 27, 2007). NMFS proposes to clarify this boundary definition by adding the following language: ''...at any depth in the water column from the U.S.-Canada border to Long Island, NY, at 72° 30' W. long. south to 36° 33.03' N. lat. (corresponding with the VA/NC border) and east to the eastern edge of the EEZ...''

*Mid-Atlantic mid-water trawl fishery*

NMFS proposes to modify the fishery description for the Category II ''Mid-Atlantic mid-water trawl fishery.'' NMFS received a comment on the 2008 LOF suggesting that the ''Mid-Atlantic mid-water trawl fishery'' was an inaccurate characterization of the fishery targeting *Ilex* squid, *Loligo* squid, and Atlantic butterfish (72 FR 66064, November 27, 2007, comment/response 28). After consulting with the Northeast Fisheries Science Center, observer reports, and vessel trip report (VTR) data , NMFS concluded that the gear targeting these species is better characterized by the ''Mid-Atlantic bottom trawl fishery'' (Category II) rather than the ''Mid-Atlantic mid-water trawl fishery'' (Category II) as it is currently listed (72 FR 66048, November 27, 2007). Additionally, NMFS has also become aware of additional species targeted by the ''Mid-Atlantic mid-water trawl fishery'' (2007 final SAR). To reflect this new information, NMFS proposes to replace the current ''Mid-Atlantic mid-water trawl'' fishery description with the following description:

''The 'Mid-Atlantic mid-water trawl fishery' primarily targets Atlantic mackerel, chub mackerel, and miscellaneous other pelagic species. This fishery consists of both single and pair trawls, which are designed, capable, or used to fish for pelagic species with no portion of the gear designed to be operated in contact with the bottom. The fishery for Atlantic mackerel occurs primarily from southern New England through the mid-Atlantic from January to March and in the Gulf of Maine during the summer and fall (May to December). This fishery is managed under the Federal Atlantic Mackerel, Squid, and Butterfish FMP using an annual quota system.''

*Mid-Atlantic bottom trawl fishery*

NMFS proposes to modify the fishery description for the Category II ''Mid-Atlantic bottom trawl fishery.'' NMFS received a comment on the 2008 LOF regarding gear used for targeting *Ilex* squid, *Loligo* squid, and Atlantic butterfish (72 FR 66048, November 27, 2007, comment/response 28). After consulting with the Northeast Fisheries Science Center, observer reports, and VTR data , NMFS concluded that the gear targeting these species is better characterized by the ''Mid-Atlantic bottom trawl fishery'' (Category II) rather than the ''Mid-Atlantic mid-water trawl fishery'' (Category II) as it is currently listed (72 FR 66057, November 27, 2007). Additionally, NMFS has also become aware of additional species targeted by the ''Mid-Atlantic bottom trawl fishery'' (2007 final SAR). To reflect this new information, NMFS proposes to replace the current ''Mid-Atlantic bottom trawl'' fishery

description with the following description:

''The Category II 'Mid-Atlantic bottom trawl fishery' uses bottom trawl gear to target species including but not limited to: bluefish, croaker, monkfish, summer flounder (fluke), winter flounder, silver hake (whiting), spiny dogfish, smooth dogfish, scup, black sea bass, Atlantic cod, haddock, pollock, yellowtail flounder, witch flounder, windowpane flounder, summer flounder, American plaice, Atlantic halibut, redfish, red hake, white hake, ocean pout, skate spp, Atlantic mackerel, *Loligo* squid, *Ilex* squid, and Atlantic butterfish. These fisheries occur year round from Cape Cod, MA, to Cape Hatteras, NC, in waters west of 72° 30' W. long. and north of a line extending due east from the NC/SC border. While the gear characteristics for the mixed groundfish bottom trawl gear have not yet been determined, the *Ilex* and *Loligo* squid fisheries are dominated by small-mesh otter trawls. The *Loligo* fishery occurs mostly offshore near the edge of the continental shelf during fall and winter months (October to March) and inshore during spring and summer (April-September) though landings of *Loligo* are also taken by inshore pound nets and fish traps in the spring and summer. The fishery for *Ilex* occurs offshore, mainly in continental shelf and slope waters during summer months (June-September). The *Ilex* and *Loligo* fisheries are managed by moratorium permits, gear and area restrictions, quotas, and trip limits. Atlantic butterfish are mainly caught as bycatch in the directed squid and mackerel fisheries and observer data has suggested that there is a significant amount of butterfish discarding that occurs at sea.''

*Mid-Atlantic haul/beach seine fishery*

NMFS proposes to update the fishery description for the Category II 'Mid-Atlantic haul/beach seine fishery.' In the Final 2008 LOF (72 FR 66048, November 27, 2007), NMFS stated that it would consider revising the description of the fishery following rulemaking by the North Carolina Division of Marine Fisheries (NCDMF) involving the NC Atlantic Ocean striped bass beach seine fishery. In an effort to distinguish between beach-anchored gillnets and true beach seines, NCDMF recently finalized regulations, effective for the fall 2008 fishery, defining a beach seine for the Atlantic Ocean striped bass beach seine fishery. Fishers participating in the fishery will be required to use multifilament or multi-fiber webbing swipe nets fished from the ocean beach that are deployed from a vessel launched from the ocean beach where the fishing operation takes place. Therefore, NMFS proposes to add the following information to the description from the Final 2008 LOF:

''The NC component of this fishery operates primarily along the Outer Banks using small and large mesh nets. Small mesh nets are generally used in the spring and fall to target gray trout (weakfish), speckled trout, spot, kingfish (sea mullet), bluefish, and harvest fish (star butters). Large mesh nets are used to target Atlantic striped bass during the winter and are regulated via NC Marine Fisheries Commission rules and NCDMF proclamations. Construction and characteristics of the large and small mesh nets differ, but they generally both gill fish, rather than haul fish to shore in the manner of a traditional beach seine. Small mesh nets are generally constructed with a combination of multifilament and monofilament webbing or all monofilament webbing material. If a combination of materials is used, the construction design often consists of monofilament for the inshore (wash) and offshore (wing) portions of the net, while the middle (bunt) is constructed of twisted nylong. Conversely, large mesh nets are constructed of all monofilament material. Despite the difference in construction, they are set and hauled similarly. Nets are deployed out of the stern of surf dories and set perpendicular to the shoreline. A truck is generally used to haul the net ashore by attaching one end of the net to the truck and pulling it ashore while the other end remains fixed until the end of the haul.

NC fishers previously referred to this type of gear as a beach seine because of the way the gear was set and hauled. Because of the manner in which both large and small mesh nets are constructed (i.e., inclusion of monofilament material) and fished, they operate as gillnets rather than beach seines, and NMFS considers them a component of the Category I, 'Mid-Atlantic gillnet fishery.' Once NCDMF's regulation is effective, the Atlantic Ocean striped bass beach seine fishery will be the only fishery included under the 'Mid-Atlantic haul/beach seine fishery' for NC. Therefore, small and large mesh nets constructed of monofilament and multifilament material will be considered part of the Category I ''Mid-Atlantic gillnet fishery.''

In addition to the NC component as described above, the 'Mid-Atlantic haul/beach seine fishery' also includes haul seining in other areas of the mid-Atlantic, including VA, MD, and NJ. Because the net materials and fishing practices of the Atlantic Ocean striped bass beach seine fishery in NC are different from haul seining in other areas, NMFS may consider splitting this fishery in the future.''

**List of Species That are Incidentally Seriously Injured or Killed**

NMFS proposes to add white-side dolphin (Western North Atlantic [WNA] stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category II ''Mid-Atlantic bottom trawl fishery.'' Information presented in the 2007 Final SAR states that one Atlantic white-sided dolphin incidental take was observed in 1997 and another in 2005.

NMFS proposes to add harbor seal (WNA stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category II ''Northeast bottom trawl fishery.'' Recent information presented in the 2007 final SAR states that two harbor seal mortalities were observed between 2001 and 2005.

NMFS proposes to add bottlenose dolphins (WNA coastal stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category III ''FL spiny lobster trap/pot fishery.'' The 2008 LOF includes the bottlenose dolphins (Eastern GMX coastal stock) as incidentally killed or injured in the fishery, but stranding data indicate that, though rare, interactions are also occurring in the Atlantic. Two bottlenose dolphins are known to have stranded with spiny lobster trap/pot gear in Miami Beach, FL: one on October 4, 1997, and one on August 17, 2007. These animals fall within the WNA coastal bottlenose dolphin stock's Central Florida Management Unit, which currently has an unknown PBR (2007 final SAR). Therefore, NMFS cannot determine whether this fishery requires reclassification until more information is available. There is no observer program for this fishery.

NMFS proposes to add bottlenose dolphins (WNA coastal stock) to the list of marine mammal species and stocks incidentally injured or killed in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery.'' The 2008 LOF states that there are no documented marine mammal interactions with this fishery. However, stranding data indicate that bottlenose dolphins interact with this fishery. Two bottlenose dolphins stranded with stone crab trap/pot gear: one in Biscayne Bay, FL, on May 5, 2003, and one in Miami Beach, FL, on November 21, 2006. These animals fall within the WNA coastal bottlenose dolphin stock's

Central Florida Management Unit, which currently has an unknown PBR (2007 final SAR). Therefore, NMFS cannot determine whether this fishery requires reclassification until more information is available. There is no observer program for this fishery.

**List of Fisheries**

The following tables set forth the proposed list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. In Tables 1 and 2, the estimated number of vessels/participants in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used. For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held by fishers. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data at this time.

Tables 1, 2, and 3 also list the marine mammal species and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries may not be verified. NMFS has designated those stocks driving a fishery's classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''1≥after the stock's name.

In Tables 1 and 2, there are several fisheries classified in Category II that have no recent documented injuries or mortalities of marine mammals, or that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level. NMFS has classified these fisheries by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2. NMFS has designated those fisheries originally listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, and therefore operate within U.S. waters and on the high seas. NMFS has designated those fisheries in each Table by a ''*'' after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the High Seas; Table 4 lists fisheries affected by Take Reduction Teams or Plans.

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Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| CATEGORY I | | |
| GILLNET FISHERIES: | | |
| CA/OR thresher shark/swordfish drift gillnet (≥ 14 in mesh) * | 85 | California sea lion, U.S.<br>Long-beaked common dolphin, CA<br>Northern elephant seal, CA breeding<br>Northern right-whale dolphin, CA/OR/WA<br>Pacific white-sided dolphin, CA/OR/WA<br>Risso's dolphin, CA/OR/WA<br>Short-beaked common dolphin, CA/OR/WA<br>Short-finned pilot whale, CA/OR/WA[1] |
| LONGLINE/SET LINE FISHERIES: | | |
| HI deep-set (tuna target) longline/set line | 129 | Blainville's beaked whale, HI<br>Bottlenose dolphin, HI<br>Bryde's whale, HI<br>False killer whale, HI[1]<br>Humpback whale, Central North Pacific<br>Pantropical spotted dolphin, HI<br>Risso's dolphin, HI<br>Short-finned pilot whale, HI<br>Spinner dolphin, HI<br>Sperm whale, HI<br>Striped dolphin, HI |
| CATEGORY II | | |
| GILLNET FISHERIES: | | |
| CA halibut/white seabass and other species set gillnet (>3.5 in mesh) | 58 | California sea lion, U.S.[1]<br>Harbor seal, CA[1]<br>Long-beaked common dolphin, CA<br>Northern elephant seal, CA breeding<br>Sea otter, CA<br>Short-beaked common dolphin, CA/OR/WA |
| | | |
| AK Bristol Bay salmon drift gillnet[2] | 1,862 | Beluga whale, Bristol Bay<br>Gray whale, Eastern North Pacific<br>Harbor seal, Bering Sea<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, North Pacific<br>Spotted seal, AK<br>Steller sea lion, Western U.S. |
| AK Bristol Bay salmon set gillnet[2] | 983 | Beluga whale, Bristol Bay<br>Gray whale, Eastern North Pacific<br>Harbor seal, Bering Sea<br>Northern fur seal, Eastern Pacific<br>Spotted seal, AK |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| AK Cook Inlet salmon set gillnet | 738 | Beluga whale, Cook Inlet<br>Dall's porpoise, AK<br>Harbor porpoise, GOA<br>Harbor seal, GOA<br>Humpback whale, Central North Pacific[1]<br>Steller sea lion, Western U.S. |
| AK Cook Inlet salmon drift gillnet | 571 | Beluga whale, Cook Inlet<br>Dall's porpoise, AK<br>Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Steller sea lion, Western U.S. |
| AK Kodiak salmon set gillnet | 188 | Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Sea otter, Southwest AK<br>Steller sea lion, Western U.S. |
| AK Peninsula/Aleutian Islands salmon drift gillnet[2] | 162 | Dall's porpoise, AK<br>Harbor porpoise, GOA<br>Harbor seal, GOA<br>Northern fur seal, Eastern Pacific |
| AK Peninsula/Aleutian Islands salmon set gillnet[2] | 115 | Harbor porpoise, Bering Sea<br>Steller sea lion, Western U.S. |
| AK Prince William Sound salmon drift gillnet | 537 | Dall's porpoise, AK<br>Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, North Pacific<br>Sea Otter, South Central AK<br>Steller sea lion, Western U.S.[1] |
| AK Southeast salmon drift gillnet | 476 | Dall's porpoise, AK<br>Harbor porpoise, Southeast AK<br>Harbor seal, Southeast AK<br>Humpback whale, Central North Pacific[1]<br>Pacific white-sided dolphin, North Pacific<br>Steller sea lion, Eastern U.S. |
| AK Yakutat salmon set gillnet[2] | 166 | Gray whale, Eastern North Pacific<br>Harbor seal, Southeast AK<br>Humpback whale, Central North Pacific (Southeast AK) |
| CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size ≥3.5 in and <14 in) | 24 | California sea lion, U.S.<br>Long-beaked common dolphin, CA[1]<br>Short-beaked common dolphin, CA/OR/WA |
| WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded) | 210 | Dall's porpoise, CA/OR/WA<br>Harbor porpoise, inland WA[1]<br>Harbor seal, WA inland |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| PURSE SEINE FISHERIES: | | |
| AK Southeast salmon purse seine | 415 | Humpback whale, Central North Pacific[1] |
| AK Cook Inlet salmon purse seine | 82 | Humpback whale, Central North Pacific[1] |
| AK Kodiak salmon purse seine | 370 | Humpback whale, Central North Pacific[1] |
| CA anchovy, mackerel, sardine purse seine | 63 | Bottlenose dolphin, CA/OR/WA offshore[1]<br>California sea lion, U.S.<br>Harbor seal, CA |
| CA squid purse seine | 71 | Common dolphin, unknown<br>Short-finned pilot whale, CA/OR/WA[1] |
| CA tuna purse seine[2] * | 10 | None documented |
| TRAWL FISHERIES: | | |
| AK Bering Sea, Aleutian Islands flatfish trawl | 34 | Bearded seal, AK<br>Harbor porpoise, Bering Sea<br>Harbor seal, Bering Sea<br>Killer whale, AK resident[1]<br>Northern fur seal, Eastern North Pacific<br>Spotted seal, AK<br>Steller sea lion, Western U.S.[1]<br>Walrus, AK |
| AK Bering Sea, Aleutian Islands pollock trawl | 95 | Dall's porpoise, AK<br>Harbor seal, AK<br>Humpback whale, Central North Pacific[1]<br>Humpback whale, Western North Pacific[1]<br>Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1]<br>Minke whale, AK<br>Ribbon seal, AK<br>Spotted seal, AK<br>Steller sea lion, Western U.S.[1] |
| LONGLINE/SET LINE FISHERIES: | | |
| HI shallow-set (swordfish target) longline/ set line | 28 | Bottlenose dolphin, stock unknown<br>Bryde's whale, stock unknown<br>Humpback whale, Central North Pacific[1]<br>Risso's dolphin, stock unknown |
| AK Bering Sea, Aleutian Islands Pacific cod longline | 54 | Killer whale, AK resident[1]<br>Ribbon seal, AK<br>Steller sea lion, Western U.S. |
| CA pelagic longline[2] * | 6 | California sea lion, U.S.<br>Risso's dolphin, CA/OR/WA |
| POT, RING NET, AND TRAP FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| AK Bering Sea sablefish pot | 6 | Humpback whale, Central North Pacific[1]<br>Humpback whale, Western North Pacific[1] |
| CA spot prawn pot | 29 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| CA Dungeness crab pot[2] | 625 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA |
| OR Dungeness crab pot | 433 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| WA/OR/CA sablefish pot | 155 | Humpback whale, CA/OR/WA[1] |
| CATEGORY III | | |
| GILLNET FISHERIES: | | |
| AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet | 824 | Harbor porpoise, Bering Sea |
| AK miscellaneous finfish set gillnet | 3 | Steller sea lion, Western U.S. |
| AK Prince William Sound salmon set gillnet | 30 | Harbor seal, GOA<br>Steller sea lion, Western U.S. |
| AK roe herring and food/bait herring gillnet | 986 | None documented |
| CA set gillnet (mesh size <3.5 in) | 304 | None documented |
| HI inshore gillnet | 5 | Bottlenose dolphin, HI<br>Spinner dolphin, HI |
| WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing) | 24 | Harbor seal, OR/WA coast |
| WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet | 913 | None documented |
| WA/OR lower Columbia River (includes tributaries) drift gillnet | 110 | California sea lion, U.S.<br>Harbor seal, OR/WA coast |
| WA Willapa Bay drift gillnet | 82 | Harbor seal, OR/WA coast<br>Northern elephant seal, CA breeding |
| PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES: | | |
| AK Metlakatla salmon purse seine | 10 | None documented |
| AK miscellaneous finfish beach seine | 1 | None documented |
| AK miscellaneous finfish purse seine | 0 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| AK octopus/squid purse seine | 0 | None documented |
| AK roe herring and food/bait herring beach seine | 4 | None documented |
| AK roe herring and food/bait herring purse seine | 361 | None documented |
| AK salmon beach seine | 31 | None documented |
| AK salmon purse seine (except Southeast Alaska, which is in Category II) | 936 | Harbor seal, GOA |
| WA/OR sardine purse seine | 42 | None documented |
| HI Kona crab loop net | 42 | None documented |
| HI opelu/akule net | 12 | None documented |
| HI inshore purse seine | 23 | None documented |
| HI throw net, cast net | 14 | None documented |
| WA (all species) beach seine or drag seine | 235 | None documented |
| WA/OR herring, smelt, squid purse seine or lampara | 130 | None documented |
| WA salmon purse seine | 440 | None documented |
| WA salmon reef net | 53 | None documented |
| DIP NET FISHERIES: | | |
| CA squid dip net | 115 | None documented |
| WA/OR smelt, herring dip net | 119 | None documented |
| MARINE AQUACULTURE FISHERIES: | | |
| CA marine shellfish aquaculture | unknown | None documented |
| CA salmon enhancement rearing pen | >1 | None documented |
| CA white seabass enhancement net pens | 13 | California sea lion, U.S. |
| HI offshore pen culture | 2 | None documented |
| OR salmon ranch | 1 | None documented |
| WA/OR salmon net pens | 14 | California sea lion, U.S.<br>Harbor seal, WA inland waters |
| TROLL FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries * | 1,302 (102 AK) | None documented |
| AK salmon troll | 2,045 | Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| American Samoa tuna troll | <50 | None documented |
| CA/OR/WA salmon troll | 4,300 | None documented |
| Commonwealth of the Northern Mariana Islands tuna troll | 88 | None documented |
| Guam tuna troll | 401 | None documented |
| HI trolling, rod and reel | 1,321 | None documented |
| LONGLINE/SET LINE FISHERIES: | | |
| AK Bering Sea, Aleutian Islands Greenland turbot longline | 29 | Killer whale, AK resident |
| AK Bering Sea, Aleutian Islands rockfish longline | 0 | None documented |
| AK Bering Sea, Aleutian Islands sablefish longline | 28 | None documented |
| AK Gulf of Alaska halibut longline | 1,302 | None documented |
| AK Gulf of Alaska Pacific cod longline | 440 | None documented |
| AK Gulf of Alaska rockfish longline | 0 | None documented |
| AK Gulf of Alaska sablefish longline | 291 | Sperm whale, North Pacific<br>Steller sea lion, Eastern U.S. |
| AK halibut longline/set line (State and Federal waters) | 2,521 | Steller sea lion, Western U.S. |
| AK octopus/squid longline | 2 | None documented |
| AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish) | 1,448 | None documented |
| American Samoa longline | 60 | None documented |
| WA/OR/CA groundfish, bottomfish longline/set line | 367 | None documented |
| WA/OR North Pacific halibut longline/set line | 350 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| TRAWL FISHERIES: | | |
| AK Bering Sea, Aleutian Islands Atka mackerel trawl | 9 | Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands Pacific cod trawl | 93 | Harbor seal, Bering Sea<br>Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands rockfish trawl | 10 | None documented |
| AK Gulf of Alaska flatfish trawl | 41 | None documented |
| AK Gulf of Alaska Pacific cod trawl | 62 | Steller sea lion, Western U.S. |
| AK Gulf of Alaska pollock trawl | 62 | Fin whale, Northeast Pacific<br>Northern elephant seal, North Pacific<br>Steller sea lion, Western U.S. |
| AK Gulf of Alaska rockfish trawl | 34 | None documented |
| AK food/bait herring trawl | 4 | None documented |
| AK miscellaneous finfish otter or beam trawl | 317 | None documented |
| AK shrimp otter trawl and beam trawl (statewide and Cook Inlet) | 32 | None documented |
| AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl | 2 | None documented |
| CA halibut bottom trawl | 53 | None documented |
| WA/OR/CA groundfish trawl | 160-180 | California sea lion, U.S.<br>Dall's porpoise, CA/OR/WA<br>Harbor seal, OR/WA coast<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, CA/OR/WA<br>Steller sea lion, Eastern U.S. |
| WA/OR/CA shrimp trawl | 300 | None documented |
| POT, RING NET, AND TRAP FISHERIES: | | |
| AK statewide miscellaneous finfish pot | 293 | None documented |
| AK Aleutian Islands sablefish pot | 8 | None documented |
| AK Bering Sea, Aleutian Islands Pacific cod pot | 68 | None documented |
| AK Bering Sea, Aleutian Islands crab pot | 297 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| AK Gulf of Alaska crab pot | 300 | None documented |
| AK Gulf of Alaska Pacific cod pot | 154 | Harbor seal, GOA |
| AK Southeast Alaska crab pot | 433 | Humpback whale, Central North Pacific (Southeast AK) |
| AK Southeast Alaska shrimp pot | 283 | Humpback whale, Central North Pacific (Southeast AK) |
| AK shrimp pot, except Southeast | 15 | None documented |
| AK octopus/squid pot | 27 | None documented |
| AK snail pot | 1 | None documented |
| CA spiny lobster, coonstripe shrimp, finfish, rock crab, tanner crab pot or trap | 530 | Gray whale, Eastern North Pacific<br>Harbor seal, CA |
| OR/CA hagfish pot or trap | 54 | None documented |
| WA Dungeness crab pot | 288 | Gray whale, Eastern North Pacific |
| WA/OR shrimp pot/trap | 254 | None documented |
| HI crab trap | 22 | None documented |
| HI fish trap | 19 | None documented |
| HI lobster trap | 0 | Hawaiian monk seal |
| HI shrimp trap | 5 | None documented |
| HANDLINE AND JIG FISHERIES: | | |
| AK miscellaneous finfish handline/hand troll and mechanical jig | 445 | None documented |
| AK North Pacific halibut handline/hand troll and mechanical jig | 228 | None documented |
| AK octopus/squid handline | 0 | None documented |
| American Samoa bottomfish | <50 | None documented |
| Commonwealth of the Northern Mariana Islands bottomfish | <50 | None documented |
| Guam bottomfish | 200 | None documented |
| HI aku boat, pole and line | 4 | None documented |
| HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish | 300 | Hawaiian monk seal |
| HI inshore handline | 307 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| HI tuna handline | 298 | Hawaiian monk seal |
| WA groundfish, bottomfish jig | 679 | None documented |
| Western Pacific squid jig | 6 | None documented |
| HARPOON FISHERIES: | | |
| CA swordfish harpoon | 30 | None documented |
| POUND NET/WEIR FISHERIES: | | |
| AK herring spawn on kelp pound net | 415 | None documented |
| AK Southeast herring roe/food/bait pound net | 6 | None documented |
| WA herring brush weir | 1 | None documented |
| BAIT PENS: | | |
| WA/OR/CA bait pens | 13 | California sea lion, U.S. |
| DREDGE FISHERIES: | | |
| Coastwide scallop dredge | 108 (12 AK) | None documented |
| DIVE, HAND/MECHANICAL COLLECTION FISHERIES: | | |
| AK abalone | 0 | None documented |
| AK clam | 156 | None documented |
| WA herring spawn on kelp | 4 | None documented |
| AK dungeness crab | 2 | None documented |
| AK herring spawn on kelp | 266 | None documented |
| AK urchin and other fish/shellfish | 570 | None documented |
| CA abalone | 0 | None documented |
| CA sea urchin | 583 | None documented |
| HI black coral diving | 1 | None documented |
| HI fish pond | N/A | None documented |
| HI handpick | 37 | None documented |
| HI lobster diving | 19 | None documented |
| HI squiding, spear | 91 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| WA/CA kelp | 4 | None documented |
| WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection | 637 | None documented |
| WA shellfish aquaculture | 684 | None documented |
| COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: | | |
| AK/WA/OR/CA commercial passenger fishing vessel | >7,000 (2,702 AK) | Killer whale, stock unknown<br>Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| HI charter vessel | 114 | None documented |
| LIVE FINFISH/SHELLFISH FISHERIES: | | |
| CA finfish and shellfish live trap/hook-and-line | 93 | None documented |

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] - Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] - Fishery classified by analogy; * - Fishery has an associated high seas component listed in Table 3.

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| CATEGORY I | | |
| GILLNET FISHERIES: | | |
| Mid-Atlantic gillnet | >670 | Bottlenose dolphin, WNA coastal[1]<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Gray seal, WNA<br>Harbor porpoise, GME/BF[1]<br>Harbor seal, WNA<br>Harp seal, WNA<br>Humpback whale, Gulf of Maine[1]<br>Long-finned pilot whale, WNA<br>Minke whale, Canadian east coast<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA |
| Northeast sink gillnet | 341 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Fin whale, WNA<br>Gray seal, WNA<br>Harbor porpoise, GME/BF[1]<br>Harbor seal, WNA<br>Harp seal, WNA<br>Hooded seal, WNA<br>Humpback whale, Gulf of Maine[1]<br>Minke whale, Canadian east coast[1]<br>North Atlantic right whale, WNA[1]<br>Risso's dolphin, WNA<br>White-sided dolphin, WNA |
| LONGLINE FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline * | 94 | Atlantic spotted dolphin, Northern GMX<br>Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, Northern GMX continental shelf<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Cuvier's beaked whale, WNA<br>Long-finned pilot whale, WNA[1]<br>Mesoplodon beaked whale, WNA<br>Northern bottlenose whale, WNA<br>Pantropical spotted dolphin, Northern GMX<br>Pantropical spotted dolphin, WNA<br>Pygmy sperm whale, WNA[1]<br>Risso's dolphin, Northern GMX<br>Risso's dolphin, WNA<br>Short-finned pilot whale, Northern GMX<br>Short-finned pilot whale, WNA[1] |
| TRAP/POT FISHERIES: | | |
| Northeast/Mid-Atlantic American lobster trap/pot | 13,000 | Fin whale, WNA<br>Harbor seal, WNA<br>Humpback whale, Gulf of Maine[1]<br>Minke whale, Canadian east coast[1]<br>North Atlantic right whale, WNA[1] |
| CATEGORY II | | |
| GILLNET FISHERIES: | | |
| Chesapeake Bay inshore gillnet[2] | 45 | None documented |
| Gulf of Mexico gillnet[2] | 724 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX bay, sound, and estuarine<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Western GMX coastal |
| NC inshore gillnet | 94 | Bottlenose dolphin, WNA coastal[1] |
| Northeast anchored float gillnet[2] | 133 | Harbor seal, WNA<br>Humpback whale, Gulf of Maine<br>White-sided dolphin, WNA |
| Northeast drift gillnet[2] | unknown | None documented |
| Southeast Atlantic gillnet[2] | 779 | Bottlenose dolphin, WNA coastal |
| Southeastern U.S. Atlantic shark gillnet * | 30 | Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, WNA coastal[1]<br>North Atlantic right whale, WNA |
| TRAWL FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| Mid-Atlantic mid-water trawl (including pair trawl) | 620 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Long-finned pilot whale, WNA<br>Risso's dolphin, WNA<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA[1] |
| Mid-Atlantic bottom trawl | >1,000 | Common dolphin, WNA[1]<br>Long-finned pilot whale, WNA[1]<br>Short-finned pilot whale, WNA[1]<br>White-sided dolphin, WNA |
| Mid-Atlantic flynet[2] | 21 | None documented |
| Northeast mid-water trawl (including pair trawl) | 17 | Harbor seal, WNA<br>Long-finned pilot whale, WNA[1]<br>Short-finned pilot whale, WNA[1]<br>White-sided dolphin, WNA |
| Northeast bottom trawl | 1,052 | Common dolphin, WNA<br>Harbor porpoise, GME/BF<br>Harbor seal, WNA<br>Harp seal, WNA<br>Long-finned pilot whale, WNA<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA[1] |
| TRAP/POT FISHERIES: | | |
| Atlantic blue crab trap/pot | >16,000 | Bottlenose dolphin, WNA coastal[1]<br>West Indian manatee, FL[1] |
| Atlantic mixed species trap/pot[2] | unknown | Fin whale, WNA<br>Humpback whale, Gulf of Maine |
| PURSE SEINE FISHERIES: | | |
| Gulf of Mexico menhaden purse seine | 40-42 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX bay, sound, estuarine<br>Bottlenose dolphin, Northern GMX coastal[1]<br>Bottlenose dolphin, Western GMX coastal |
| Mid-Atlantic menhaden purse seine[2] | 22 | Bottlenose dolphin, WNA coastal |
| HAUL/BEACH SEINE FISHERIES: | | |
| Mid-Atlantic haul/beach seine | 25 | Bottlenose dolphin, WNA coastal[1] |
| NC long haul seine | 33 | Bottlenose dolphin, WNA coastal[1] |
| STOP NET FISHERIES: | | |
| NC roe mullet stop net | 13 | Bottlenose dolphin, WNA coastal[1] |
| POUND NET FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| VA pound net | 187 | Bottlenose dolphin, WNA coastal[1] |
| CATEGORY III | | |
| GILLNET FISHERIES: | | |
| Caribbean gillnet | >991 | Dwarf sperm whale, WNA<br>West Indian manatee, Antillean |
| DE River inshore gillnet | 60 | None documented |
| Long Island Sound inshore gillnet | 20 | None documented |
| RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet | 32 | None documented |
| Southeast Atlantic inshore gillnet | unknown | None documented |
| TRAWL FISHERIES: | | |
| Atlantic shellfish bottom trawl | 972 | None documented |
| Gulf of Mexico butterfish trawl | 2 | Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, Northern GMX continental shelf |
| Gulf of Mexico mixed species trawl | 20 | None documented |
| GA cannonball jellyfish trawl | 1 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | >18,000 | Bottlenose dolphin, WNA coastal<br>Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, Western GMX coastal<br>Bottlenose dolphin, GMX bay, sound, estuarine<br>West Indian Manatee, FL |
| MARINE AQUACULTURE FISHERIES: | | |
| Finfish aquaculture | 48 | Harbor seal, WNA |
| Shellfish aquaculture | unknown | None documented |
| PURSE SEINE FISHERIES: | | |
| Gulf of Maine Atlantic herring purse seine | 30 | Harbor seal, WNA<br>Gray seal, WNA |
| Gulf of Maine menhaden purse seine | 50 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| FL West Coast sardine purse seine | 10 | Bottlenose dolphin, Eastern GMX coastal |
| U.S. Atlantic tuna purse seine * | 5 | Long-finned pilot whale, WNA<br>Short-finned pilot whale, WNA |
| LONGLINE/HOOK-AND-LINE FISHERIES: | | |
| Northeast/Mid-Atlantic bottom longline/hook-and-line | 46 | None documented |
| Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon | 26,223 | Humpback whale, Gulf of Maine |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line | >5,000 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line | <125 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, Northern GMX continental shelf |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon | 1,446 | None documented |
| U.S. Atlantic, Gulf of Mexico trotline | unknown | None documented |
| TRAP/POT FISHERIES | | |
| Caribbean mixed species trap/pot | >501 | None documented |
| Caribbean spiny lobster trap/pot | >197 | None documented |
| FL spiny lobster trap/pot | 2,145 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, WNA coastal |
| Gulf of Mexico blue crab trap/pot | 4,113 | Bottlenose dolphin, Western GMX coastal<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX Bay, Sound, & Estuarine<br>West Indian manatee, FL |
| Gulf of Mexico mixed species trap/pot | unknown | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot | 10 | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot | 4,453 | Bottlenose dolphin, WNA coastal |
| U.S. Mid-Atlantic eel trap/pot | >700 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| STOP SEINE/WEIR/POUND NET FISHERIES: | | |
| Gulf of Maine herring and Atlantic mackerel stop seine/weir | 50 | Gray seal, Northwest North Atlantic<br>Harbor porpoise, GME/BF<br>Harbor seal, WNA<br>Minke whale, Canadian East Coast<br>White-sided dolphin, WNA |
| U.S. Mid-Atlantic crab stop seine/weir | 2,600 | None documented |
| U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net) | 751 | None documented |
| DREDGE FISHERIES: | | |
| Gulf of Maine mussel | >50 | None documented |
| Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge | 233 | None documented |
| U.S. Mid-Atlantic/Gulf of Mexico oyster | 7,000 | None documented |
| U.S. Mid-Atlantic offshore surf clam and quahog dredge | 100 | None documented |
| HAUL/BEACH SEINE FISHERIES: | | |
| Caribbean haul/beach seine | 15 | West Indian manatee, Antillean |
| Gulf of Mexico haul/beach seine | unknown | None documented |
| Southeastern U.S. Atlantic haul/beach seine | 25 | None documented |
| DIVE, HAND/MECHANICAL COLLECTION FISHERIES: | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection | 20,000 | None documented |
| Gulf of Maine urchin dive, hand/mechanical collection | >50 | None documented |
| Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net | unknown | None documented |
| COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel | 4,000 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Western GMX coastal<br>Bottlenose dolphin, WNA coastal |

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic; [1] - Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] - Fishery classified by analogy; * - Fishery has an associated high seas component listed in Table 3.

Table 3 - List of Fisheries Commercial Fisheries on the High Seas

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| Category I | | |
| DRIFT GILLNET FISHERIES: | | |
| Pacific Highly Migratory Species * ^ | 5 | Long-beaked common dolphin, CA<br>Northern right-whale dolphin, CA/OR/WA<br>Pacific white-sided dolphin, CA/OR/WA<br>Risso's dolphin, CA/OR/WA<br>Short-beaked common dolphin, CA/OR/WA<br>Short-finned pilot whale, CA/OR/WA |
| LONGLINE FISHERIES: | | |
| Atlantic Highly Migratory Species * + | 75 | Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Cuvier's beaked whale, WNA<br>Long-finned pilot whale, WNA<br>Mesoplodon beaked whale, WNA<br>Pygmy sperm whale, WNA<br>Risso's dolphin, WNA<br>Short-finned pilot whale, WNA |
| Western Pacific Pelagic (Deep-set component) * ^ | 129 | Blainville's beaked whale, HI<br>Bottlenose dolphin, HI<br>Byrde's whale, HI<br>False killer whale, HI<br>Humpback whale, Central North Pacific<br>Pantropical spotted dolphin, HI<br>Risso's dolphin, HI<br>Short-finned pilot whale, HI<br>Spinner dolphin, HI<br>Sperm whale, HI<br>Striped dolphin, HI |
| Category II | | |
| DRIFT GILLNET FISHERIES: | | |
| Atlantic Highly Migratory Species * ^ | 1 | Atlantic spotted dolphin, WNA |
| Unspecified | 1 | Undetermined |
| GILLNET NEI FISHERIES: | | |
| Pacific Highly Migratory Species | 1 | Undetermined |
| TRAWL FISHERIES: | | |
| Atlantic Highly Migratory Species ** | 3 | Undetermined |

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| Pacific Highly Migratory Species ** | 14 | Undetermined |
| South Pacific Albacore Troll | 5 | Undetermined |
| Western Pacific Pelagic | 11 | Undetermined |
| Unspecified | 22 | Undetermined |
| PURSE SEINE FISHERIES: | | |
| Pacific Highly Migratory Species * ^ | 5 | None Documented |
| South Pacific Albacore Troll | 1 | Undetermined |
| South Pacific Tuna Fisheries | 23 | Undetermined |
| Western Pacific Pelagic | 4 | Undetermined |
| POT VESSEL FISHERIES: | | |
| Pacific Highly Migratory Species ** | 8 | Undetermined |
| South Pacific Albacore Troll | 5 | Undetermined |
| Western Pacific Pelagic | 8 | Undetermined |
| LONGLINE FISHERIES: | | |
| Pacific Highly Migratory Species * + | 56 | Risso's dolphin, CA/OR/WA |
| South Pacific Albacore Troll | 12 | Undetermined |
| South Pacific Tuna Fisheries ** | 2 | Undetermined |
| Western Pacific Pelagic (Shallow-set component) * ^ | 28 | Bottlenose dolphin, stock unknown<br>Bryde's whale, stock unknown<br>Humpback whale, Central North Pacific<br>Risso's dolphin, stock unknown |
| Unspecified | 4 | Undetermined |
| HANDLINE/POLE AND LINE FISHERIES: | | |
| Atlantic Highly Migratory Species | 2 | Undetermined |
| Pacific Highly Migratory Species | 18 | Undetermined |
| South Pacific Albacore Troll | 7 | Undetermined |
| Western Pacific Pelagic | 8 | Undetermined |
| SEINE-HANDLINE FISHERIES: | | |
| Pacific Highly Migratory Species | 1 | Undetermined |
| TROLL FISHERIES: | | |

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed/injured |
|---|---|---|
| Atlantic Highly Migratory Species | 5 | Undetermined |
| South Pacific Albacore Troll | 45 | Undetermined |
| South Pacific Tuna Fisheries ** | 1 | Undetermined |
| Western Pacific Pelagic | 44 | Undetermined |
| Unspecified | 9 | Undetermined |
| LINERS NEI FISHERIES: | | |
| Pacific Highly Migratory Species ** | 3 | Undetermined |
| South Pacific Albacore Troll | 1 | Undetermined |
| Western Pacific Pelagic | 2 | Undetermined |
| DREDGE FISHERIES: | | |
| Unspecified | 2 | Undetermined |
| FACTORY MOTHERSHIP FISHERIES: | | |
| Western Pacific Pelagic | 1 | Undetermined |
| MULTIPURPOSE VESSELS NEI FISHERIES: | | |
| Atlantic Highly Migratory Species | 1 | Undetermined |
| Pacific Highly Migratory Species ** | 9 | Undetermined |
| South Pacific Albacore Troll | 6 | Undetermined |
| Western Pacific Pelagic | 7 | Undetermined |
| FISHING VESSELS NEI FISHERIES: | | |
| Pacific Highly Migratory Species ** | 2 | Undetermined |
| South Pacific Albacore Troll | 1 | Undetermined |
| Western Pacific Pelagic | 2 | Undetermined |
| Category III | | |
| TROLL FISHERIES: | | |
| Pacific Highly Migratory Species * | 222 | None documented |
| PURSE SEINE FISHERIES: | | |
| Atlantic Highly Migratory Species * ^ | 1 | Long-finned pilot whales, WNA<br>Short finned pilot whales, WNA |

List of Terms, Abbreviations, and Symbols Used in Table 3:

GMX- Gulf of Mexico.
NEI - Not Elsewhere Identified;.
Unspecified - Identifies the number of valid high seas permits for a fishery that, as of 2004, is no longer authorized under the High Seas Fishery Compliance Act (HSFCA). Once these permits expire (valid for 5 years), fishers will be required to obtain a permit for one of the seven currently authorized HSFCA fisheries to continue to fish on the high seas.
WNA - Western North Atlantic.
* - Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ -The marine mammal species or stock listed as killed/injured in this fishery has been observed taken by this fishery on the high seas.
^ - The list of marine mammal species killed/injured in this fishery is identical to the list of marine mammal species killed/injured in U.S. waters component of the fishery, minus coastal stocks, because the marine mammal species are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

| Take Reduction Plans | Affected Fisheries |
|---|---|
| Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32 | Category I<br>Mid-Atlantic gillnet<br>Northeast/Mid-Atlantic American lobster trap/pot<br>Northeast sink gillnet<br><br>Category II<br>Atlantic blue crab trap/pot<br>Atlantic mixed species trap/pot<br>Northeast anchored float gillnet<br>Northeast drift gillnet<br>Southeast Atlantic gillnet<br>Southeastern U.S. Atlantic shark gillnet |
| Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35 | Category I<br>Mid-Atlantic gillnet<br><br>Category II<br>Atlantic blue crab trap/pot<br>Mid-Atlantic haul/beach seine<br>NC inshore gillnet<br>NC long haul seine<br>NC roe mullet stop net<br>Southeast Atlantic gillnet<br>Southeastern U.S. Atlantic shark gillnet<br>VA pound net |
| Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 and 229.34 | Category I<br>Mid-Atlantic gillnet<br>Northeast sink gillnet |
| Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31 | Category I<br>CA/OR thresher shark/swordfish drift gillnet (≥ 14 in mesh) |
| | |
| Take Reduction Teams | Affected Fisheries |
| Pelagic Longline Take Reduction Team (PLTRT) | Category I<br>Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline |
| Atlantic Trawl Gear Take Reduction Team (ATGTRT) | Category II<br>Mid-Atlantic Bottom Trawl<br>Mid-Atlantic Mid-Water Trawl (Including Pair Trawl)<br>Northeast Bottom Trawl<br>Northeast Mid-Water Trawl (Including Pair Trawl) |

For a description of each Take Reduction Team and copies of Take Reduction Plans, access:
http://www.nmfs.noaa.gov/pr/interactions/trt/

Table 5- Reports of Entangled Humpback Whales, January 1, 2002 - December 31, 2006

| CONFIRMED ENTANGLEMENT IN TRAP OR POT GEAR | | |
|---|---|---|
| Date | Area | Fishery (if known) and whale's condition |
| August 12, 2005 | Channel Islands | Entangled with crabpots running through mouth- seriously injured |
| September 26, 2005 | Monterey Bay | Entangled in spot prawn gear- seriously injured |
| December 11, 2005 | San Francisco area | Entangled with 12 pots and lines- seriously injured |
| September 3, 2006 | Monterey Bay | Entangled in sablefish gear, disentangled by divers- not seriously injured |
| UNCONFIRMED, BUT PROBABLE ENTANGLEMENT IN TRAP OR POT GEAR | | |
| May 24, 2006 | Charleston, OR | Entangled in crab pot gear, stranded on beach - mortality (carcass found near Garnier, OR on May 28, 2006) |
| UNCONFIRMED, BUT POSSIBLE ENTANGLEMENT IN TRAP OR POT GEAR | | |
| March 29, 2003 | Monterey Bay | Crabpot line and white float- seriously injured |
| August 31, 2003 | San Francisco area | Crabpot line with floats- seriously injured |
| June 29, 2006 | San Mateo | Unidentified pot/trap gear- seriously injured |
| CANNOT BE DETERMINED | | |
| May 27, 2003 | Channel Islands | 100 ft (330 m) of polypropylene line around fins- seriously injured |
| November 24, 2003 | Humboldt | Line wrapped around body- seriously injured |
| November 28, 2003 | Del Norte | Line wrapped around body- seriously injured |
| May 23, 2004 | Monterey Bay | While rope wrapped around body- seriously injured |
| April 25, 2006 | Channel Islands | net/rope fragment seen on animal- seriously injured |

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**Classification**

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. NMFS has estimated that approximately 44,200 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register with NMFS. Each region has integrated the MMPA registration process with existing state and Federal registration programs. Fishers who have a Federal or state fishery permit or landing license, or who are authorized through another related Federal or state fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee under the MMPA. Therefore, there are no direct costs to small entities under this proposed rule.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: June 9, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 08–1352 Filed 6–10–08; 3:04pm]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
Vol. 73, No. 115
Friday, June 13, 2008

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 10, 2008.

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

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

**Risk Management Agency**

*Title:* Multiple Peril Crop Insurance.

*OMB Control Number:* 0563–0053.

*Summary of Collection:* Previous amendments to the Federal Crop Insurance Act expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products and provided that crop insurance program operate on an actuarially sound basis, provided for independent review of crop insurance products by person experienced as actuaries and in underwriting, and required that the crop insurance program operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Federal Crop Insurance Corporation (FCIC) offers a Standard Reinsurance Agreement to eligible crop insurance companies under which FCIC will use data elements instead of standards forms.

*Need and Use of the Information:* FCIC requires crop acreage information to be submitted to the insurance agent by each producer on or before a specific date. The basic provision covers information such as the name of the crop, the number of timely planted acres, person sharing in the crop, location of the acreage, etc. This information is used to determine liability, premium and subsidy. Federal agencies, Risk Management Agency, crop insurance companies reinsured by FCIC, and other agencies that require such information in the performance of their duties may use this information. If the information were not collected by specified dates, the producers may not have insurance coverage or the amount of insurance may be reduced and the crop insurance program would not be administered in an actuarially sound manner.

*Description of Respondents:* Farms; business or other for-profit.

*Number of Respondents:* 1,167,516.

*Frequency of Responses:* Recordkeeping; Reporting: Quarterly; weekly; semi-annually; monthly; annually.

*Total Burden Hours:* 1,788,974.

**Charlene Parker,**

*Departmental Information Clearance Officer.*

[FR Doc. E8–13329 Filed 6–12–08; 8:45 am]
BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 10, 2008.

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

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

**Rural Business-Cooperative Service**

*Title:* Renewal Energy and Energy Efficiency Improvements Program.

*OMB Control Number:* 0570–0050.

*Summary of Collection:* This program is authorized under the Farm Security and Rural Investment Act of 2002 (Act) that established the Renewable Energy Systems and Energy Efficiency Improvements Program under title IX, Section 9006. The Act requires the Secretary of Agriculture to create a program to make direct loans, loan guarantees, and grants to farmers, ranchers, and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The program is designed to help farmers, ranchers, and rural small businesses reduce energy cost and consumption, develop new income streams, and help meet the nation's critical energy needs. The Act also mandates the maximum percentage the Rural Business-Cooperative Service (RBS) will provide in funding for these types of projects. Applicants wishing to apply for the grant or guaranteed loans will have to submit applications along with specified documents to the State Rural Energy Coordinator.

*Need and Use of the Information:* RBS will use the collected information to determine applicant eligibility, to determine project eligibility and feasibility, ensure compliance with applicable regulations, and to ensure that grantees/borrowers operate on a sound basis and use funds for authorized purposes. Without this collection of information RBS would be unable to meet the requirements of the Act and effectively administer the program.

This notice reflects an increase in figures to encompass the projected increase in applicants due to additional funding and public interest in the program that was not accounted for in the **Federal Register** notice published on January 9, 2008.

*Description of Respondents:* Farmers, ranchers, and business or other for-profit.

*Number of Respondents:* 1,507.

*Frequency of Responses:* Annually.

*Total Burden Hours:* 77,412.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–13330 Filed 6–12–08; 8:45 am]

**BILLING CODE 3410–XT–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## DEPARTMENT OF AGRICULTURE

## U.S. Forest Service

**[WO–300–9131–PP]**

## Notice of Availability of the Draft Programmatic Environmental Impact Statement for Leasing of Geothermal Resources in 11 Western States and Alaska and Notice of Public Hearings

**AGENCIES:** Bureau of Land Management, Interior; and U.S. Forest Service, Agriculture.

**ACTION:** Notice of Availability (NOA) of the Draft Programmatic Environmental Impact Statement for Leasing of Geothermal Resources in 11 Western States and Alaska and Notice of Public Hearings.

**SUMMARY:** In accordance with Section 202 of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's regulations implementing the NEPA (40 CFR 1500–1508), and applicable agency guidance, a Draft Programmatic Environmental Impact Statement (PEIS) has been prepared on the leasing of geothermal resources in 11 Western States and Alaska. The Department of the Interior, the Bureau of Land Management (BLM) and the Department of Agriculture, the Forest Service (FS) are co-lead agencies for the PEIS, and the Department of Energy (DOE) is a cooperating Federal agency.

In accordance with the Energy Policy Act of 2005 (Pub. L. 109–58, August 8, 2005), the agencies' goal is to make geothermal leasing decisions on pending lease applications submitted prior to January 1, 2005, and to facilitate geothermal leasing decisions on other existing and future lease applications and nominations for geothermal leasing on Federal lands. The planning area encompasses about 530 million acres of land with the potential for geothermal development in Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

**DATES:** To ensure comments will be considered, the BLM must receive written comments on the Draft PEIS within 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Public hearings will be held in 13 cities during June and July 2008. See the **SUPPLEMENTARY INFORMATION** section for meeting dates and locations.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: geothermal_EIS@blm.gov.*
- *Fax:* 1–866–625–0707.
- *US Mail:* Geothermal Programmatic EIS, c/o EMPSi, 182 Howard Street, Suite 110, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** For further information, including information on how to comment, contact Jack G. Peterson, Bureau of Land Management at (208) 373–4048, *Jack_G_Peterson@blm.gov* or Tracy Parker, Forest Service at (703) 605–4796, *tparker03@fs.fed.us*, or visit the PEIS Web site at *http://www.blm.gov/Geothermal_EIS*.

**SUPPLEMENTARY INFORMATION:** A copy of the Draft PEIS is available for review via the Internet from a link at *http://www.blm.gov/Geothermal_EIS*. Hardcopies are available for review at the BLM State and Field Offices. Electronic (on CD–ROM) and paper copies may also be obtained by contacting Jack Peterson at the aforementioned address and phone number.

*The PEIS consists of three volumes:* Volume I contains the PEIS and associated programmatic analyses; Volume II provides the additional site-specific environmental analysis for the pending lease applications; and Volume III contains the appendices.

The public is encouraged to provide comments on the Draft PEIS. In addition to the written comment period, the BLM and the FS will host 13 public meetings to collect additional comments. The public meeting dates and addresses are as follows:

1. June 16, 2008, 5:30 to 7:30 p.m., Denver, Colorado; PPA Event Center, 2105 Decatur Street.

2. June 17, 2008, 5:30 to 7:30 p.m., Cheyenne, Wyoming; Laramie County Main Library, Willow Room, 200 Pioneer Avenue.

3. June 18, 2008, 5:30 to 7:30 p.m., Helena, Montana; Lewis and Clark Main Library, 120 S. Last Chance Gulch.

4. June 19, 2008, 5:30 to 7:30 p.m., Boise, Idaho; Boise Public Library, 715 South Capitol Blvd.

5. June 23, 2008, 5:30 to 7:30 p.m., Seattle, Washington; Seattle Public Library, University Branch, 5009 Roosevelt Way, NE.

6. June 24, 2008, 5:30 to 7:30 p.m., Portland, Oregon; Multnomah County Library, Hillsdale Branch, 1525 SW Sunset Blvd.

7. June 25, 2008, 5:30 to 7:30 p.m., Davis, California; University of

California Davis Walter A. Buehler Alumni and Visitors Center, Mrak Hall Road.

8. July 8, 2008, 5:30 to 7:30 p.m., Anchorage, Alaska; Alaska Energy Authority, 813 W. Northern Lights Blvd.

9. July 9, 2008, 5:30 to 7:30 p.m., Fairbanks, Alaska; Fairbanks North Star Borough Library, 1215 Cowles Street.

10. July 14, 2008, 5:30 to 7:30 p.m., Reno, Nevada; Washoe County Library—Spanish Springs Branch, 7100 Pyramid Highway.

11. July 15, 2008, 5:30 to 7:30 p.m., Salt Lake City, Utah; Main Library, 210 East 400 South.

12. July 16, 2008, 5:30 to 7:30 p.m., Tucson, Arizona; Pima County Public Library, Dusenberry River Branch, 5605 E. River Road.

13. July 17, 2008, 5:30 to 7:30 p.m., Albuquerque, New Mexico; University of New Mexico, Conference Center, Room G, 1634 University NE.

Any changes to these dates or locations, and any other public involvement activities, will be announced at least 10 days in advance through local media and on the project Web site: *http://www.blm.gov/Geothermal_EIS*.

The Notice of Intent to prepare the PEIS was published on June 13, 2007, in the **Federal Register** (72 FR 32679). In accordance with the Energy Policy Act of 2005, the BLM and the FS propose to facilitate geothermal leasing on lands administered by the BLM (termed ''public lands'') and by the FS (National Forest System (NFS) lands) that have geothermal potential in the 11 western states and Alaska. Under the proposal, the BLM and the FS would do the following: (1) Identify public and NFS lands with geothermal potential for which geothermal leases may be issued, statutorily open lands, and for which issuance of geothermal leases is barred by operation of law, legally closed lands; (2) identify public lands that are administratively closed or open, and under what conditions; (3) develop a comprehensive list of stipulations, best management practices, and procedures to serve as consistent guidance for future geothermal leasing and development on public and NFS lands; (4) amend the BLM Resource Management Plans (RMPs) to adopt the resource allocations and procedures; and (5) issue or deny geothermal lease applications pending as of January 1, 2005.

The need for the action is to (1) Issue decisions on pending lease applications in accordance with the Energy Policy Act of 2005; (2) address other provisions of the Energy Policy Act of 2005, respond to other policy directives calling for clean and renewable energy (such as state renewable portfolio standards), and meet the increasing energy demands of the nation; and (3) facilitate geothermal leasing decisions on other existing and future lease applications and nominations on the Federal mineral estate. The purpose of the action is to (1) Complete the processing of active pending geothermal lease applications; (2) amend BLM land use plans to allocate lands with geothermal potential as being closed or open with minor to major constraints to leasing; and (3) provide suitable information to the FS to facilitate its subsequent consent decisions for BLM leasing on NFS lands.

Over 530 million acres of the western United States and Alaska have been identified as potentially containing geothermal resources suitable for commercial electrical generation and other direct uses, such as heating. Much of the resource base is held in the Federal mineral estate, for which the BLM has the delegated authority for processing and issuing geothermal leases. Some units or portions of the areas identified as having geothermal resource potential will not be developed because they are unavailable for leasing, either by statute, regulation or other authority. These designations are described at 43 CFR 3201.11, and include, but are not limited to: lands where the Secretary has determined that issuing a lease would cause unnecessary or undue degradation to public lands and resources; lands contained within a unit of the National Park System, for example, the geothermal features in and around Yellowstone National Park; wilderness areas; wilderness study areas; fish hatcheries; wildlife management areas; Indian trust lands; and other areas referred to in the above regulation.

Under the Proposed Action, the BLM and the FS would also apply discretionary closures to (1) Areas of Critical Environmental Concern (ACEC) where the BLM determines that geothermal leasing and development would be incompatible with the purposes for which the ACEC was designated, or those whose management plans expressly preclude new leasing; (2) National Conservation Areas, except the California Desert Conservation Area; (3) other lands in the BLM's National Landscape Conservation System, such as historic and scenic trails; and (4) military reservations where geothermal development would conflict with the military mission.

Approximately 142 million acres of public (BLM) lands and 106 million acres of NFS lands have geothermal potential. Based on the proposed closures, the BLM and the FS are proposing to allocate approximately 117 million acres of public lands and 75 million acres of NFS lands to geothermal leasing subject to existing laws, regulations, formal orders, stipulations attached to the lease form, and terms and conditions of the standard lease form. To protect special resource values, the BLM and the FS have developed a comprehensive list of stipulations, conditions of approval, and best management practices (BMPs).

In addition, a reasonably foreseeable development scenario (RFD) was prepared to predict future geothermal development trends. The RFD estimates a potential for 5,500 megawatts (MW) of new electrical generation capacity by 2015 through 110 new geothermal power plants, and an additional 6,600 MW from an additional 132 power plants by 2025. The RFD also recognizes the great potential for direct uses, including up to 270 communities being able to develop geothermal resources for heating buildings to offset the use of conventional energy sources.

The BLM and the FS administrative units that have geothermal resources within their boundaries and are included in the planning area for the PEIS are provided in Table 1. In order for geothermal resource leasing and development to take place on the public lands that the BLM manages, such activities must be provided for in the land use plan for the affected administrative unit. Therefore, land use plans for the affected BLM administrative units may be amended by this PEIS to address geothermal leasing. Adoption of the appropriate allocations, development scenarios, stipulations, and BMPs for specific administrative units will be done through the plan maintenance process; thereby allowing future leasing decisions to be made based on the amended plans. The FS will evaluate their land use plans and amend them as needed through a separate environmental review process.

TABLE 1.—BLM AND FOREST SERVICE ADMINISTRATIVE UNITS WITHIN THE PLANNING AREA

| State | BLM Field Office (or District) | National Forest |
|---|---|---|
| Alaska ..... | Anchorage, Central Yukon, Eastern Interior, Glennallen ..... | Tongass National Forest. |
| Arizona ..... | Arizona Strip, Hassayampa, Kingman, Lake Havasu, Lower Sonoran, Safford, Tucson, Yuma. | Apache-Sitgreaves National Forests, Coronado National Forest, Tonto National Forest. |
| California ..... | Alturas, Arcata, Bakersfield, Barstow, Bishop, Eagle Lake, El Centro, Folsom, Hollister, Needles, Palm Springs, Redding, Ridgecrest, Surprise, Ukiah. | Angeles National Forest, Cleveland National Forest, Eldorado National Forest, Humboldt-Toiyabe National Forest, Inyo National Forest, Klamath National Forest, Lassen National Forest, Los Padres National Forest, Mendocino National Forest, Modoc National Forest, Plumas National Forest, San Bernardino National Forest, Sequoia National Forest, Shasta Trinity National Forest, Sierra National Forest, Tahoe National Forest. |
| Colorado ..... | Columbine, Del Norte, Dolores, Glenwood Springs, Grand Junction, Gunnison, Kremmling, La Jara, Little Snake, Pagosa Springs, Royal Gorge, Saguache, Uncompahgre, White River. | Arapaho and Roosevelt National Forests, Grand Mesa, Uncompahgre and Gunnison National Forests, Medicine Bow-Routt National Forest, Pike-San Isabel National Forest, Rio Grande National Forest, San Juan National Forest, White River National Forest. |
| Idaho ..... | Bruneau, Burley, Challis, Cottonwood, Four Rivers, Jarbridge, Owyhee, Pocatello, Salmon, Shoshone, Upper Snake. | Boise National Forest, Caribou-Targhee National Forest, Clearwater National Forest, Nez Perce National Forest, Payette National Forest, Salmon-Challis National Forest, Sawtooth National Forest. |
| Montana ..... | Billings, Butte, Dillon, Lewistown, Malta, Miles City, Missoula ... | Beaverhead-Deerlodge National Forest, Bitterroot National Forest, Clearwater National Forest, Custer National Forest, Dixie National Forest, Gallatin National Forest, Helena National Forest, Lewis and Clark National Forest, Lolo National Forest. |
| New Mexico .. | Carlsbad, Farmington, N/A, Rio Puerco, Roswell, Soccoro, Taos. | Carson National Forest, Cibola National Forest, Gila National Forest, Lincoln National Forest, Santa Fe National Forest. |
| Nevada ..... | Battle Mountain, Carson City, Elko, Ely, Las Vegas, Winnemucca. | Humboldt-Toiyabe National Forest. |
| Oregon ..... | Burns, Eugene, Lakeview, Medford, Prineville, Roseburg, Salem, Vale. | Deschutes National Forest, Fremont-Winema National Forests, Malheur National Forest, Mt. Hood National Forest, Ochoco National Forest, Rogue River-Siskiyou National Forests, Umatilla National Forest, Umpqua National Forest, Wallowa-Whitman National Forest, Willamette National Forest. |
| Utah ..... | Cedar City, Fillmore, Kanab, Richfield, Salt Lake, St. George, Vernal. | Dixie National Forest, Fishlake National Forest, Uinta National Forest, Wasatch-Cache National Forest. |
| Washington ... | Spokane ..... | Gifford Pinchot National Forest, Mt Baker-Snoqualmie National Forest, Okanogan-Wenatchee National Forests, Umatilla National Forest. |
| Wyoming ..... | Buffalo, Casper, Cody, Kemmerer, Lander, Newcastle, Pinedale, Rawlins, Rock Springs, Worland. | Ashley National Forest, Bridger-Teton National Forest, Caribou-Targhee National Forest, Medicine Bow-Routt National Forest, Shoshone National Forest, Wasatch-Cache National Forest. |

In addition to the Proposed Action, the PEIS evaluates two other alternatives: The No Action Alternative and an alternative termed Leasing Near Transmission Lines. The No Action Alternative would allow the processing of pending geothermal lease applications; however, no land use plans would be amended. Therefore, lease applications would be evaluated on a case-by-case basis and would require additional environmental review and possible land use plan amendments.

The Leasing Near Transmission Lines Alternative was developed based on input from scoping. Under this alternative the scope of lands considered for leasing for commercial electrical generation would be limited to those lands that are near transmission lines.

This alternative also considers a larger buffer around Yellowstone National Park. While this alternative minimizes the potential footprint of tie-in transmission lines from power plants to distribution lines, it would limit the potential for geothermal energy generation.

In addition to the programmatic analysis, the PEIS provides site-specific environmental analysis for seven lease applications in Alaska, California, Nevada, Oregon, and Washington that were pending as of January 1, 2005. The alternatives evaluated for this analysis are issuing the lease or denying the lease (no action conditions).

Comments may be submitted in writing on the stated planning criteria using one of the methods listed in the **ADDRESSES** section. Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays. Comments will be available for review at the following Web site: *http://www.blm.gov/Geothermal_EIS*.

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 may request in your comment that we withhold your personal identifying information from

public review, we cannot guarantee that we will be able to do so.

**Jeff O. Holdren,**

*Acting Assistant Director, Minerals and Realty Management.*

**Gloria Manning,**

*Associate Deputy Chief for National Forest System, U.S. Forest Service.*

[FR Doc. E8–13365 Filed 6–12–08; 8:45 am]

**BILLING CODE 4310–10–P**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** Monday, June 9, 2008, 4 p.m.–4:15 p.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in a special session to review and discuss budgetary issues relating to U.S. Government-funded non-military international broadcasting. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

**FOR MORE INFORMATION CONTACT:** Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

Dated: June 10, 2008.

**Timi Nickerson Kenealy,**

*Acting Legal Counsel.*

[FR Doc. 08–1358 Filed 6–11–08; 3:22 pm]

**BILLING CODE 8610–01–P**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting; U.S. Government-Funded Nonmilitary International Broadcasting

**DATE AND TIME:** Tuesday, June 10, 2008, 2:30 p.m.–4:30 p.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9) (B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

June 3, 2008.

**Timi Nickerson Kenealy,**

*Acting Legal Counsel.*

[FR Doc. E8–13031 Filed 6–12–08; 8:45 am]

**BILLING CODE 8610–01–M**

## DEPARTMENT OF COMMERCE

## INTERNATIONAL TRADE ADMINISTRATION

**(C–570–938)**

### Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

**EFFECTIVE DATE:** June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** David Neubacher or Shelly Atkinson, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5823 and (202) 482–0116, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 5, 2008, the Department of Commerce (''the Department'') initiated the countervailing duty investigation of citric acid and certain citrate salts from the People's Republic of China. *See Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts from the People's Republic of China*, 73 FR 26960 (May 12, 2008). Currently, the preliminary determination is due no later than July 9, 2008.

#### Postponement of Due Date for Preliminary Determination

On June 6, 2008, the Department received a request from Archer Daniels Midland Company, Cargill, and Tate & Lyle Americas, Inc. (collectively, ''the petitioners'') to postpone the preliminary determination of the countervailing duty investigation of citric acid and certain citrate salts from the PRC. Under section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) (section 703(b) of the Act). Pursuant to section 351.205(e) of the Department's regulations, the petitioners' request for postponement of the preliminary determination was made 25 days or more before the scheduled date of the preliminary determination. Accordingly, we are extending the due date for the preliminary determination by 65 days to no later than September 12, 2008.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: June 6, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–13341 Filed 6–12–08; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Notice of Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of Invention Available for Licensing.

**SUMMARY:** The Department of Commerce's interest in the invention is

available for non-exclusive licensing, in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development. This invention was jointly invented by NIST employees and a NIST contractor. The invention will be jointly owned by NIST and one or more yet to be identified parties.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, *Attn:* Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–975–3482, or *e-mail: mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[NIST Docket Number: 07–015]

*Title:* Magneto-Optical Trap Ion Source (MOTIS).

*Abstract:* The invention consists of a new source for creating a focused ion beam. A magneto-optical trap serves as a source of cold atoms that are photo ionized to produce the ion source. Under appropriate conditions, the resulting ion cloud has temperature and spatial characteristics similar to that of the initial neutral atom cloud. An external electric field extracts the ions which can be focused using standard charged-particle optics. The cold temperatures achieved through laser cooling yield an ion beam with excellent characteristics which should allow for a beam resolution of 10 nm or less. The current produced from this source depends on the operating parameters of the MOT and can range from single ions on demand to over 100 pA, a much wider range than is currently possible. In addition, the wide range of elements that can be laser cooled greatly extends the possibilities for ionic species that can be used in FIBs. The net result is a source that has improved characteristics as well as expanded capabilities over current technology.

Dated: June 4, 2008.

**Richard F. Kayser,**

*Chief Scientist.*

[FR Doc. E8–13363 Filed 6–12–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Public Workshop on the Establishment of a Laboratory Accreditation Program (LAP) for Laboratories Performing Interoperability, Performance, and Conformance Biometrics Testing Under the National Voluntary Laboratory Accreditation Program and Technical Requirements for Such a LAP

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Announcement of public workshop.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces a public workshop to be held on July 1, 2008, in the Green Auditorium of the NIST Administration Building in Gaithersburg, MD, regarding the establishment of an accreditation program and technical requirements for laboratories that perform biometric testing including interoperability, performance, and conformance using internationally recognized standards developed by the American National Standards Institute (ANSI), NIST, and by the International Committee for Information Technology Standards (INCITS). Additional standards may be identified throughout the development of the accreditation program technical requirements.

**DATES:** The workshop will be held 9 a.m.–4 p.m. on July 1, 2008.

**ADDRESSES:** The meeting will be held at the Green Auditorium of the NIST Administration Building in Gaithersburg, MD. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Brad Moore, Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, *Phone:* (301) 975–5740 or e-mail: *brad.moore@nist.gov*.

Information regarding the National Voluntary Laboratory Accreditation Program (NVLAP) and the accreditation process can be obtained from *http://www.nist.gov/nvlap.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The United States Department of Homeland Security (DHS) requested that NIST establish a laboratory accreditation program for laboratories performing inoperability, performance, and conformance biometrics testing on Personal Identification Verification equipment used in Homeland Security applications. In accordance with NVLAP procedures (15 CFR Part 285), on February 29, 2008, NIST published a notice in the **Federal Register** requesting comments on the proposed establishment of a laboratory accreditation program for laboratories performing testing, interoperability, performance, and conformance biometrics testing under the National Voluntary Laboratory Accreditation Program (73 FR 11093). In addition to soliciting public comments through the notice, NIST will hold a public workshop to solicit further public comments on the proposed establishment of a laboratory accreditation program for biometrics testing. The public workshop will also solicit comments on the technical requirements necessary for such a laboratory accreditation program.

Biometric technologies such as facial, fingerprint, iris, and voice recognitions are used to verify the identity of individuals attempting to gain access to secure areas. The purpose of the proposed Biometrics Laboratory Accreditation Program is to evaluate testing laboratories' technical competencies against known standards and testing criteria that will ultimately be used to provide confidence in the performance of biometric sub-systems.

This notice is issued in accordance with NVLAP procedures and general requirements, found in Title 15 Part 25 of the Code of Federal Regulations.

NVLAP provides an unbiased, third-party evaluation and recognition of competence. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems, personnel, accommodation and environment, test and calibration methods, equipment, measurement traceability, sampling, handling of test and calibration items, and test and calibration reports.

NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data. NVLAP accreditation is a finding of laboratory competence.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting

must register by close of business Monday, June 16, 2008, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Tessa Beavers, Administrative Support Assistant, NIST/NVLAP, and she will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Beavers' e-mail address is *tessa.beavers@nist.gov* and her phone number is (301) 975–4017.

Dated: June 6, 2008.

**Richard F. Kayser,**

*Chief Scientist.*

[FR Doc. E8–13355 Filed 6–12–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC From an Objection by the Maryland Department of the Environment

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of extension of time to issue a decision.

**SUMMARY:** Notice is hereby provided that the deadline for issuing a decision has been extended 15 days, in the federal consistency appeal filed with the Department of Commerce by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC (collectively, AES).

**DATES:** The new deadline for issuing a decision on AES's federal consistency appeal is extended to June 30, 2008.

**ADDRESSES:** Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Odin Smith, Attorney-Advisor, Office of the Assistant General Counsel for Legislation and Regulation, Department of Commerce, via e-mail at *osmith@doc.gov,* or at (202) 482–4144.

**SUPPLEMENTARY INFORMATION:** In August 2007, AES filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal was taken from an objection by the Maryland Department of the Environment (State) to AES's consistency certification for U.S. Army Corps of Engineers and Federal Energy Regulatory Commission permits to construct and operate a liquefied natural gas (LNG) terminal and associated 88-mile natural gas pipeline.

The decision record for this appeal was closed on April 14, 2008. Notice of closure was published in the **Federal Register**. 73 FR 20,028 (April 14, 2008). Under the CZMA, a final decision on the appeal must be issued no later than 60 days after notice announcing closure of the decision record is published. 16 U.S.C. 1465(c)(1). This deadline, however, may be extended by publishing (within the 60-day period) a subsequent notice explaining why a decision cannot be issued within that time frame. 16 U.S.C. 1465(c)(1). In this event, a final decision must be issued no later than 15 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(c)(2).

This announcement provides notice that the deadline for issuing a decision on the appeal has been extended 15 days. The Secretary needs the additional time to complete a review of the record and reach a decision. A decision on AES's administrative appeal will be issued no later than June 30, 2008.

Dated: June 9, 2008.

**Joel La Bissonniere,**

*Assistant General Counsel for Ocean Services.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

[FR Doc. E8–13300 Filed 6–12–08; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Supplemental Environmental Impact Statement/ Subsequent Environmental Impact Report for the Sacramento River Deep Water Ship Channel, CA

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers, San Francisco District, (Corps) in coordination with the Port of Sacramento is preparing a draft Supplemental Environmental Impact Statement /Subsequent Environmental Impact Report (SEIS/SEIR) to evaluate the action of resuming construction of navigational improvements to the Sacramento River Deep Water Ship Channel (SRDWSC). The SRDWSC runs from the Contra Costa county line to the Port of Sacramento. Construction was initiated in 1989, but work was suspended in 1990 after deepening a portion of the channel to the authorized depth of 35 feet. The proposed action involves deepening the existing Federal navigation channel from 30 feet to 35 feet (mean lower low water) and widening portions of the channel to improve navigational efficiency for movement of goods and safety. The SRDWSC project was originally authorized by the River and Harbors Act of 1946 , Public Law 525, 79th Congress, 2nd Session, and reauthorized under Section 202(a) of the Water Resources and Development Act of 1986, Public Law 99–662, 100 Stat. 4092. This is a notice of intent to prepare an SEIS/SEIR, and to consider alternatives, evaluate potential impacts of the proposed action, and identify appropriate mitigation measures.

**DATES:** A public meeting will be held in West Sacramento on Monday, June, 30, 2008 from 5 p.m. to 7 p.m. The public comment period begins on June 16, 2008. Written comments must be received by July 22, 2008.

**ADDRESSES:** The meeting will be held at the West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA 95691.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments regarding the proposed action can be addressed to: Attn.: Bill Brostoff, ET–PA, U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, San Francisco, CA 94103–1398; telephone (415) 503–6867; or *SPNETPA@usace.army.mil*. Written comments can also be faxed to (415) 503–6692 or sent electronically to *SPNETPA@usace.army.mil*.

**SUPPLEMENTARY INFORMATION:**

1. *Background.* The SRDWSC is located in the Sacramento—San Joaquin Delta region of northern California. The 46.5-mile long ship channel lies within Contra Costa, Solano, Sacramento, and Yolo Counties and serves the marine terminal facilities at the Port of Sacramento. The SRDWSC joins the existing 35-foot deep channel at New York Slough, thereby affording the Port

of Sacramento access to San Francisco Bay Area harbors and the Pacific Ocean. This navigational improvement project was analyzed in the Feasibility Report and Final Environmental Impact Statement (1980), the General Design Memorandum and Final Supplemental Environmental Impact Statement (1986), and Environmental Assessments (1988, 1991, 1992). Navigational improvements to the SRDWSC were authorized in the Supplemental Appropriations of 1985, Public Law 99–88. Construction to deepen the existing channel to 35 feet was initiated in 1989, but work was suspended in 1990 at the request of the Port of Sacramento. Two of six construction contracts, from River Mile 43 to 35 (approximately eight miles near the Port of Sacramento), have been completed. The Corps was directed to prepare a reevaluation report in a Conference Report, H. Rept. 105–749, 105th Congress, 2nd Sess., 1998, by the Committee of Conference that resolved differences between the House and Senate versions of the bill that became the Energy and Water Appropriations Act of 1999.

2. *Proposed Action.* The proposed project would complete the deepening and widening of the navigation channel to its authorized depth of 35 feet. Deepening of the existing ship channel is anticipated to allow for movement of cargo via larger deeper draft vessels. Widening portions of the channel would increase navigational safety by increasing maneuverability.

3. *Project Alternatives.* Alternatives that are anticipated to be evaluated in this SEIS/SEIR include, but are not limited to, the following: (A) No action alternative. (B) Increased use of lighter aboard ship (LASH); lighters (barges) would be used to transport cargo from ports in shallow water to larger ocean going vessels birthed in deeper water. (C) Increased use of intermodal transportation; cargo would be loaded at other terminal facilities and transported by truck or railroad, and (D) project depths shallower than 35 feet.

4. *Environmental Considerations.* The SEIS/SEIR will update the 1980 EIS and the 1986 SEIS and will evaluate changes to project conditions. The SEIS/SEIR will determine if there are significant new issues, information, or environmental concerns bearing on the proposed project and alternatives. The SEIS/SEIR being prepared will reexamine water and air quality issues, fish and wildlife impacts, and effects to endangered or threatened species; potential impacts from dredging and placement of dredged material at upland disposal sites; and the potential impact of deepening on salinity intrusion in the Delta. Additionally, the economic benefits of the proposed project and alternatives will be examined.

5. *Scoping Process.* The Corps is seeking participation and input of all interested federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the draft SEIS/SEIR through this public notice. The purpose of the public scoping meeting is to solicit comments regarding the potential impacts, environmental issues, and alternatives associated with the proposed action to be considered in the draft SEIS/SEIR. The meeting place, date and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. The draft SEIS/SEIR will be available for public review and comment in May 2009. The final SEIS/SEIR will be available for review in October 2009.

6. *Availability of SEIS/SEIR.* The public will have an additional opportunity to comment on project alternatives once the draft SEIS/SEIR is released. The Corps will announce availability of the draft SEIS/SEIR in the **Federal Register** and other media, and will provide a 45-day public review period for the public, organizations, and agencies to review and comment on the SEIS/SEIR. All submitted comments will be addressed in the final SEIS/SEIR.

**Craig W. Kiley,**

*Lieutenant Colonel, U.S. Army, Commanding.*

[FR Doc. E8–13339 Filed 6–12–08; 8:45 am]

**BILLING CODE 3710–19–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Inland Waterways Users Board

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

*Name of Committee:* Inland Waterways Users Board (Board).

*Date:* July 31, 2008.

*Location:* Marcus Whitman Hotel and Conference Center, Six West Rose Drive, Walla Walla, WA 99362, (509–525–2200 or 866–826–9422).

*Time:* Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

*Agenda:* The Board will hear briefings on the status of the funding for inland navigation projects and studies, an assessment of the Inland Waterways Trust Fund, and be provided updates of various inland waterways projects.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–IP, 441 G Street, NW., Washington, DC 20314–1000; *Ph:* 202–761–4258.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8–13337 Filed 6–12–08; 8:45 am]

**BILLING CODE 3710–92–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–341]**

### Application To Export Electric Energy; Photovoltaic Technologies, LLC

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** Photovoltaic Technologies, LLC (Photovoltaic) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before July 14, 2008.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On June 9, 2008, DOE received an application from Photovoltaic for authority to transmit electric energy

from the United States to Mexico as a power marketer. Photovoltaic does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which SEP proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

Photovoltaic proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned by AEP Texas Central, El Paso Electric Company, Central Power & Light Company, San Diego Gas & Electric Company, Sharyland Utilities, and Comision Federal de Electricidad, the national electric utility of Mexico.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Photovoltaic was previously authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition, and protest should be filed with DOE on or before the dates listed above.

All filings in this proceeding should be clearly marked with Docket No. EA–341. Additional copies are to be filed directly with Francisco Bunt, CEO, 3504 Santa Idalia, Mission, TX 78572.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://oe.energy.gov/permits.htm*, or by e-mailing Odessa Hopkins at *odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on June 10, 2008.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E8–13347 Filed 6–12–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP08–409–000; PF08–1–000]**

### Orbit Gas Storage, Inc.; Notice of Application

June 5, 2008.

Take notice that on May 23, 2008, Orbit Gas Storage, Inc. (OGS), 600 Barret Boulevard, Henderson, Kentucky 42420, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Parts 157 and 284 of the Commission's regulations for an order granting a certificate of public convenience to construct and operate a new underground gas storage facility in Hopkins County, Kentucky. Referred to as the Kentucky Energy Hub Project (Project), OGS states that the Project will involve the conversion of the depleted White Plains Gas Field to natural gas storage and the construction of an approximately 22-mile pipeline header, compressor station, and related facilities. OGS asserts that the Project will have a total storage capacity of approximately 13.0 billion cubic feet (Bcf), comprised of approximately 5.0 Bcf of working gas and 8.0 Bcf of cushion gas. OGS claims that it will be capable of delivering and injecting natural gas at the rate of approximately 100 million standard cubic feet per day (MMscf/d). OGS avers that the Project will interconnect with the interstate pipeline system of ANR Pipeline Company (ANR) near Rabbit Ridge, Kentucky. OGS is also requesting authorization to provide open-access firm and interruptible storage services in interstate commerce at market-based rates under 18 CFR Park 284, Subpart G; and to undertake the limited construction and operation activities permitted under 18 CFR Part 157, Subpart F, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Douglas F. John, John & Hengerer, 1730 Rhode Island Avenue, NW., Suite 600, Washington, DC 20036–3116, at (202) 429–8800, or by facsimile at (202) 429–8805, or *djohn@jhenergy.com*.

On October 3, 2007, the Commission staff granted OGS's request to utilize the Pre-Filing process and assigned Docket No. PF08–1–000 to staff activities involving the proposed Project. Now, as of the filing of the May 23, 2008 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP08–409–000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to

the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions 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:* June 26, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13256 Filed 6–12–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EL08–66–000, etc.]**

## Ashland Windfarm, LLC, et al.; Notice of Filing

June 5, 2008.

**Notice of Filing**

| | Docket Nos. |
|---|---|
| Ashland Windfarm, LLC | EL08–66–000 |
| Asian Children Support, Inc. | QF08–475–001 |
| Bangladesh Children Support, Inc | QF08–476–001 |
| Bobilli Blind School Support, Inc | QF08–477–001 |
| Brandon Windfarm, LLC | QF08–478–001 |
| BT, LLC (Unit 1) | QF08–479–001 |
| BT, LLC (Unit II) | QF08–480–001 |
| Burmese Children Support, Inc | QF08–481–001 |
| Elsinore Wind, LLC | QF08–482–001 |
| G. McNeilus, LLC (Unit I) | QF08–483–001 |
| G. McNeilus, LLC (Unit II) | QF08–484–001 |
| GarMar Foundation (Unit I) | QF08–486–001 |
| GarMar Foundation (Unit II) | QF08–487–001 |
| GarMar Wind I, LLC (Unit I) | QF08–488–001 |
| GarMar Wind, I LLC (Unit II) | QF08–489–001 |
| GarMar Wind, I LLC (Unit III) | QF08–491–001 |
| GarWind, LLC | QF08–490–001 |
| GM, LLC (Unit I) | QF08–492–001 |
| GM, LLC (Unit II) | QF08–493–001 |
| GM, LLC (Unit III) | QF08–494–001 |
| Grant Windfarm, LLC | QF08–563–001 |
| Henslin Creek Windfarm, LLC | QF08–495–001 |
| Indian Children Support, Inc | QF08–496–001 |
| K&K Wind Enterprises, LLC | QF08–497–001 |
| McNeilus Windfarm, LLC (Unit I) | QF08–498–001 |
| McNeilus Windfarm, LLC (Unit II) | QF08–499–001 |
| Rose Creek Wind, LLC | QF08–500–001 |
| Salvadoran Children Support | QF08–501–001 |
| SF Wind Enterprises, LLC | QF08–502–001 |
| SG, LLC | QF08–503–001 |
| Triton Windfarm, LLC | QF08–504–001 |
| Wasioja Wind, LLC | QF08–505–001 |
| Wilhelm Wind, LLC | QF08–506–001 |
| Zumbro Windfarm, LLC | QF08–507–001 |
| GM Transmission, LLC | QF08–508–001 |

Take notice that on May 29, 2008, Ashland Windfarm, *et al.*, filed a petition for declaratory order for a limited waiver from the qualifying facility filing requirements of section 292.203(a)(3) of the Commission's regulations for the period from April 15, 2006 to April 11, 2008 and May 15, 2008, with respect to GM, LLC (Unit III).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 30, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13254 Filed 6–12–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP08–414–000]**

## Southern Natural Gas Company; Notice of Request Under Blanket Authorization

June 5, 2008.

Take notice that on June 2, 2008, Southern Natural Gas Company (''Southern''), Post Office Box 2563, Birmingham, Alabama 35202–2563,

filed in Docket No. CP08–414–000, a prior notice request pursuant to sections 157.205, and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and its blanket authority granted in Docket No. CP82–406–000 on September 1, 1982, for authorization to replace two existing compressor units at its Gwinville Compressor Station (''Gwinville'') with one larger unit, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Gwinville is a critical station located at the intersection of Southern's Franklinton-Gwinville Pipelines and Southern's South Main Pipelines. This point in Southern's system is where the gas transported from the Gulf of Mexico interconnects with Southern's south main system. The two existing compressor units, #10 and #12, which have a horsepower of 1,080 and 4,390, respectively, would be replaced with a new Solar Taurus 70 unit to be rated at ISO 10,310 hp. This new compressor unit is proposed to be installed in a new compressor building, which will be immediately adjacent to Unit #12.

Any questions regarding the application should be directed to Patrick B. Pope, Vice President and General Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, at (205) 325–7126 or Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, at (205) 325–7696.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13255 Filed 6–12–08; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0414; FRL–8366–3]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects; EPA ICR No. 2195.03, OMB Control No. 2070–0169

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects'' and identified by EPA ICR No. 2195.03 and OMB Control No. 2070–0169, is scheduled to expire on January 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Comments must be received on or before August 12, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0414, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2008–0414. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://*

*www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; fax number: (703) 305–5884; e-mail address: *hogue.joe@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## III. What Information Collection Activity or ICR Does this Action Apply to?

*Affected entities*: Entities potentially affected by this action are those that submit protocols and study reports for environmental research involving human subjects under the pesticide laws, typically registrants of pesticide products (NAICS 325320).

*Title*: Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects.

*ICR numbers*: EPA ICR No. 2195.03, OMB Control No. 2070–0169.

*ICR status*: This ICR is currently scheduled to expire on January 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the 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*: In January 2006, EPA issued a final rule to amend the Federal Policy for the Protection of Human Subjects (also known as the Common Rule) at 40 CFR part 26. EPA's January 2006 final rule significantly strengthens and expands the protections for subjects of ''third-party'' human research (i.e., research that is not conducted or supported by EPA). The information collection activity imposed by this final rule consists of activity-driven reporting and recordkeeping requirements for those who intend to conduct research for submission to EPA under the pesticide laws. If such research involves intentional dosing of human subjects, these individuals (respondents) are required to submit study protocols to EPA and a cognizant local human subjects institutional review board (IRB) before such research is initiated so that the scientific design and ethical standards that will be employed during the proposed study may be reviewed and approved. Also, respondents are required to submit information about the ethical conduct of completed research that involved intentional dosing of human subjects when such research is submitted to EPA. Responses to this collection of information are mandatory.

*Burden statement*: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours per response for research involving intentional exposure of human subjects, and 12 hours per response for all other submitted research with human subjects. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents*: 62.

*Frequency of response*: On occasion.

*Estimated total average number of responses for each respondent*: 1.

*Estimated total annual burden hours*: 1,404 hours.

*Estimated total annual costs*: $84,674. This includes an estimated burden cost of $84,674 with no additional cost for capital investment or maintenance and operational costs.

## IV. Are There Changes in the Estimates from the Last Approval?

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

**V. What is the Next Step in the Process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects**

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 4, 2008.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E8–13346 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6699–8]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

**Draft EISs**

*EIS No. 20080067, ERP No. D–FHW–F40442–MT*, Detroit River International Crossing Study, Propose Border Crossing System between the International Border Cities of Detroit, Michigan and Windsor, Ontario, Wayne County, MI.

*Summary:* EPA expressed environmental concerns about particulate matter and mobile source air toxics impacts, and recommended using energy efficiency and sustainability principles. Rating EC2.

*EIS No. 20080103, ERP No. D–USN–E11064–FL*, Mayport Naval Station Project, Proposed Homeporting of Additional Surface Ships, Several Permits, Mayport, FL.

*Summary:* EPA expressed environmental concerns about to the magnitude of proposed dredged material and the capacity and management limitations of existing ocean dredged material disposal sites to handle this additional material. EPA recommends additional mitigation measures for other on-shore environmental impacts related to the proposed homeporting. Rating EC2.

*EIS No. 20080115, ERP No. D–UAF–E15001–FL*, Eglin Air Force Base Program, Base Realignment and Closure (BRAC) 2005 Decisions and Related Action, Implementation, FL.

*Summary:* EPA expressed environmental concerns about impacts to air quality, low-income/minority populations, aquatic habitats, water quality and noise impacts and recommended several mitigation measures. Rating EC2.

*EIS No. 20080120, ERP No. D–USN–ELL065–FL*, Naval Surface Warfare Center Panama City Division (NSWC PCD), Capabilities to Conduct New and Increased Mission Operations for the Department of Navy (DON) and Customers within the three Military Operating Area and St. Andrew Bay (SAB), Gulf of Mexico, FL.

*Summary:* EPA expressed concerns about impacts to marine mammals, sea turtles, and marine fish. Rating EC2.

*EIS No. 20080137, ERP No. D–AFS–L65552–OR*, East Maury Fuels and Vegetation Management Project, Proposed Fuels and Vegetation Treatments Reduce the Risk of Stand Loss, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR.

*Summary:* EPA expressed environmental concerns about potential impacts to water quality from mass wasting associated with road construction in management units with dormant landslide terrain. EPA requested additional information regarding road closures and stream crossings. Rating EC2.

*EIS No. 20080144, ERP No. D–CGD–E03019–FL*, Port Dolphin LLC Liquefied Natural Gas Deepwater Port License Application, Proposes to Own, Construct and Operate a Deepwater Port, Outer Continental Shelf, Manatee County, FL.

*Summary:* EPA expressed environmental concerns about construction impacts to hard bottom habitat and port operation impacts to icthyoplankton. Rating EC2.

*EIS No. 20080184, ERP No. D–FHW–H40193–IA*, I–29 Improvements in Sioux City, Construction from Burlington Northern Santa Fe Rail Road (BNSF) Bridge over the Missouri River to Existing Hamilton Boulevard Interchange, Woodbury County, IA.

*Summary:* EPA does not object to the proposed action. Rating LO.

*EIS No. 20080128, ERP No. DS–MMS–A02245–00*, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2009–2012 Western Planning Area Sales: 210 in 2009, 215 in 2010, and 218 in 2011, and Central Planning Area Sales: 208 in 2009, 213 in 2010, 216 in 2011, and 222 in 2012, TX, LA, MS, AL, and FL.

*Summary:* EPA does not object to the proposed action. Rating LO.

**Final EISs**

*EIS No. 20080052, ERP No. F–FTA–E40816-FL*, Tier 1 Programmatic—Jacksonville Rapid Transit System (RTS), Improvement to Transportation in Four Primary Transit Corridors Radiating from Downtown Jacksonville, Duval County, FL.

*Summary:* EPA expressed environmental concerns about indirect impacts, and requested additional information on cumulative, and irreversible/irretrievable impacts.

*EIS No. 20080147, ERP No. F–AFS–J65479–MT*, Trapper Bunk House Land Stewardship Project, Reduce Risk from Stand-Replacing and Uncontrollable Fires, Improve Resiliency and Provide Forest Products, Fuel Reduction Research and Watershed Improvement, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT.

*Summary:* EPA supports project objectives to reduce fire risk, improve vegetative resiliency, conduct fuel reduction research, provide timber and improve watersheds. However, EPA expressed environmental concerns about water quality impacts from sediment transport and a budget process that requires commercial timber harvest to provide funding for road maintenance or decommissioning.

*EIS No. 20080155, ERP No. F–AFS–J65502–MT*, Cooney McKay Forest Health and Fuels Reduction Project, Proposed to Restore Desirable Vegetative Conditions, Swan Valley near Condon, Swan Lake Ranger District, Flathead National Forest, Lake and Missoula Counties, MT.

*Summary:* EPA supports activities to reduce hazardous fuels and fire risk in wildland urban interface areas, but expressed environmental concerns

regarding inadequate funding to implement needed watershed restoration work and mitigation measures.

*EIS No. 20080161, ERP No. F–NPS–J61023–00*, Quarry Visitor Center Treatment Project, To Address the Structural Deterioration, Dinosaur National Monument, CO and UT.

*Summary:* No formal comment letter was sent to the preparing agency.

*EIS No. 20080170, ERP No. F–AFS–J65509–MT*, Young Dodge Project, Proposed Timber Harvest and Associate Activities, Prescribed Burning, Road and Recreation Management, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

*Summary:* EPA supports the reduction of hazardous fuels and fire risk in wildland urban interface and restoring declining tree species. However, EPA continues to have environmental concerns about erosion and sediment production associated with ground disturbing timber harvests and wildlife impacts associated with the exceedance of open road density standards.

Dated: June 10, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–13343 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6699–7]**

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 06/02/2008 Through 06/06/2008 Pursuant to 40 CFR 1506.9.

*EIS No. 20080227, Second Draft Supplement, TPT, CA*, Presidio Trust Management Plan (PTMP), Updated Information on the Concept for the 120-Acre Main Post District, Area B of the Presidio of San Francisco, Implementation, City and County of San Francisco, CA, Comment Period Ends: 07/31/2008, Contact: John G. Pelka 415–561–5300.

*EIS No. 20080228, Draft EIS, AFS, WA*, Republic Ranger Station Excess Residence Sale Project, Proposes to Sell a 0.72 Acre Parcel of Land with a Residential Building, Republic Ranger District, Colville National Forest, Ferry County, WA, Comment Period Ends: 07/28/2008, Contact: James L. Parker 509–775–7462.

*EIS No. 20080229, Draft EIS, AFS, AK*, Black River Exchange Project, Proposal to Exchange Federal and Non-Federal Lands, Apache-Sitgreaves National Forests, Apache County, AZ, Comment Period Ends: 07/28/2008, Contact: Bruce Buttrey 928–333–4372.

*EIS No. 20080230, Draft EIS, COE, CA*, Natomas Levee Improvement Project, Issuing of 408 Permission and 404 Permit, Sacramento Area Flood Control Agency, Sutter and Sacramento, CA, Comment Period Ends: 07/28/2008, Contact: Elizabeth G. Holland 916–557–6763.

*EIS No. 20080231, Final EIS, FRC, 00*, Bradwood Landing Project, Liquified Natural Gas Import Terminal and Natural Gas Pipeline Facilities, Construction and Operation, US Army COE Section 10 and 404 Permits, Clatsop County, OR and Cowlitz County, WA, Wait Period Ends: 07/14/2008, Contact: Patricia Schaub 1–866–208–3372.

*EIS No. 20080232, Final EIS, AFS, CA*, Orleans Community Fuels Reduction and Forest Health Project, To Manage Forest Stands to Reduce Hazardous Fuel Conditions, Orleans Ranger District, Six Rivers National Forest, Humboldt County, CA, Wait Period Ends: 07/14/2008, Contact: William Rice 530–627–3291.

*EIS No. 20080233, Final EIS, NOA, 00*, South Atlantic Snapper Grouper Fishery, Amendment 14 to Establish Eight Marine Protected Areas in Federal Waters, Implementation, South Atlantic Region, Wait Period Ends: 07/14/2008, Contact: Roy E. Crabtree 727–551–5305.

**Amended Notices**

*EIS No. 20080171, Draft EIS, NOA, WA*, Proposed Authorization of the Makah Indian Tribe's Request to Hunt Gray Whales in the Tribe's Usual and Accustomed Fishing Grounds off the Coast of Washington, Comment Period Ends: 08/15/2008, Contact: Donna Darm 206–526–6150. Revision to FR Notice Published 05/09/2008: Extending Comment Period from 07/08/2008 to 08/15/2008.

*EIS No. 20080186, Draft EIS, FAA, NV*, City of Mesquite, Proposed Replacement General Aviation Airport, Implementation, Clark County, NV, Comment Period Ends: 07/03/2008, Contact: Barry Franklin 650–876–2778 Revision to FR Notice Publish 05/16/2008: Extending Comment from 07/03/2008 to 07/18/2008.

Dated: June 10, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–13351 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0046; FRL–8367–3]**

### Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before July 14, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0046 and the pesticide petition number (PP) of interest, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to EPA–HQ–OPP–2008–0046 the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** The person listed at the end of the pesticide petition summary of interest.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

| PP Number | Docket ID Number |
|---|---|
| PP 7E7206 | EPA–HQ–OPP–2008–0042 |
| PP 8E7350 | EPA–HQ–OPP–2008–0458 |
| PP 0F1234 | EPA–HQ–OPP–2008–0405 |
| PP 6F7098 | EPA–HQ–OPP–2008–0405 |
| PP 6F7105 | EPA–HQ–OPP–2007-0214 |
| PP 7F7190 | EPA–HQ–OPP–2007-0366 |
| PP 8F7322 | EPA–HQ–OPP–2008–0352 |
| PP 8F7334 | EPA–HQ–OPP–2008–0386 |
| PP 8F7342 | EPA–HQ–OPP–2008–0461 |
| PP 7F7190 | EPA–HQ–OPP–2007-0366 |
| PP 7F7306 | EPA–HQ–OPP–2008–0384 |
| PP 7F7307 | EPA–HQ–OPP–2008–0385 |
| PP 6E7093 | EPA–HQ–OPP–2008–0105 |
| PP 7E7206 | EPA–HQ–OPP–2008–0042 |
| PP 8E7329 | EPA–HQ–OPP–2008–0407 |

## III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the

pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

**New Tolerance**

1. *PP 7E7206*. (EPA–HQ–OPP–2008–0042). Bayer Crop Science, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the inert safener cyprosulfamide (parent) in or on food commodities field corn grain at 0.01 parts per million (ppm); sweet corn kernels at 0.01 ppm; sweet corn (k+cwhr) at 0.01 ppm; pop corn grain at 0.01 ppm; and parent cyprosulfamide and its metabolites AE 0001789-sulfonamide-alanine, AE 0001789-sulfonamide-lactate, and AE 0001789-N-cyclopropyl-4-sulfamoylbenzamide in or on food commodities field corn forage at 0.15 ppm; sweet corn forage at 0.40 ppm; field corn stover at 0.60 ppm; sweet corn stover at 0.60 ppm; and popcorn stover at 0.60 ppm. For the following animal tissues parent cyprosulfamide is proposed based on the tissue to feed ratio from the feeding study, applied to a new diet calculated from the proposed tolerances from the residue studies in or on food commodities milk at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.02 ppm; cattle, kidney at 0.05 ppm; goat, meat at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.02 ppm; goat, kidney at 0.05 ppm; hog, meat at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.02 ppm; hog, kidney at 0.05 ppm; horse, meat at 0.01 ppm; horse, fat at 0.01 ppm; horse, liver at 0.02 ppm; horse, kidney at 0.05 ppm; sheep, meat at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.02 ppm; sheep, kidney at 0.05 ppm. An adequate liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) analytical method is available for AE 0001789 to enforce the tolerances. The residues of cyprosulfamide and its metabolites AE 0001789-cyclopropylsulfamoylbenzamide (M02, AE 0852999), AE 0001789-sulfonamide-alanine (M11, AE 2300003), and AE 0001789-sulfonamide-lactate (M10, AE 2300002) are quantitated by high performance liquid chromatography/triple stage quadruple mass spectrometry (HPLC/MS/MS) (Method UB-008-P06-01). The individual analyte residues are reported in AE 0001789 molar equivalents and summed to give a total cyprosulfamide residue. The limit of quantitation (LOQ) is 0.01 ppm for each analyte in all matrices. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

2. *PP 8E7350*. (EPA–HQ–OPP–2008–0458). Interregional Research Project No. 4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide fenamidone, 4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-, in or on food commodities: Vegetables, root, except sugarbeet, subgroup 1B, except radish at 0.2 ppm; turnip, leaves at 55 ppm; coriander, leaves at 60 ppm; okra at 3.5 ppm; and a tolerance with regional registration for grape at 1.0 ppm. Residues are quantified by high performance liquid chromatography (HPLC) with LC/MS/MS. The method LOQ are 0.02 ppm or lower for fenamidone, and its metabolites, RPA 412636, RPA 412708, and RPA 410193 in test raw agricultural commodities and processed fractions. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

3. and 4. *PP 0F1234* and *6F7098*. (EPA–HQ–OPP–2008–0405). BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide pendimethalin, N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347)] in or on food commodities crayfish at 0.05 ppm; cotton gin byproducts at 3.0 ppm; and rice processing fractions at 0.1 ppm. The analytical method in plants is aqueous organic solvent extraction, column clean up, and quantitation by gas chromatography (GC). The method has a LOQ of 0.05 ppm for pendimethalin and the alcohol metabolite. Contact: James Tompkins, (703) 305–5697, *tompkins.jim@epa.gov*.

5. *PP 6F7105*. (EPA–HQ–OPP–2007–0214). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolite methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate (BF 500-3); expressed as parent in or on the food commodities borage at 0.45 ppm; castor oil plant at 0.45 ppm; Chinese tallowtree at 0.45 ppm; crambe at 0.45 ppm; cuphea at 0.45 ppm; echium at 0.45 ppm; euphorbia at 0.45 ppm; evening primrose at 0.45 ppm; flax seed at 0.45 ppm; gold of pleasure at 0.45 ppm; hare's ear mustard at 0.45 ppm; jojoba at 0.45 ppm; lesquerella at 0.45 ppm; lunaria at 0.45 ppm; meadowfoam at 0.45 ppm; niger seed at 0.45 ppm; milkweed at 0.45 ppm; mustard seed at 0.45 ppm; oil radish at 0.45 ppm; poppy seed at 0.45 ppm; rapeseed at 0.45 ppm; rose hip at 0.45 ppm; safflower at 0.45 ppm; sesame at 0.45 ppm; stokes aster at 0.45 ppm; sunflower at 0.45 ppm; sweet rocket at 0.45 ppm; tallowwood at 0.45 ppm; tea oil plant at 0.45 ppm; and vernonia at 0.45 ppm. In plants, the method of analysis is aqueous organic solvent extraction, column clean up and quantitation by LC/MS/MS. In animals, the method of analysis involves base hydrolysis, organic extraction, column clean up and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by gas chromatography/mass spectrometry (GC/MS). Contact: John Bazuin, (703) 305–7381, *bazuin.john@epa.gov*.

6. *PP 7F7190*. (EPA–HQ–OPP–2007–0366). Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808, proposes to establish a tolerance for residues of the herbicide pyraflufen-ethyl [ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate] and its acid metabolite, E-1 [2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid], expressed in terms of the parent, in or on food commodities grass, forage, group 17 at 1.0 ppm; grass, hay, group 17 at 1.4 ppm; milk at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. Aqueous organic solvent extraction, column clean up, and quantitation by gas chromatography is used to measure and evaluate the chemical residues. Contact: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

7. *PP 8F7322*. (EPA–HQ–OPP–2008–0352). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to establish a tolerance for residues of the herbicide combined residues of BAS 800 H (N'-[2-chloro-4-fluoro-5-(3-methyl-2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)benzoyl]-N-isopropyl-N-methylsulfamide) plus metabolite M800H11 (N-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)-4-fluorobenzoyl]-N'-isopropylsulfamide) and plus metabolite M800H35 (N-[4-chloro-2-fluor-5-([(isopropylamino)sulfonyl]amino carbonyl)phenyl]urea) in or on food

commodities legume vegetables (group 06), citrus fruits (group 10), pome fruits (group 11), stone fruits (group 12), tree nuts (group 14), pistachio, cereal grains (group 15), undelinted cotton seed, cotton gin by products, and grape at 0.03 ppm; foliage of legume vegetables (group 07), forage, fodder and straw of cereal grains (group 16), and sorghum stover at 0.1 ppm; almond hulls at 0.2 ppm; and sunflower seed at 0.7 ppm. Independently validated analytical methods have been submitted for analyzing residues of parent BAS 800 H plus metabolites M800H11 and M800H35 with appropriate sensitivity in all the crop and processed commodities for legume vegetables (group 06), foliage of legume vegetables (group 07), citrus fruits (group 10), pome fruits (group 11), stone fruits (group 12), tree nuts (group14), cereal grains (group 15), pistachio, forage, fodder, and straw of cereal grains (group 16), cotton, sunflower and grape and in animal liver and kidney matrices which tolerances are being requested. Contact: Kathryn Montague, (703) 305–1243, *montague.kathryn@epa.gov*.

8. *PP 8F7334*. (EPA–HQ–OPP–2008–0386). Gowan Company, 370 South Main St., Yuma, AZ 85364, proposes to establish a tolerance for residues of the herbicide triallate in or on food commodity Bermuda grass hay at 0.2 ppm. Residues of triallate and its metabolite TCPSA in Bermuda grass forage, hay, straw and seed screenings were quantitated using a GC/MS analytical method. The LOQ was 0.02 ppm for triallate and 0.05 ppm for TCPSA. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

9. *PP 8F7342*. (EPA–HQ–OPP–2007–00461). Syngenta Crop Protection, Inc., 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance for residues of the fungicide mandipropamid, benzeneacetamide, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy) phenyl]ethyl-alpha-(2-propynyloxy)] in or on food commodity hops at 50 ppm. Analytical method RAM 415-01 was developed for determination of mandipropamid residues in crops. This method involves extraction of mandipropamid residues from crop samples by homogenization with acetonitrile:water (80:20 v/v). Extracts are centrifuged and aliquots diluted with water prior to being cleaned up using polymeric solid-phase extraction cartridges. Residues of mandipropamid are quantified using high performance liquid chromatography with LC-MS/MS. This method has been successfully validated at an independent facility and therefore is suitable for use as the enforcement method for the determination of residues of mandipropamid in crops. Contact: Rosemary Kearns, (703) 305–5611, *kearns.rosemary@epa.gov*.

**Amendment to Existing Tolerance**

1. *PP 7F7190*. (EPA–HQ–OPP–2007–0366). Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808, proposes to amend the tolerances in 40 CFR 180.585 by revising existing tolerances for residues of the herbicide pyraflufen-ethyl [ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate] and its acid metabolite, E-1 [2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid], expressed in terms of the parent, in or on food commodities soybeans, seed to 0.05 ppm; soybeans, hay to 0.1 ppm; wheat, forage to 0.02 ppm; and wheat, hay to 0.01 ppm. Aqueous organic solvent extraction, column clean up, and quantitation by gas chromatography is used to measure and evaluate the chemical residues. Contact: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

2. *PP 7F7306*. (EPA–HQ–OPP–2008–0384). Monsanto Company (a member of the Acetochlor Registration Partnership, ARP), 1300 I Street NW, Suite 450 East, Washington DC 20005, proposes to amend the tolerances in 40 CFR 180.470 for residues of the herbicide acetochlor (2-chloro-2'-methyl-6'-ethyl-N-ethoxymethylacetanilide) and its metabolites containing either the 2-ethyl-6-methylaniline (EMA) or the 2-(1-hydroxyethyl)-6-methyl-aniline (HEMA) moiety, to be expressed as acetochlor equivalents, in or on the food commodities when present therein as a result of the application of acetochlor to soil or growing crops: corn, field, forage at 4.5 ppm and corn, field, stover at 3.0 ppm. An adequate enforcement method for residues of acetochlor in crops has been approved. Acetochlor and its metabolites are hydrolyzed to either EMA or HEMA, which are determined by high performance liquid chromatography-oxidative coulometric electrochemical detector (HPLC-OCED) and expressed as acetochlor equivalents. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

3. *PP 7F7307*. (EPA–HQ–OPP–2008–0385). E. I. du Pont de Nemours and Company, DuPont Crop Protection, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend the tolerances in 40 CFR 180.364 by establishing tolerances for the combined residues of the herbicide glyphosate [N-(phosphonomethyl)glycine] and its metabolite N-acetylglyphosate [N-acetyl-N-(phosphonomethyl)glycine] resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate to OptimumTM GATTM field corn, in or on the food commodities: Field corn, grain; field corn, forage; field corn, stover; and field corn, aspirated grain fractions at levels already established for glyphosate alone. An analytical method was developed, and validated, for the determination of glyphosate and degradate residues in transgenic crop and crop fraction matrices. The analytes examined included glyphosate and N-acetylglyphosate since N-acetylglyphosate is a metabolite associated with transgenic crops containing the glyphosate N-acetyltransferase (gat) enzyme. The method target LOQ in each matrix examined was 0.050 mg/kg (ppm). The method was validated at 0.050 milligrams/kilograms (mg/kg) and 0.50 mg/kg or higher fortification level using a LC/MS/MS system operating with an electrospray interface (ESI) in positive ion mode detection. An analytical method was developed, and validated, for the determination of N-acetylglyphosate, glyphosate, AMPA, and N-acetyl AMPA in animal matrices including milk, eggs, muscle, kidney, liver, and fat. The method target LOQ in glyphosate equivalents for each analyte was 0.025 mg/kg in egg, milk, and muscle matrices and 0.050 mg/kg in kidney, liver, and fat matrices. The method was validated at the respective LOQ and 10xLOQ level for each matrix using a LC/MS/MS system operating with an electrospray interface (ESI) in positive or negative ion mode detection. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

**New Exemption from Tolerance**

1. *PP 6E7093*. (EPA–HQ–OPP–2008–0105). Huntsman Corporation, 8600 Gosling Rd., The Woodlands, TX 77381, proposes to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.910, 40 CFR 180.920, and 40 CFR 180.930 for residues of morpholine 4-C6-12 Acyl derivatives (CAS Reg. No. 887947–29–7) when used as a pesticide inert ingredient as a solvent in pesticide formulations applied to growing food crops, post harvest applications, and to animals. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen

Samek, (703) 347–8825, *samek.karen@epa.gov*.

2. *PP 7E7206*. (EPA–HQ–OPP–2008–0042). Bayer Crop Science, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of the inert safener cyprosulfamide (parent) in or on food commodities sorghum grain and plants grown from cyprosulfamide treated seeds. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

3. *PP 8E7329*. (EPA–HQ–OPP–2008–0407). SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of ammonium chloride (CAS Reg. No. 12125–02–9) when used as a pesticide inert ingredient as a carrier/nutrient in pesticide formulations applied pre-harvest to all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 5, 2008.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E8–13344 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0099; FRL–8365–7]**

## Pesticide Product Registration Approval

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

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of two applications to register the pesticide products QRD 406 and QRD 400 containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0099. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

### II. Did EPA Approve the Applications?

The Agency approved the applications after considering all required data on risks associated with the proposed use of Extract of Chenopodium *ambrosioides* near *ambrosioides*, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Extract of Chenopodium *ambrosioides* near *ambrosioides* when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

### III. Approved Applications

EPA issued a notice, published in the **Federal Register** of May 18, 2005 (70 FR 28524) (FRL–7706–5), which announced that Codena, Inc., c/o of Landis International Inc., P.O. 5126, Valdosta, GA 31603–5126, had submitted three applications to register the pesticide products, FACIN TECHNICAL, FACIN 25 EC, and FACIN 50 ME for use as biochemical insecticides and acaricides (EPA File Symbols 81978–R, 81978–E, and 81978–G respectively), containing Extract of Chenopodium *ambrosioides* var. *amcrosiosdes*.

Subsequent to the **Federal Register** notice of May 18, 2005, the applications were transferred to Agraquest, Inc., 1540 Drew Avenue, Davis, CA 95618. FACIN 50 ME was withdrawn and the remaining product names were changed.

The manufacturing use product, QRD 406 (EPA Registration Number 69592–21), and the end use product, QRD 400 (EPA Registration Number 69592–22), were approved on April 16, 2008. The end use product QRD 400, containing the new active ingredient Extract of Chenopodium *ambrosioides* var. *ambrosioides*, is for use as an insecticide and acaricide to be applied to field and container-grown non-food ornamental plants in commercial nurseries, greenhouses, and lath- and shade houses.

**List of Subjects**

Environmental protection, Chemicals, Pests and pesticides.

Dated: May 27, 2008.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E8–13373 Filed 6–12–08; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 6, 2008.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written PRA comments should be submitted on or before August 12, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1117.

*Title:* Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC 07–228.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents/Responses:* 1,000 respondents; 120,000 responses.

*Estimated Hours per Response:* 0.01–0.33 hours.

*Frequency of Response:* Recordkeeping requirement; third party disclosure requirement; on occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 8,380 hours.

*Total Annual Costs:* $200,000.

*Confidentiality:* No need for confidentiality required.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228 (''Third DTV Periodic Report and Order'') to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission affords broadcasters the opportunity for regulatory flexibility, if necessary, to meet their DTV construction deadlines. The Commission, however, must also ensure that no consumers are left behind in the DTV transition. Therefore, the Commission requires broadcasters that choose to reduce or terminate TV service to comply with viewer notification requirements.

Specifically, as a result of the Third DTV Periodic Report and Order, stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if:

(1) The station will permanently reduce or terminate analog or pre-transition digital service before the transition date; or

(2) The station will not serve at least the same population that receives their current analog TV and DTV service after the transition date.

Viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service or the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–13262 Filed 6–12–08; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

June 3, 2008.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

**FOR FURTHER INFORMATION CONTACT:** Dana Wilson, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2247 or via the Internet at *Dana.Wilson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0519.

*OMB Approval Date:* 11/26/2007.

*Expiration Date:* 11/30/2010.

*Title:* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Order, CG Docket No. 02–278.

*Form No.:* N/A.

*Estimated Annual Burden:* 135,607,383 responses; .004 (15 seconds) to 3 hours per response; 708,806 total annual hourly burden.

*Needs and Uses:* The reporting requirements included under OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of the Do-Not-Call Implementation Act (Do-Not-Call Act). If the information collection was not conducted, the Commission would be unable to track and enforce violations of the Do-Not-Call Act. The Do-Not-Call rules provide consumers with several options for avoiding most unwanted telephone solicitations.

The National Do-Not-Call Registry supplemented company-specific do-not-call rules, though consumers may give specific companies permission to call them through an express written agreement even if such consumers have registered with the National Do-Not-Call Registry. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the do-not-call requirements.

*OMB Control No.:* 3060–0653.

*OMB Approval Date:* 04/24/2008.

*Expiration Date:* 04/30/2011.

*Title:* Section 64.703 (b) and (c), Consumer Information—Posting by Aggregators.

*Form No.:* N/A.

*Estimated Annual Burden:* 5,339,038 responses; .017 to 3 hours per response; 172,631 total annual hourly burden.

*Needs and Uses:* Pursuant to the information collection requirements included under OMB Control Number 3060–0653, aggregators making telephones available to the public or transient users of their premises under 47 U.S.C. 226(c)(1)(A) and 47 CFR 64.703(b) must post in writing, on or near such phones, information about pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) of the Commission's rules establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the pre-subscribed operator service provider (OSP). Consumers will use this information to determine whether they wish to use the services of the identified OSP.

*OMB Control No.:* 3060–0833.

*OMB Approval Date:* 04/08/2008.

*Expiration Date:* 04/30/2011.

*Title:* Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings.

*Form No.:* N/A.

*Estimated Annual Burden:* 85,154 responses; 0.25 to 5 hours per response; 80,184 total annual hourly burden.

*Needs and Uses:* The information collection requirements included under this OMB Control Number 3060–0833 govern the filing of complaints with the Commission as part of the implementation of section 255 of the Telecommunications Act of 1996, which seeks to ensure that telecommunications equipment and services are available to all Americans, including those individuals with disabilities. As with any complaint procedure, a certain number of regulatory and information burdens are necessary to ensure compliance with FCC rules. The information collection requirements also give full effect to the accessibility policies embodied in section 255, by requiring telecommunications equipment manufacturers and service providers to make end-user product documentation available in alternate formats, including providing contact information to request such documentation, and by requiring them to demonstrate how they considered accessibility during product development, when no other affirmative defenses to a complaint are pertinent.

*OMB Control No.:* 3060–1043.

*OMB Approval Date:* 03/24/2008.

*Expiration Date:* 03/31/2011.

*Title:* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, CG Docket No. 03–123; FCC 04–137.

*Form No.:* N/A.

*Estimated Annual Burden:* 18 responses; 10 hours per response; 180 total annual hourly burden.

*Needs and Uses:* The reporting requirements included under OMB Control Number 3060–1043 enable the Commission to collect waiver reports from Video Relay Service (VRS) and Internet-Protocol Relay (IP Relay) providers requesting waivers from certain Telecommunications Relay Services (TRS) mandatory minimum standards. On June 30, 2004, the Commission released a *Report and Order* and *Order on Reconsideration* in Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 04–137. In the *Report and Order*, the Commission granted VRS and IP Relay providers waivers of the following TRS mandatory minimum requirements, amongst others: (1) 47 CFR 64.604(a)(3)—types of calls that must be handled; (2) 47 CFR 64.604(a)(4)—emergency call handling; and (3) 47 CFR 64.604(b)(3)—equal access to interexchange carriers. These waivers are granted provided that VRS and IP Relay providers submit annual reports to the Commission, in a narrative form, detailing: (1) The provider's plan or general approach to meet the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standards; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waiver should continue in effect.

*OMB Control No.:* 3060–1078.

*OMB Approval Date:* 11/20/2007.

*Expiration Date:* 11/30/2010.

*Title:* Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act); CG Docket No. 04–53.

*Form No.:* N/A.

*Estimated Annual Burden:* 5,443,287 responses; 1 to 10 hours per response; 30,254,598 total annual hourly burden.

*Needs and Uses:* The reporting requirements included under OMB Control Number 3060–1078 enable the Commission to collect information regarding violations of the CAN–SPAM Act. This information is used to help wireless subscribers stop receiving unwanted commercial mobile services messages.

On August 12, 2004, the Commission released an *Order*, Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, adopting rules to prohibit the sending of commercial messages to any address referencing an Internet domain name associated with wireless subscribers' messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist of 47 CFR 64.3100(a)(4), (d), (e) and (f).

*OMB Control No.:* 3060–1111.

*OMB Approval Date:* 01/15/2008.

*Expiration Date:* 01/31/2011.

*Title:* Sections 225 and 255, Interconnected Voice Over Internet Protocol Services (VoIP).

*Form No.:* N/A.

*Estimated Annual Burden:* 27,464 responses; 1 to 20 hours per response; 149,962 total annual hourly burden.

*Needs and Uses:* On June 15, 2007, the Commission released a *Report and Order*, IP-Enabled Services; Implementation of Sections 225 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 07–110. FCC 07–110 extended the disability access requirements that apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended (the Act), to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extended to interconnected VoIP providers the TRS requirements contained in its regulations, pursuant to section 225(b)(1) of the Act. As applied to interconnected VoIP providers and to manufacturers of specialized VoIP equipment, several requirements adopted by FCC 07–110 contained new or modified information collection requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–13263 Filed 6–12–08; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 6, 2008.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before August 12, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0423.

*Title:* Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 50 respondents; 50 responses.

*Estimated Time per Response:* 20 minutes.

*Frequency of Response:* Third party disclosure requirement; On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 17 hours.

*Total Annual Cost:* 42,500.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* 47 CFR 73.3588 states whenever a petition to deny or an informal objection has been filed against any applications for renewal, new construction permits, modifications, and transfers/assignments, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal. This request must include the following documents: (1) A copy of any written agreement related to the dismissal or withdrawal, (2) an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, (3) an itemization of the expenses for which it is seeking reimbursement, and (4) the terms of any oral agreements related to the dismissal or withdrawal of the petitions to deny. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of

petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The affidavit must also include the terms of any oral agreements relating to the dismissal or withdrawal of the petition to deny.

*OMB Control Number:* 3060–0386.

*Title:* Special Temporary Authorization (STA) Requests, 47 CFR 73.1635; Notifications, 47 CFR 73.1615; and Informal Filings (47 CFR part 73).

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents/Responses:* 3,710.

*Estimated Hours per Response:* 30 minutes to 4 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

*Confidentiality:* No need for confidentiality required.

*Total Annual Burden:* 4,020 hours.

*Total Annual Costs:* $3,921,890.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 31, 2007, the Commission released a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission authorized the following ''DTV Transition-related'' filings, which must be made electronically via the FCC's Consolidated Database System (''CDBS''), to permit broadcasters to request and obtain regulatory flexibility from the Commission, if necessary, to meet their DTV construction deadlines:

• *STA for Phased Transition and Continued Interim Operations.* Stations may file a request for Special Temporary Authorization (STA) approval to temporarily remain on their in-core, pre-transition DTV channel after the transition date through the CDBS using the Informal Application Filing Form.

• *STA for Phased Transition/Build-Out.* Stations may file a request for STA approval to build less than full, authorized post-transition facilities by the transition date through the CDBS using the Informal Application Filing Form.

• *STA for Permanent Service Reduction or Termination.* Stations may file a request for STA approval to permanently reduce or terminate analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities through the CDBS using the Informal Application Filing Form.

• *Notification/Informal Letter of Temporary Service Disruption.* Stations may file a notification or informal letter pursuant to 47 CFR 73.1615 to temporarily reduce or cease existing analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities through the CDBS using the Informal Application Filing Form.

• *Notification of Service Reduction or Termination.* Stations may file a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date through the CDBS using the Informal Application Filing Form.

• *Informal Filings.* Stations claiming a ''unique technical challenge'' warranting a February 17, 2009 construction deadline may file a notification to document their status through the CDBS using the Informal Application Filing Form.

47 CFR 73.1635 states that broadcast stations (licensees or permittees) may file a request for Special Temporary Authority (STA) approval to permit a station to operate a broadcast facility for a limited period at a specified variance from the terms of the station's authorization or requirements of the FCC rules. Stations may file a request for STA approval for a variety of reasons. The request must describe the operating modes and facilities to be used.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–13270 Filed 6–12–08; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 30, 2008.

**A. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. James A. Button*, Mequon, Wisconsin; Michael J. McGuire, Oak Lawn, Illinois; Robert C. Olson, Palos Hills, Illinois; Mark S. Poker, Brookfield, Wisconsin; and Thomas W. Tice, Key Largo, Florida, as new co–trustees of the KJ Children's Trust, Brookfield, Wisconsin, to acquire control of iTeam Companies, Inc., Brookfield, Wisconsin, and thereby indirectly acquire control of Kenney Bank and Trust, Kenney, Illinois.

Board of Governors of the Federal Reserve System, June 10, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–13332 Filed 6–12–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 2008.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Nova Financial Holdings, Inc.*, Berwyn, Pennsylvania, to acquire 100 percent of the voting shares of Pennsylvania Business Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, June 10, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–13333 Filed 6–12–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8-12885 published on page 32709 of the issue for Tuesday, June 10, 2008.

Under the Federal Reserve Bank of Kansas City heading, the entry for Pinnacle Bancorp, Inc., Central City, Nebraska, is revised to read as follows:

**A. Federal Reserve Bank of Kansas City** (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. Pinnacle Bancorp, Inc.*, Central City, Nebraska, to acquire 100 percent of the voting shares of First Azle Bancshares, Inc., Azle, Texas, and thereby indirectly acquire voting shares of Wood Financial Group, Inc., Dover, Delaware, and First Bank, Azle, Texas.

Comments on this application must be received by July 3, 2008.

Board of Governors of the Federal Reserve System, June 10, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–13334 Filed 6–12–08 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–08–08BF]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Evaluation Models to Assess Patient Perspectives on Opt-out HIV testing in Clinical Settings—New—National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In 2006, CDC published the *Revised Recommendations for HIV Testing of Adults, Adolescents and Pregnant Women in Health Care Settings* which recommends routine, opt-out HIV testing to persons 13–64 years of age in health care settings. The goal of this project is to develop evaluation models for health care providers in a variety of settings to independently assess the effect that expanded HIV screening activities have on patient attitudes toward and acceptance of HIV testing.

The evaluation models will be packaged into a toolkit containing educational materials, administrative tools and a model questionnaire to measure patients' perceptions of their ability to decline testing, the sufficiency and effectiveness of methods used to impart information prior to testing, and satisfaction with the testing process.

As part of the development of a model questionnaire for inclusion in the toolkit, three health care settings (a hospital emergency department, a private primary care practice and a public primary care practice) will be selected to pilot test the questionnaire. In each health care site, 150 patients will be asked to voluntarily complete a brief computer assisted self interview regarding their experience with the HIV testing process during their health care visit.

Collection of data will include information on patient demographics and current behaviors that may facilitate HIV transmission; perceptions regarding pressure to take the test; confidentiality and privacy during testing; and patient satisfaction and acceptance of opt-out HIV testing. For persons who refused HIV testing during their visit, information about refusal will be collected.

Results from the three pilot sites will be assessed to understand issues of feasibility of the model questionnaire and validity of the included items and scales. The findings from the three site evaluations will be used to improve the model questionnaire and protocols included in the evaluation models toolkit.

CDC plans to complete data collection in 3 health care settings in one year. CDC estimates that 188 patients will be asked to participate at each site during the one year of data collection and that 80% will accept, resulting in approximately 450 new survey respondents across all sites. The average

duration of the survey is estimated to be 20 minutes.

Participation is voluntary. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of data collection | Number of respondents | Average number of responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|
| Clinic Patient Survey | 450 | 1 | 20/60 | 150 |

Dated: June 9, 2008.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8–13317 Filed 6–12–08; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, has been renewed for a 2-year period through May 21, 2010.

For information, contact Mark Bashor, Ph.D., Executive Secretary, Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, 4770 Buford Highway, Mailstop F61, Chamblee, Georgia 30341, telephone 770/488–0574 or fax 770/488–3377.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 6, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–13318 Filed 6–12–08; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–906, CMS–1696, and CMS–10167]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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 function; (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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Fiscal Soundness Reporting Requirements; *Use:* CMS is assigned responsibility for overseeing all Medicare Advantage Organizations (MAO) on-going financial performance. CMS needs the requested collection of information to establish that each MAO maintains a fiscally sound organization. *Form Number:* CMS–906 (OMB# 0938–0469); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 700; *Total Annual Responses:* 700; *Total Annual Hours:* 233.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* This form will be completed by beneficiaries, providers and suppliers who wish to appoint representatives to assist them with obtaining initial determinations and filing appeals. The appointment of representative form must be signed by the party making the appointment and the individual agreeing to accept the appointment. *Form Number:* CMS–1696 (OMB# 0938–0950); *Frequency:* Occasionally; *Affected Public:* Individuals or households and business or other for-profits; *Number of Respondents:* 268,268; *Total Annual Responses:* 268,268; *Total Annual Hours:* 67,067.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Competitive Acquisition Program for Medicare Part B Drugs: CAP Physician Election Agreement; *Use:* The Competitive Acquisition Program (CAP) is required by Section 303(d) of the Medicare Modernization Act (MMA), which amended Title XVIII of the Social Security Act (the Act) by adding a new section 1847(B), which establishes a competitive acquisition program for the payment for Part B covered drugs and biologicals furnished on or after January 1, 2006. Physicians are given a choice between buying and billing these drugs under the average sales price (ASP) system, or obtaining these drugs from vendors selected in a competitive bidding process. Section 108 of the Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006 amended Section 1847(b)(a)(3) of the Act and requires that CAP implement a post payment review process.

The CAP Physician Election Agreement is used annually by physicians to elect to participate in the CAP or to make changes to the previous

year's selections. The information collected by these documents is used by CMS, its Medicare contractor, and the approved CAP vendor to meet programmatic requirements pertaining to physician election as established by the MMA. *Form Number:* CMS–10167 (OMB# 0938–0955); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 3800; *Total Annual Responses:* 3800; *Total Annual Hours:* 7600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *July 14, 2008.*

OMB Human Resources and Housing Branch, *Attention:* OMB Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, *Fax Number:* (202) 395–6974.

Dated: June 5, 2008.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E8–13095 Filed 6–12–08; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1402–N]**

### Medicare Program; Public Meeting in Calendar Year 2008 for New Clinical Laboratory Tests Payment Determinations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting to discuss payment determinations for specific new Physicians' Current Procedural Terminology (CPT) codes for clinical laboratory tests. The meeting provides a forum for interested parties to make oral presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for calendar year 2009, which will be effective on January 1, 2009. The meeting will address technical issues relating to payment determinations for a specified list of new clinical laboratory codes. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the CMS meeting.

**DATES:** The public meeting is scheduled for Monday, July 14, 2008 from 9 a.m. to 2 p.m., Eastern Standard Time (EST).

**ADDRESSES:** The public meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services (CMS) located at 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Glenn McGuirk, (410) 786–5723.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554, mandated procedures that permit public consultation for payment determinations for new clinical laboratory tests under Part B of title XVIII of the Social Security Act (the Act) in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA. Also, section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108–173, added section 1833(h)(8)(B)(iii) of the Act to require that we convene a public meeting not less than 30 days after publication of this notice in the **Federal Register** to receive comments and recommendations (and data on which recommendations are based) for establishing payment amounts for new clinical laboratory tests.

A newly created Current Procedural Terminology (CPT) code can either represent a refinement or modification of existing test methods, or a substantially new test method. The preliminary list of newly created CPT codes for the calendar year (CY) 2009 will be published on our Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched* approximately mid-June 2008.

Two methods are used to establish payment amounts for tests paid on the clinical laboratory fee schedule. The first method, called cross-walking, is used when a new test is determined to be similar to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned the related existing local fee schedule amounts and the related existing national limitation amount. Payment for the new test code is made at the lesser of the local fee schedule amount or the national limitation amount. The second method, called gap-filling, is used when no comparable, existing test is available. When using this method, instructions are provided to each Medicare carrier or A/B MAC to determine a payment amount for its geographic area(s) for use in the first year. These determinations are based on the following sources of information (if available): Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. The carrier-specific amounts are used to establish a national limitation amount for following years. For each new clinical laboratory test code, a determination must be made to either cross-walk or to gap-fill, and, if cross-walking is appropriate, to know what tests to cross-walk.

#### II. Format

This meeting is open to the public. The on-site check-in for visitors will be held from 8:30 a.m. to 9 a.m., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new CPT codes for the CY 2009 Clinical Laboratory Fee Schedule.

Oral presentations must be brief and must be accompanied by three written copies. Presenters may also make copies available for approximately 50 meeting participants. Presenters should address the—(1) new test code(s) and descriptor; (2) the test purpose and method; (3) costs; (4) charges; and (5) make a recommendation with rationale for one of two methods (cross-walking or gap-fill) for determining payment for new clinical laboratory codes. Additionally, the presenters should provide the data on which their recommendations are based. Presentations that do not address the five items may be considered incomplete and may not be considered by CMS when making a payment determination. CMS may request

missing information following the meeting in order to prevent a recommendation from being considered incomplete.

A summary of the proposed new codes and the payment recommendations that are presented during the public meeting will be posted on our Web site by early September 2008 and can be accessed at *http://www.cms.hhs.gov/ClinicalLabFeeSched.*

In addition, the summary will list other comments received by July 29, 2008 or 15 days after the meeting. The summary will also display CMS' proposed payment determinations, an explanation of the reasons for each determination, and the data on which the determinations are based. Interested parties may submit written comments on the tentative payment determinations by September 19, 2008 to the address specified in the **ADDRESSES** section of the summary. Final payment determinations will be posted on our Web site during October 2008 together with the rationale for each determination, the data on which the determinations are based, responses to comments, and suggestions received from the public.

After the final payment determinations have been posted on our Web site, the public may request reconsideration of the payment determinations as set forth in 42 CFR 414.509. See also 72 FR 66275 through 66280.

**III. Registration Instructions**

We are coordinating the public meeting registration. Beginning June 16, 2008, registration may be completed on-line at *http://www.cms.hhs.gov/ClinicalLabFeeSched.* The following information must be submitted when registering: Name; company name; address; telephone number(s); and E-mail address(es).

When registering, individuals who want to make a presentation must also specify on which new clinical laboratory test code(s) they will be presenting comments. A confirmation will be sent upon receipt of the registration.

*Registration Deadline:* Individuals must register by July 9, 2008.

**IV. Security, Building, and Parking Guidelines**

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification may be denied access to the building.

Individuals who are not registered in advance will not be permitted to enter the building and will not be able to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

**V. Special Accommodations**

Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide the information upon registering for the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 29, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E8–13097 Filed 6–12–08; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Resources, Special Emphasis Panel, SNP SEP.

*Date:* July 16, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John R. Glowa, PhD, Scientific Review Officer, National Center For Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: June 5, 2008.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–13167 Filed 6–12–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute, Special Emphasis Panel, NRSA Short-Term Research Training (T35's).

*Date:* July 2, 2008.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge Two, 6701 Rockledge Drive Room 7186, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood

Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 5, 2008.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–13169 Filed 6–12–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating Jackson State University as a DHS Center of Excellence for Natural Disasters, Coastal Infrastructure and Emergency Management as Education Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated Jackson State University as a DHS Center of Excellence for Natural Disasters, Coastal Infrastructure and Emergency Management, Education Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Bryan Roberts, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5738, facsimile 202–254–6179; e-mail *bryan.roberts@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

#### Criteria

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, and 4. Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for Natural Disasters, Coastal Infrastructure and Emergency Management is demonstrated expertise in conducting fundamental research into the issues and challenges in predicting, preparing for, preventing damages from, responding to, and recovering from natural disasters in coastal areas. The Center will develop research and education programs to improve understanding of, preparation for, and responses to natural disasters, with a particular emphasis on flooding and hurricanes. The Center will align with DHS S&T's Infrastructure and Geophysical Division and will develop approaches and train future professionals to reduce serious threats to American life and property for many years. Specifically, the Center will conduct basic and transformational research on coastal issues in the following areas: (1) Natural hazards of the coastal region (*e.g.*, flooding from hurricanes or storm surges); (2) Innovative and comprehensive regional flood water management, including technical approaches and options to prevent damages from, mitigate, and recover from flooding incidents, and development of better understanding of land-water interactions; (3) Approaches to safeguarding public-sector coastal infrastructure and meeting other public-sector needs in crises; and (4) Coastal regional planning, governance, resilience, and unified comprehensive risk-based decision support tools, particularly for natural disasters warranting emergency measures. These tools include social, political, and economic studies on the public sector workforce and on new networks, institutions, or associations that might be devised as test beds to be effective in the coastal region, tailored to the region's socio-economic, governance, and geographic features.

#### Announcement of Funding Opportunities and Competition

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, or 4. Border Security and Immigration. The funding opportunity announcements for these four Centers of

Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Natural Disasters, Coastal Infrastructure and Emergency Management, DHS received 31 Natural Disasters white papers proposals and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 13 full proposals by the closing date of July 30, 2007. The 13 full proposals were reviewed by subject matter experts external to DHS S&T. Eight full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at four sites. Based on information collected on these site visits, DHS selected Jackson State University to be the Education Lead Institution for the Natural Disasters, Coastal Infrastructure and Emergency Management Center of Excellence, in partnership with the University of North Carolina at Chapel Hill (the Research Lead), Louisiana State University and other affiliates.

Jackson State University and its partners will conduct research and education on natural hazards—particularly flood and hurricane modeling, natural and infrastructure resilience, physical testing to extend new theoretical and modeling developments, community preparedness and regional governance and natural disaster-related education, including the development and use of capabilities at minority-serving institutions.

This team of institutions is uniquely well equipped and located to address issues of hurricane and flood prediction, preparedness, response and recovery. They will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other federal, state and local governments to reduce potential damages from floods, hurricanes, and other natural disasters.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13296 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the Northeastern University as a DHS Center of Excellence for Explosives Detection Mitigation and Response as Research Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the Northeastern University as a DHS Center of Excellence for Explosives Detection Mitigation and Response, Research Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Douglas Bauer, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–6040, facsimile 202–254–6179; e-mail *doug.bauer@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

*Criteria*

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: (1) Natural Disasters, Coastal Infrastructure and Emergency Management, (2) Explosives Detection, Mitigation and Response, (3) Maritime, Island and Remote Environment Security, and (4) Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence for Explosives Detection Mitigation and Response (EDMR)is demonstrated expertise in conducting fundamental research in explosives-related science and engineering. S&T is establishing the EDMR COE to conduct research to enhance the Nation's technical capabilities to detect, prepare for, prevent damages from, respond to, and recover from terrorist attacks involving explosives. The EDMR COE will collaborate closely with the DHS/Science and Technology (S&T) Directorate's Explosives Division, which manages a full-spectrum research and

development (R&D) program from fundamental research to advanced technologies. The EDMR COE will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future. The EDMR COE will develop relevant educational curricula for both matriculated students and career professionals. The EDMR COE also will participate in S&T's University Network, a consortium of COEs that share resources and data and collaborate on research projects to provide cost-effective results to support DHS's mission.

*Announcement of Funding Opportunities and Competition*

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: (1) Explosives Detection Mitigation and Response, (2) Explosives Detection, Mitigation and Response, (3) Maritime, Island and Remote Environment Security, or (4) Border Security and Immigration. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Explosives Detection Mitigation and Response, DHS received 19 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 5 full proposals by the closing date of July 30, 2007. The 5 full proposals were reviewed by subject matter experts external to DHS S&T. All 5 full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at 3 sites. Based on information collected on these site visits, DHS selected Northeastern University to be the Research Lead Institution for the Explosives Detection Mitigation and Response Center of Excellence, in partnership with the University of Rhode Island (the Education Lead), New Mexico Institute of Mining and Technology and other affiliated universities.

Northeastern University and its partners will conduct basic and transformational research and develop educational programs on explosives-related issues including explosives properties, formulation, and characterization; detection of explosives and explosive devices; sensor materials; unconventional approaches to identify threats, and other countermeasures. These programs will include the development and use of explosives research and educational capabilities at minority-serving institutions.

This team of institutions will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other federal, state and local governments to reduce potential damages from floods, hurricanes, and other natural disasters.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13287 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating Stevens Institute of Technology as a DHS Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security as Research Co-Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated Stevens Institute of Technology as a DHS Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security, Research Co-Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Tiffany Lightbourn, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5843, facsimile 202–254–6179; e-mail *tiffany.lightbourn@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

#### Criteria

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Border Security and Immigration, and 4. Maritime, Island and Extreme/Remote Environment Security. Research in these

areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for the Study of Maritime Island and Extreme/Remote Environment Security is demonstrated expertise in conducting fundamental research into the issues and challenges of global maritime domain security technology and policy. In addition this COE will conduct research on maritime and security interests in U.S. islands, territories, and extreme environments (e.g. Hawaii, Puerto Rico and Alaska). Research results will support DHS, other Federal, and state and local agencies' missions to secure national maritime borders and the U.S. maritime interests. This COE will collaborate closely with the S&T Directorate's Borders & Maritime Division which manages a full-spectrum research and development (R&D) program from fundamental research to advanced technologies. The COE for the Study of Maritime, Island and Extreme/Remote Environment Security will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future to defend maritime commerce and the global supply chain, minimize damage and expedite recovery from attacks or catastrophic events impacting the maritime domain, and protect maritime-related population centers, critical infrastructure and other national maritime interests. This COE will develop relevant educational curricula for both matriculated students and career professionals.

The Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security will conduct basic and transformational research on maritime security issues in the following areas:

1. Maritime Domain Awareness. Specifically the COE will research the best ways—with full regard to legal and international frameworks, sensitivity to privacy, effectiveness, and affordability—of maintaining necessary and appropriate surveillance over the U.S. and global maritime domain and its users, ports of entry and maritime infrastructure. In addition, the COE will develop improvements in our ability to screen and scan cargo, vessels, passengers, the maritime workforce and the boating public, so that contraband does not enter the U.S.

2. Marine Transportation System Security, Critical Infrastructure Protection, Resiliency and Recovery. Research will develop effective and feasible ways to imbed security practices that will enhance supply chain transparency and protect against intentional acts of terrorism. Research will assess the risk and vulnerability of extreme environments for terrorist attacks and catastrophic events and methods to mitigate the consequences of these events on people, commerce, and critical infrastructure should they occur. Research will evaluate the resiliency of the maritime transportation system to aid in maritime system recovery planning.

3. Maritime Risk Management, Policy Analysis, & International Governance. Research will develop new technologies and improved risk assessment methodologies to prioritize protection efforts, and best leverage public and private layered security efforts to protect critical maritime infrastructure. Policy and legal analysis will be conducted to enhance cooperation among nations and international organizations that share common interests regarding the security of the maritime domain.

4. Maritime Enforcement, Operational Analyses, & Command, Control, and Communications. In particular the COE will develop approaches that allow for multiple layers of security and diverse forms of surveillance, interdiction, and enforcement to be effectively integrated. Research will also facilitate the timely communication of information and analysis generated by surveillance and screening systems.

**Announcement of Funding Opportunities and Competition**

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: 1. Explosives Detection Mitigation and Response, 2. Explosives Detection, Mitigation and Response, 3. Border Security Immigration, or 4. Maritime, Island and Extreme/Remote Environment Security. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Maritime, Island and Extreme/Remote Environment Security DHS received 8 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 4 full proposals by the closing date of July 30, 2007. The 4 full proposals were reviewed by subject matter experts external to DHS S&T. Two full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at both sites. Based on information collected on these site visits, DHS selected University of Hawaii and Stevens Institute of Technology to be Research Co-Lead Institutions for the Maritime, Island and Extreme/Remote Environment Security Center of Excellence.

Stevens Institute of Technology and its partners will conduct basic and transformational research on maritime related issues including Maritime Domain Awareness; Marine Transportation System Security, Critical Infrastructure Protection, Resiliency and Recovery; Maritime Risk Management, Policy Analysis, & International Governance; and Maritime Enforcement, Operational Analyses, & Command, Control, and Communications.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13290 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the University of North Carolina at Chapel Hill as a DHS Center of Excellence for Natural Disasters, Coastal Infrastructure and Emergency Management as Research Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the University of North Carolina at Chapel Hill as a DHS Center of Excellence for Natural Disasters, Coastal Infrastructure and Emergency Management, Research Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Bryan Roberts, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5738, facsimile 202–254–6179; e-mail *bryan.roberts@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 308 of the Homeland Security Act of 2002, Public Law 107–296 (the ''Homeland Security Act''), as amended by the Consolidated Appropriations

Resolution of 2003, Public Law 108–7, and as codified in Title 6 of the United States Code, Chapter I, Subchapter III, Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

*Criteria*

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, and 4. Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for Natural Disasters, Coastal Infrastructure and Emergency Management is demonstrated expertise in conducting fundamental research into the issues and challenges in predicting, preparing for, preventing damages from, responding to, and recovering from natural disasters in coastal areas. The Center will develop research and education programs to improve understanding of, preparation for, and responses to natural disasters, with a particular emphasis on flooding and hurricanes. The Center will align with DHS S&T's Infrastructure and Geophysical Division and will develop approaches and train future professionals to reduce serious threats to of American life and property for many years. Specifically, the Center will conduct basic and transformational research on coastal issues in the following areas: (1) Natural hazards of the coastal region (e.g., flooding from hurricanes or storm surges); (2) Innovative and comprehensive regional flood water management, including technical approaches and options to prevent damages from, mitigate, and recover from flooding incidents, and development of better understanding of land-water interactions; (3) Approaches to safeguarding public-sector coastal infrastructure and meeting other public-sector needs in crises; and (4) Coastal regional planning, governance, resilience, and unified comprehensive risk-based decision support tools, particularly for natural disasters warranting emergency measures. These tools include social, political, and economic studies on the public sector workforce and on new networks, institutions, or associations that might be devised as test beds to be effective in the coastal region, tailored to the region's socio-economic, governance, and geographic features.

*Announcement of Funding Opportunities and Competition*

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, or 4. Border Security and Immigration. The funding opportunity announcements for these four Centers of Excellence were published at *www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Natural Disasters, Coastal Infrastructure and Emergency Management, DHS received 31 Natural Disasters white papers proposals and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 13 full proposals by the closing date of July 30, 2007. The 13 full proposals were reviewed by subject matter experts external to DHS S&T. Eight full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at four sites. Based on information collected on these site visits, DHS selected the University of North Carolina at Chapel Hill to be the Research Lead Institution for the Natural Disasters, Coastal Infrastructure and Emergency Management Center of Excellence, in partnership with Jackson State University (the Education Lead), Louisiana State University and other affiliates.

The University of North Carolina at Chapel Hill and its partners will conduct research and education on natural hazards—particularly flood and hurricane modeling, natural and infrastructure resilience, physical testing to extend new theoretical and modeling developments, community preparedness and regional governance and natural disaster-related education, including the development and use of capabilities at minority-serving institutions.

This team of institutions is uniquely well equipped and located to address issues of hurricane and flood prediction, preparedness, response and recovery. They will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other federal, state and local governments to reduce potential

damages from floods, hurricanes, and other natural disasters.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13276 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the University of Arizona as a DHS Center of Excellence for the Study of Border Security and Immigration, Research Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the University of Arizona as a DHS Center of Excellence for the Study of Border Security and Immigration, Research Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Tiffany Lightbourn, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5843, facsimile 202–254–6179; e-mail *tiffany.lightbourn@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

*Criteria*

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: (1) Natural Disasters, Coastal Infrastructure and Emergency Management, (2) Explosives Detection, Mitigation and Response, (3) Maritime, Island and Remote Environment Security, and (4) Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for the Study of Border Security and Immigration) is demonstrated expertise in conducting fundamental research into the policy and technological issues and challenges of U.S. border security, immigration, and national security. Research results will support DHS, other federal, state and local agencies missions to secure our national borders while welcoming legitimate visitors and trade. This COE will collaborate closely with S&T's Borders & Maritime Division which manages a full-spectrum research and development (R&D) program from fundamental research to advanced technologies. The COE for the Study of Border Security and Immigration will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future to balance the lawful movement of people and goods with effective border security. This COE will develop relevant educational curricula for both matriculated students and career professionals.

The Center of Excellence for the Study of Border Security and Immigration will conduct basic and transformational research on border security issues in the following areas:

1. Surveillance, Screening, Data Fusion, and Situational Awareness. Specifically they will research the best ways—in terms of legality, sensitivity to privacy, effectiveness, and affordability—of maintaining surveillance over borders and ports of entry. In addition they will develop improvements in our ability to screen cargo, vehicles, and passengers entering the U.S.

2. Population Dynamics, Immigration Administration, and Immigration Enforcement. Research will develop methods to accurately measure and reliably predict the size of immigration flows to the U.S. and improve the efficiency of our system of immigration administration and enhance the enforcement of our immigration laws.

3. Operational Analysis, & Command, Control, and Communications. In particular they will develop approaches that allow for multiple layers of security and diverse forms of surveillance, interdiction, and enforcement to be effectively integrated. Research will also facilitate the timely communication of information and analysis generated by surveillance and screening systems.

4. Immigration Policy, Civic Integration, & Citizenship. Research will assess the consequences of immigration policies on future flows of migrants, the American labor market, and on the incorporation of immigrants into American society.

5. Border Risk Management & International Governance. Research will assess new technologies and improved risk assessment methodologies to prioritize protection efforts. Research will also assess strategies that can enhance cooperation among nationals and international organizations that

share common interests regarding the security of the border domain.

*Announcement of Funding Opportunities and Competition*

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: (1) Explosives Detection Mitigation and Response, (2) Explosives Detection, Mitigation and Response, (3) Maritime, Island and Remote Environment Security, or (4) Border Security and Immigration. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Border Security and Immigration DHS received 11 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 6 full proposals by the closing date of July 30, 2007. The 6 full proposals were reviewed by subject matter experts external to DHS S&T. Three full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at all 3 sites. Based on information collected on these site visits, DHS selected the University of Arizona to be the Research Lead Institution for the Border Security and Immigration Center of Excellence, in partnership with the University of Texas at El Paso (the Education Lead), the University of New Mexico and other affiliated universities.

The University of Arizona and its partners will conduct basic and transformational research and develop educational programs on the policy and technological issues and challenges of U.S. border security, immigration, and national security.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13281 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the University of Hawaii as a DHS Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security as Research Co-Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the University of Hawaii as a DHS Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security, Research Co-Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Tiffany Lightbourn, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5843, facsimile 202–254–6179; e-mail *tiffany.lightbourn@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

#### Criteria

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Border Security and Immigration, and 4. Maritime, Island and Extreme/Remote Environment Security. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for the Study of Maritime Island and Extreme/Remote Environment Security is demonstrated expertise in conducting fundamental research into the issues and challenges of global maritime domain security technology and policy. In addition this COE will conduct research on maritime and security interests in U.S. islands, territories, and extreme environments (*e.g.* Hawaii, Puerto Rico and Alaska). Research results will support DHS, other Federal, and state and local agencies' missions to secure national maritime borders and the U.S. maritime interests. This COE

will collaborate closely with the S&T Directorate's Borders & Maritime Division which manages a full-spectrum research and development (R&D) program from fundamental research to advanced technologies. The COE for the Study of Maritime, Island and Extreme/Remote Environment Security will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future to defend maritime commerce and the global supply chain, minimize damage and expedite recovery from attacks or catastrophic events impacting the maritime domain, and protect maritime-related population centers, critical infrastructure and other national maritime interests. This COE will develop relevant educational curricula for both matriculated students and career professionals.

The Center of Excellence for the Study of Maritime, Island and Extreme/Remote Environment Security will conduct basic and transformational research on maritime security issues in the following areas:

1. Maritime Domain Awareness. Specifically the COE will research the best ways—with full regard to legal and international frameworks, sensitivity to privacy, effectiveness, and affordability—of maintaining necessary and appropriate surveillance over the U.S. and global maritime domain and its users, ports of entry and maritime infrastructure. In addition, the COE will develop improvements in our ability to screen and scan cargo, vessels, passengers, the maritime workforce and the boating public, so that contraband does not enter the U.S.

2. Marine Transportation System Security, Critical Infrastructure Protection, Resiliency and Recovery. Research will develop effective and feasible ways to imbed security practices that will enhance supply chain transparency and protect against intentional acts of terrorism. Research will assess the risk and vulnerability of extreme environments for terrorist attacks and catastrophic events and methods to mitigate the consequences of these events on people, commerce, and critical infrastructure should they occur. Research will evaluate the resiliency of the maritime transportation system to aid in maritime system recovery planning.

3. Maritime Risk Management, Policy Analysis, & International Governance. Research will develop new technologies and improved risk assessment methodologies to prioritize protection efforts, and best leverage public and private layered security efforts to protect critical maritime infrastructure. Policy and legal analysis will be conducted to enhance cooperation among nations and international organizations that share common interests regarding the security of the maritime domain.

4. Maritime Enforcement, Operational Analyses, & Command, Control, and Communications. In particular the COE will develop approaches that allow for multiple layers of security and diverse forms of surveillance, interdiction, and enforcement to be effectively integrated. Research will also facilitate the timely communication of information and analysis generated by surveillance and screening systems.

**Announcement of Funding Opportunities and Competition**

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: 1. Explosives Detection Mitigation and Response, 2. Explosives Detection, Mitigation and Response, 3. Border Security Immigration, or 4. Maritime, Island and Extreme/Remote Environment Security. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Maritime, Island and Extreme/Remote Environment Security DHS received 8 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 4 full proposals by the closing date of July 30, 2007. The 4 full proposals were reviewed by subject matter experts external to DHS S&T. Two full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at both sites. Based on information collected on these site visits, DHS selected the University of Hawaii and Stevens Institute of Technology to be Research Co-Lead Institutions for the Maritime, Island and Extreme/Remote Environment Security Center of Excellence.

The University of Hawaii and its partners will conduct basic and transformational research on maritime related issues including Maritime Domain Awareness; Marine Transportation System Security, Critical Infrastructure Protection, Resiliency and Recovery; Maritime Risk Management, Policy Analysis, & International Governance; and Maritime Enforcement, Operational Analyses, & Command, Control, and Communications.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13295 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the University of Rhode Island as a DHS Center of Excellence for Explosives Detection Mitigation and Response as Education Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the University of Rhode Island as a DHS Center of Excellence for Explosives Detection Mitigation and Response, Education Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Douglas Bauer, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–6040, facsimile 202–254–6179; e-mail *doug.bauer@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as

university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

**Criteria**

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, and 4. Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence (COE) for Explosives Detection Mitigation and Response (EDMR) is demonstrated expertise in conducting fundamental explosives-related sciences and engineering research. S&T is establishing the EDMR COE to conduct research to enhance the Nation's technical capabilities to detect, prepare for, prevent damages from, respond to, and recover from terrorist attacks involving explosives. The EDMR COE will collaborate closely with the DHS/Science and Technology (S&T) Directorate's Explosives Division, which manages a full-spectrum research and development (R&D) program from fundamental research to advanced technologies. The EDMR COE will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future. The EDMR COE will develop relevant educational curricula for both matriculated students and career professionals. The EDMR COE also will participate in S&T's University Network, a consortium of COEs that share resources and data and collaborate on research projects to provide cost-effective results to support DHS's mission.

**Announcement of Funding Opportunities and Competition**

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: 1. Natural Disasters, Coastal Infrastructure and Emergency Management, 2. Explosives Detection, Mitigation and Response, 3. Maritime, Island and Remote Environment Security, or 4. Border Security and Immigration. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Explosives Detection Mitigation and Response, DHS received 19 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 5 full proposals by the closing date of July 30, 2007. The 5 full proposals were reviewed by subject matter experts external to DHS S&T. All 5 full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at 3 sites. Based on information collected on these site visits, DHS selected the University of Rhode Island to be the Education Lead Institution for the Explosives Detection Mitigation and Response Center of Excellence, in partnership with Northeastern University (the Research Lead), New Mexico Institute of Mining and Technology and other affiliated universities.

The University of Rhode Island and its partners will develop educational programs and conduct basic and transformational research and on explosives-related issues including explosives properties, formulation, and characterization; detection of explosives and explosive devices; sensor materials; unconventional approaches to identify threats, and other countermeasures. These programs will include the development and use of explosives research and educational capabilities at minority-serving institutions.

This team of institutions will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other federal, state and local governments to reduce potential damages from floods, hurricanes, and other natural disasters.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13291 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Notice Designating the University of Texas at El Paso as a DHS Center of Excellence for the Study of Border Security and Immigration for Education Lead Institution

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security has designated the University of Texas at El Paso as a DHS Center of Excellence for the Study of Border Security and Immigration, Education Lead Institution.

**FOR FURTHER INFORMATION CONTACT:** Tiffany Lightbourn, Program Manager, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5843, facsimile 202–254–6179; e-mail *tiffany.lightbourn@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III

Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development. However, the list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

*Criteria*

In response to Congressional direction contained in the Conference Report for the Fiscal Year 2007 Department of Homeland Security Appropriations Act, the DHS Under Secretary for Science and Technology developed a plan in November 2006 to establish new DHS Centers of Excellence in high priority science and technology areas which aligned to the DHS Science and Technology Directorate's research portfolios and for which DHS determined there were significant gaps in scientific understanding and technological development. These areas included: (1) Natural Disasters, Coastal Infrastructure and Emergency Management, (2) Explosives Detection, Mitigation and Response, (3) Maritime, Island and Remote Environment Security, and (4) Border Security and Immigration. Research in these areas will contribute significantly to the Department's ability to enhance homeland security and the safety of our citizens from both natural and man-made threats.

The criteria for designation for this new Center of Excellence for the Study of Border Security and Immigration will demonstrate expertise in conducting fundamental research into the policy and technological issues and challenges of U.S. border security, immigration, and national security. Research results will support DHS, other federal, state and local agencies missions to secure our national borders while welcoming legitimate visitors and trade. This COE will collaborate closely with S&T's Borders & Maritime Division which manages a full-spectrum research and development (R&D) program from fundamental research to advanced technologies. The COE for the Study of Border Security and Immigration will provide enabling basic research that will advance the technical tools and information that S&T's customers will need in the future to balance the lawful movement of people and goods with effective border security. This COE will develop relevant educational curricula for both matriculated students and career professionals.

The Center of Excellence for the Study of Border Security and Immigration will conduct basic and transformational research on border security issues in the following areas:

1. Surveillance, Screening, Data Fusion, and Situational Awareness. Specifically they will research the best ways—in terms of legality, sensitivity to privacy, effectiveness, and affordability—of maintaining surveillance over borders and ports of entry. In addition they will develop improvements in our ability to screen cargo, vehicles, and passengers entering the U.S.

2. Population Dynamics, Immigration Administration, and Immigration Enforcement. Research will develop methods to accurately measure and reliably predict the size of immigration flows to the U.S. and improve the efficiency of our system of immigration administration and enhance the enforcement of our immigration laws.

3. Operational Analysis, & Command, Control, and Communications. In particular they will develop approaches that allow for multiple layers of security and diverse forms of surveillance, interdiction, and enforcement to be effectively integrated. Research will also facilitate the timely communication of information and analysis generated by surveillance and screening systems.

4. Immigration Policy, Civic Integration, & Citizenship. Research will assess the consequences of immigration policies on future flows of migrants, the American labor market, and on the incorporation of immigrants into American society.

5. Border Risk Management & International Governance. Research will assess new technologies and improved risk assessment methodologies to prioritize protection efforts. Research will also assess strategies that can enhance cooperation among national and international organizations that share common interests regarding the security of the border domain.

*Announcement of Funding Opportunities and Competition*

In February 2007, the Department established a competitive process and requested white papers and proposals from universities that wished to be designated as DHS Centers of Excellence in: (1) Explosives Detection Mitigation and Response, (3) Maritime, Island and Remote Environment Security, or (4) Border Security and Immigration. The funding opportunity announcements for these four Centers of Excellence were published at *http://www.grants.gov* on February 4, 2007, as required by the Office of Management and Budget. In the area of Border Security and Immigration DHS received 11 white papers and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty, and the private sector. Following the white paper review, DHS received 6 full proposals by the closing date of July 30, 2007. The 6 full proposals were reviewed by subject matter experts external to DHS S&T. Three full proposals were referred to an internal review panel of S&T subject matter experts for evaluation, who recommended site visits at all 3 sites. Based on information collected on these site visits, DHS selected University of Arizona to be the Research Lead Institution for the Border Security and Immigration Center of Excellence, in partnership with the University of Texas at El Paso (the Education Lead), University of New Mexico and other affiliated universities.

The University of Texas at El Paso and its partners will develop educational programs on the policy and

technological issues and challenges of U.S. border security, immigration, and national security.

**Jay M. Cohen,**

*Under Secretary for Science and Technology, Department of Homeland Security.*

[FR Doc. E8–13288 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Designation of the Electronic Employment Eligibility Verification System Under Executive Order 12989, as Amended by the Executive Order Entitled ''Amending Executive Order 12989, as Amended'' of June 6, 2008

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Homeland Security has designated the E-Verify system, operated by U.S. Citizenship and Immigration Services in partnership with the Social Security Administration, as the electronic employment eligibility verification system to be used by Federal contractors, pursuant to Executive Order 12989, as amended by the Executive Order entitled ''Amended Executive Order 12989, as Amended'' of June 6, 2008.

**DATES:** This designation is effective immediately.

**Designation**

Executive Order 12989, as amended by the Executive Order entitled ''Amended Executive Order 12989, as Amended'' of June 6, 2008, instructs Federal departments and agencies that enter into contracts to require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of all persons hired during the contract term by the contractor to perform employment duties within the United States, and all persons assigned by the contractor to perform work within the United States on the Federal contract.

Pursuant to that Executive Order, I hereby designate the E-Verify system, modified as necessary and appropriate to accommodate the policy set forth in the Executive Order entitled ''Amended Executive Order 12989, as Amended'' and the implementation of that Executive Order by the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration, as the electronic employment eligibility verification system to be used by Federal contractors.

Dated: June 9, 2008.

**Michael Chertoff,**

*Secretary, Department of Homeland Security.*

[FR Doc. E8–13294 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–698, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–698, Application to Adjust Status From Temporary to Permanent Resident; OMB Control No. 1615–0035.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 9, 2008, at 73 FR 19234 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0035 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The data collected on this form is used by the USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

If additional information is required contact: USCIS, Regulatory Management

Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: June 10, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–13307 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form AR–11, Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection under Review: Form AR–11, Alien's Change of Address Card; OMB Control No. 1615–0007.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 8, 2008, at 73 FR 19087 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0007 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Alien's Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring this collection:* Form AR–11. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used by aliens to submit their change of address to the USCIS within 10 days from the date of change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at .083 hours (5 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 59,760 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: June 10, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–13308 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Forms I–600/I–600A, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Forms I–600/I–600A, Petition to Classify Orphan as an Immediate Relative, and, Application for Advance Processing of Orphan Petition; OMB Control No. 1615–0028.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 9, 2008, at 73 FR 19233 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–

6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0028 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative, and, Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–600/I–600A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The Form I–600 is used by the U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit he USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: June 10, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–13309 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Proposed Collection; Comment Request; Harbor Maintenance Fee

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

**ACTION:** 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0055.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before August 12, 2008, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Room 3.2.C, *Attn:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the 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 estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

*Title:* Harbor Maintenance Fee.

*OMB Number:* 1651–0055.

*Form Number:* CBP Forms 349 and 350.

*Abstract:* This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

*Current Actions:* There are no changes to the information collection. This submission is to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Institutions.

*Estimated Number of Respondents:* 1,300.

*Estimated Number of Responses:* 5,200.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,816.

Dated: June 6, 2008.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E8–13293 Filed 6–12–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5186–N–24]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2545; (These are not toll-free numbers).

Dated: June 5, 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**Title V, Federal Surplus Property Program Federal Register Report for 06/13/2008**

**Suitable/Available Properties**

*Building*

Alaska

Bldg. 105
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820144
Status: Excess
Comments: 4992 sq. ft., most recent use—housing, off-site use only

Bldgs. 112, 113, 114, 115
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820145
Status: Excess
Comments: 5184 sq. ft., most recent use—housing, off-site use only

Bldgs. 120, 129, 139, 148
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820146
Status: Excess
Comments: 4766 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties**

*Building*

Alaska

Bldg. 136
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820147
Status: Excess
Comments: 2383 sq. ft., most recent use—housing, off-site use only

Bldgs. 366, 367, 371, 373
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820148
Status: Excess
Comments: 13,743 sq. ft., most recent use—housing, off-site use only

Bldgs. 369, 372
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820149
Status: Excess
Comments: 12,642 sq. ft., most recent use—housing, off-site use only

Bldgs. 392, 394
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820150
Status: Excess
Comments: 18,496 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties**

*Building*

Alaska

12 Bldgs.
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820151
Status: Excess
Directions: 413, 414, 415, 416, 417, 418, 424, 425, 427, 428, 429, 431
Comments: 13,056 sq. ft., most recent use—housing, off-site use only

Maryland

Bldg. 00310
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820077
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

Bldg. 00315
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820078
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 00338
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820079
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820080
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820081
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

Bldg. 00851
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820082
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

**Suitable/Available Properties**

*Building*

Maryland

E1043
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820083
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820084
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820085
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

Bldg. E1386
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820086
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820087
Status: Unutilized
Directions: E1440, E1441, E1443, E1445, E1455
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1467, E1485
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820088
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

Bldg. E1521
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820090
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E1570
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820091
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Bldg. E1572
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820092
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint., off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820093
Status: Unutilized
Directions: E1645, E1675, E1677, E1930
Comments: various sq. ft., most recent use—office, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. E2160, E2184, E2196
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820094
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820095
Status: Unutilized
Comments: 132 sq. ft., off-site use only

Bldgs. 02208, 02209
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820096
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820097
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldgs. 02482, 02484
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820098
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820099
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldgs. 02504, 02505

Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820100
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldgs. 02831, E3488
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820101
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 2831A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820102
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820103
Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Aberdeen Proving Ground
Aberdeen MD
Landholding Agency: Army
Property Number: 21200820104
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820105
Status: Unutilized
Directions: E3510, E3570, E3640, E3832
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820106
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820107
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 03754
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820108
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820109
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820110
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820111
Status: Unutilized
Directions: E5057, E5058, E5246, 05258
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820112
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820113
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5128
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820114
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820115
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820116
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820117
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. 05223
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820118
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820119
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820120
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820121
Status: Unutilized
Directions: 05267, E5294, E5327, E5441, E5485
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820122
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Aberdeen Proving Ground
Harford MD

Landholding Agency: Army
Property Number: 21200820123
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5452
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820124
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820125
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820126
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

**Suitable/Available Properties**

*Building*

Maryland

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820127
Status: Unutilized
Directions: E5730, E5738, E5915, E5928, E6875
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820128
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only
Bldg. E5840
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820129
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

**Suitable/Available Properties**

*Building*

Maryland

Bldg. E5946
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820130
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only
Bldg. E6872
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820131
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820132
Status: Unutilized
Comments: most recent use—protective barrier, off-site use only

Bldg. E7821
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820133
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

**Suitable/Available Properties**

*Building*

Oklahoma

Bldg. 05685
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200820152
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Texas

12 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820153
Status: Excess
Directions: 56522, 56523, 56525, 56533, 56534, 56535, 56539, 56542, 56543, 56544, 56545, 56549
Comments: 600/607 sq. ft., presence of asbestos, most recent use—dining, off-site use only

10 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820154
Status: Excess
Directions: 56622, 56623, 56624, 56625, 56629, 56632, 56633, 56634, 56635, 56639
Comments: 500/507 sq. ft., presence of asbestos, most recent use—dining, off-site use only

**Unsuitable Properties**

*Building*

Alaska

Bldg. RLNCL
Fort Richardson
Ft. Richardson AK
Landholding Agency: Army
Property Number: 21200820058
Status: Unutilized
Reasons: Extensive deterioration

Arizona

6 Bldgs.
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200820061
Status: Excess
Directions: 12624, 14277, 15229, 15230, 15406, 15407
Reasons: Extensive deterioration

Arkansas

8 Bldgs.
Pine Bluff Arsenal
Jefferson AR 71602
Landholding Agency: Army
Property Number: 21200820059
Status: Unutilized
Directions: 12330, 12332, 12334, 12336, 12338, 12340, 12342, 12406
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Arkansas

12 Bldgs.
Pine Bluff Arsenal
Jefferson AR 71602
Landholding Agency: Army
Property Number: 21200820060
Status: Unutilized
Directions: 13698, 13710, 13740 thru 13749
Reasons: Secured Area

California

Bldg. 00718
Fort Hunter Liggett
Monterey CA 93928
Landholding Agency: Army
Property Number: 21200820062
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldg. 06284
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21200820063
Status: Unutilized
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Georgia

Bldgs. 4307, 9088, 9089
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200820064
Status: Unutilized
Reasons: Secured Area

Bldg. 00816
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200820065
Status: Excess
Reasons: Extensive deterioration

Bldg. 00021
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200820066
Status: Excess

Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Hawaii

Bldg. 00528
Fort Shafter
Honolulu HI 96858
Landholding Agency: Army
Property Number: 21200820067
Status: Unutilized
Reasons: Extensive deterioration

Indiana

4 Bldgs.
Newport Chemical Depot
Newport IN 47966
Landholding Agency: Army
Property Number: 21200820037
Status: Excess
Directions: 0726C, 707BB, 60581, 60582
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Kansas

Bldg. 00688
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21200820068
Status: Unutilized
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Kentucky

Structure 000RR
Fort Campbell
Montgomery KY 42223
Landholding Agency: Army
Property Number: 21200820069
Status: Excess
Reasons: Secured Area

6 Bldgs.
Fort Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21200820070
Status: Unutilized
Directions: 42, 43, 68, 69, 71, 7712
Reasons: Extensive deterioration

Louisiana

9 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820002
Status: Unutilized
Directions: 403, 404, 406, 407, 411, 412, 421, 422, 840
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Louisiana

10 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820003
Status: Unutilized
Directions: 1726, 2504, 2530, 3346, 3412, 3706, 3712, 3716, 3717, 3718
Reasons: Extensive deterioration

17 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820004
Status: Unutilized
Directions: 7104, 7105, 7127, 7128, 7130, 7131, 7132, 7134, 7135, 7137, 7139, 7140, 7144, 7151, 7152, 7154, 7155
Reasons: Extensive deterioration

13 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820005
Status: Unutilized
Directions: 7161, 7162, 7164, 7166, 7167, 7168, 7170, 7174, 7177, 7178, 7179, 7180, 7189
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Louisiana

11 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820006
Status: Unutilized
Directions: 7602, 7653, 7654, 8004, 8005, 8006, 8010, 8011, 8012, 8013, 8014, 8015
Reasons: Extensive deterioration

12 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820007
Status: Unutilized
Directions: 8016, 8017, 8018, 8019, 8045, 8047, 8051, 8054, 8055, 8056, 8057, 8058
Reasons: Extensive deterioration

14 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820008
Status: Unutilized
Directions: 8060, 8061, 8062, 8063, 8066, 8069, 8070, 8072, 8073, 8074, 8075, 8080, 8086, 8087
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Louisiana

10 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820009
Status: Unutilized
Directions: 8235, 8241, 8241, 8242, 8243, 8244, 8245, 8246, 8248, 8249
Reasons: Extensive deterioration

12 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820010
Status: Unutilized
Directions: 8250, 8251, 8252, 8254, 8255, 8256, 8258, 8259, 8260, 8261, 8262, 8263
Reasons: Extensive deterioration

9 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820011
Status: Unutilized
Directions: 8401, 8405, 8424, 8427, 8428, 8429, 8430, 8432, 8443
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Louisiana

11 Bldgs.
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200820012
Status: Unutilized
Directions: 8502, 8541, 8542, 8543, 8545, 8546, 8547, 8548, 8549, 9875, 10008
Reasons: Extensive deterioration

Maryland

6 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820134
Status: Unutilized
Directions: 03070, 3070A E3163, E3642, E3646, E3871
Reasons: Contamination

Bldgs. E3641, E3728
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820135
Status: Unutilized
Reasons: Contamination

**Unsuitable Properties**

*Building*

Maryland

9 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820136
Status: Unutilized
Directions: 04019, 04020, 04021, 04022, 04023, 04031, 04035, 04036, 04038
Reasons: Contamination

10 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820137
Status: Unutilized
Directions: 05005, 05010, 05011, 05031, 05032, 05033, 05035, 05037, 05038, 05039
Reasons: Contamination

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820138
Status: Unutilized
Directions: 05042, 05045, 05047, 05048
Reasons: Contamination

**Unsuitable Properties**

*Building*

Maryland

11 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820139
Status: Unutilized
Directions: 05200, 05202, 05204, 05206, 05207, 05212, 05214, 05215, 05216, 05217, 05218
Reasons: Contamination

Bldgs. E5325, E5375
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820140
Status: Unutilized
Reasons: Contamination

6 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820141
Status: Unutilized
Directions: E5440 E5476, E5481, E5487, E5489, E5760
Reasons: Contamination

**Unsuitable Properties**

*Building*

Maryland

Bldg. 0909A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820142
Status: Unutilized
Reasons: Contamination

New Jersey

15 Bldgs.
Fort Dix
Burlington NJ 08640
Landholding Agency: Army
Property Number: 21200820038
Status: Unutilized
Directions: S4429, S4430, S4431, S4432, S4433, T4434, T4436, T4438, P4441, P4442, P4443, P4444, T4445, S4446, S4447, P4451
Reasons: Extensive deterioration; Secured Area

8 Bldgs.
Fort Dix
Burlington NJ 08640
Landholding Agency: Army
Property Number: 21200820039
Status: Unutilized
Directions: S9751, S9752, S9753, S9754, P9755, S9756, S9757, S9758
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

New Jersey

Bldgs. 00004, 00005, 00072
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

8 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820041
Status: Unutilized
Directions: 90T, 168, 302B, 308A, 324A, 452B, 506, 542A
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

8 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820042
Status: Unutilized
Directions: 617E, 641G, 642C, 642D, 656, 657, 671, 672
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

**Unsuitable Properties**

*Building*

New Jersey

4 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820043
Status: Unutilized
Directions: 717C, 727, 916, 937
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

5 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820044
Status: Unutilized
Directions: 1029W, 01061, 01094, 1210S, 1212S
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

4 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820045
Status: Unutilized
Directions: 1227A, 1229A, 01510, 01602
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

**Unsuitable Properties**

*Building*

New Jersey

5 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820046
Status: Unutilized
Directions: 3236, 3533, 3608, 3611, 3616
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 3715, 3716
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200820047
Status: Unutilized
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

New Mexico

4 Bldgs.
White Sands Missile Range
Don Ana NM 88002
Landholding Agency: Army
Property Number: 21200820048
Status: Excess
Directions: 365, 368, 30724, 30728
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

New York

Bldg. 813
U.S. Army Garrison
West Point NY 10996
Landholding Agency: Army
Property Number: 21200820049
Status: Underutilized
Reasons: Secured Area

6 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200820050
Status: Unutilized
Directions: 725, 742, 743, 746, 749, 752
Reasons: Secured Area; Extensive deterioration

Bldgs. 893, 895, 1800
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200820051
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

New York

Bldgs. 1942, 1943, 1955, 1956
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200820052
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Bldg. 00405
Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21200820071
Status: Excess
Reasons: Secured Area

North Carolina

6 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200820053
Status: Unutilized
Directions: C3821, C3927, C4120, C4122, C4123, C4127
Reasons: Secured Area; Extensive deterioration

**Unsuitable Properties**

*Building*

North Carolina

7 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200820054
Status: Unutilized
Directions: C4420, C4422, C4424, C4426, C4428, C4823, C4923
Reasons: Extensive deterioration; Secured Area

6 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200820055
Status: Unutilized
Directions: C5029, C5129, C5225, C5227, C5322, C5324
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200820056
Status: Unutilized
Directions: C8145, C8246, C8344, C8442, C8448
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

North Carolina

6 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200820057
Status: Unutilized
Directions: C8541, C8548, C8640, C8750, C8948, C9349
Reasons: Extensive deterioration; Secured Area

Ohio

Bldg. 300
Defense Supply Center
Columbus OH 43218
Landholding Agency: Army
Property Number: 21200820072
Status: Unutilized
Reasons: Secured Area

Oklahoma

6 Bldgs.
McAlester Army Ammo Plant
McAlester OK 74501
Landholding Agency: Army
Property Number: 21200820073
Status: Unutilized
Directions: 50B, 55, 56, 97, 207, 692
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

**Unsuitable Properties**

*Building*

Pennsylvania

7 Bldgs.
Tobyhanna Army Depot
Monroe PA 18466
Landholding Agency: Army
Property Number: 21200820074
Status: Unutilized
Directions: 22, CPR22, 1004, 1005, 1009, 1010, 1016
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Texas

9 Bldgs.
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200820013
Status: Excess
Directions: 1610, 1680, 2322, 2323, 2332, 2333, 2343, 2353, 3191
Reasons: Secured Area

**Unsuitable Properties**

*Building*

Utah

Bldgs. 4535, 5126
Deseret Chemical Depot
Stockton UT
Landholding Agency: Army
Property Number: 21200820075
Status: Excess
Reasons: Secured Area

Virginia

Bldgs. 46, 45, 469
Fort Myer
Ft. Myer VA 22211
Landholding Agency: Army
Property Number: 21200820014
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. T2837
Fort Pickett
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21200820015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

**Unsuitable Properties**

*Building*

Virginia

Bldgs. S1102, P1105, P1116
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200820016
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200820017
Status: Unutilized
Directions: 5000, 5100, 5101, 6112, 6113, 6114
Reasons: Extensive deterioration; Secured Area

5 Bldgs.
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200820018
Status: Unutilized
Directions: 7123, 7124, 7130, 7136, 7137
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

Virginia

5 Bldgs.
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200820019
Status: Unutilized
Directions: 8025, 8026, 8031, 8042, 8407
Reasons: Extensive deterioration; Secured Area

10 Bldgs.
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200820020
Status: Unutilized
Directions: 8515, 8516, 8519, 8520, 8521, 8522, 8525, 8526,8533, 8534
Reasons: Extensive deterioration; Secured Area

Bldgs. 8601, 11104
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200820021
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

Virginia

5 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820022
Status: Unutilized
Directions: S0652, S0658, P0922, T1026, R1704
Reasons: Extensive deterioration

Bldgs. P2300 thru P2317
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820023
Status: Unutilized
Reasons: Extensive deterioration

8 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820024
Status: Unutilized
Directions: P2346, P2347, P2348, P2349, P2350, P2351, P2352, P2359
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Virginia

7 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820025
Status: Unutilized

Directions: P2363, P2364, P2365, P2366, P2367, P2368, P2369
Reasons: Extensive deterioration

18 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820026
Status: Unutilized
Directions: P2370, P2371, P2372, P2376, P2377, P2378, P2379, P2380, P2381, P2382, P2383, P2384, P2385, P2390, P2391, P2392, P2393, P2394
Reasons: Extensive deterioration

11 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820027
Status: Unutilized
Directions: S2731, S2732, S2751, S2752, S2753, S2754, S2755, S2756, S2757, S2758, S2759
Reasons: Extensive deterioration

**Unsuitable Properties**

*Building*

Virginia

9 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200820028
Status: Unutilized
Directions: S2785, S2787, S2789, S2791, S2793, S2795, S2797, S2799, P2802
Reasons: Extensive deterioration

11 Bldgs.
Ft. A.P. Hill
Caroline VA 22427
Landholding Agency: Army
Property Number: 21200820029
Status: Unutilized
Directions: T0506, S0516, S0517, S0518, S0519, S0520, S0521, S0522, S0523, S0524, S0525
Reasons: Extensive deterioration; Secured Area

9 Bldgs.
Ft. A.P. Hill
Caroline VA 22427
Landholding Agency: Army
Property Number: 21200820030
Status: Unutilized
Directions: T0708, S0718, S0719, S0720, S0721, S0722, S0723, S0724, S0726
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

Virginia

8 Bldgs.
Ft. A.P. Hill
Caroline VA 22427
Landholding Agency: Army
Property Number: 21200820031
Status: Unutilized
Directions: 0846A, 0854A, AS903, A0904, A0912, 00916, 00924, 00980
Reasons: Extensive deterioration; Secured Area

7 Bldgs.
Ft. A.P. Hill
Caroline VA 22427
Landholding Agency: Army
Property Number: 21200820032
Status: Unutilized
Directions: 01107, 01213, 01213, S1259, S1267, 01447, TPPAD
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

Washington

Bldgs. U002A, 3102
Fort Lewis
Yakima WA 98901
Landholding Agency: Army
Property Number: 21200820076
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Wisconsin

6 Bldgs.
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200820033
Status: Unutilized
Directions: 645, 647, 648, 845, 846, 847
Reasons: Extensive deterioration; Secured Area

Bldgs. 1665, 1666, 1667
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200820034
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Building*

Wisconsin

8 Bldgs.
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200820035
Status: Unutilized
Directions: 2646, 2647, 2648, 2649, 2650, 2652, 2653, 2655
Reasons: Extensive deterioration; Secured Area

6 Bldgs.
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200820036
Status: Unutilized
Directions: 2748, 2750, 2756, 2760, 2761, 2852
Reasons: Extensive deterioration; Secured Area

**Unsuitable Properties**

*Land*

Maryland

RNWYA
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820143
Status: Unutilized
Reasons: Within airport runway clear zone

[FR Doc. E8–13163 Filed 6–12–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2008–N0150; 40136–1265–0000–S3]**

### Sabine National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Sabine National Wildlife Refuge in Cameron Parish, LA.

**SUMMARY:** The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for Sabine National Wildlife Refuge and the East Cove Unit of Cameron Prairie National Wildlife Refuge is available for distribution. This CCP was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge and the East Cove Unit of Cameron Prairie National Wildlife Refuge will be managed for the next 15 years.

**ADDRESSES:** A copy of the CCP/FONSI may be obtained by writing to: Mr. Donald J. Voros, Project Leader, Southwest Louisiana National Wildlife Refuge Complex, 1428 Highway 27, Bell City, Louisiana 70630. You may also access and download a copy of the CCP/FONSI from the Service's Web site address: *http://southeast.fws.gov/planning*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald J. Voros; Telephone: 337/598–2216.

**SUPPLEMENTARY INFORMATION:** Sabine National Wildlife Refuge is one of four refuges that comprise the Southwest Louisiana National Wildlife Refuge Complex. It is located 8 miles south of Hackberry on State Highway 27 in Cameron Parish, Louisiana. Sabine National Wildlife Refuge was established by Executive Order 7764, dated December 6, 1937, as a refuge and breeding ground for migratory birds and other wildlife and by the Migratory Bird Conservation Act as a sanctuary for migratory birds. The refuge occupies the marshes between Calcasieu and Sabine Lakes and consists of 125,790 acres of open water and marsh grassland. It is

managed to provide habitat for migratory waterfowl and other birds and to conserve and enhance coastal marshes for wildlife and fish.

Compatibility determinations for recreational freshwater sportfishing; recreational sportfishing tournaments; recreational hunting; environmental education and interpretation; wildlife observation and photography; research and monitoring; commercial alligator harvest; commercial video and photography; commercially guided wildlife viewing, photography, environmental education, and interpretation; beneficial use of dredge material; and commercially guided fishing on the East Cove Unit only are also included in the CCP.

With this notice, we finalize the CCP process for Sabine National Wildlife Refuge begun as announced in the **Federal Register** on January 17, 2003 (68 FR 2566). We released the Draft CCP/EA to the public, announcing and requesting comments for 30 days in a notice of availability in the **Federal Register** on June 29, 2007 (72 FR 35717).

The Draft CCP/EA evaluated three alternatives for managing Sabine National Wildlife Refuge over the next 15 years. The Service chose Alterative B, which will keep the refuge operational with minimal public use programs functional but at a reduced cost in the short term; the refuge was severely damaged by Hurricane Rita in September 2005, and is currently closed to most activities other than essential operations, hurricane clean-up and restoration activities, and very limited public use activities. After hurricane damages are repaired, management will increase marsh restoration, enhance fish and wildlife management, and expand public use in the long-term. For the East Cove Unit of Cameron Prairie National Wildlife Refuge, water control structures will be operated to restore preferred vegetated plant communities associated with intermediate or slightly brackish environments. The CCP discusses opportunities to improve vegetation in open-water areas by constructing terraces, assessing the need for waterfowl sanctuary, monitoring and controlling invasive plant species, and improving public fishing access. Commercially guided fishing will be permitted in this unit under special use permit only. The alternative will be the most effective one to contribute to the purpose for which the refuge was established and to the mission of the National Wildlife Refuge System. Implementation of the goals, objectives, and strategies within the CCP will allow the Service to manage the refuge to maintain and perpetuate Gulf Coast wetlands for migratory wintering waterfowl, provide for endangered plants and animals, allow appropriate and compatible wildlife-dependent recreation, and promote research on marsh and aquatic wildlife.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

**Editorial Note:** This document was received at the Office of the Federal Register on June 10, 2008.

Dated: October 30, 2007.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E8–13314 Filed 6–12–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2008–N0090; 40136–1265–0000–S3]**

### Shell Keys National Wildlife Refuge, Iberia Parish, LA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Shell Keys National Wildlife Refuge for public review and comment. In this Draft CCP/EA, we describe the alternatives, including our proposed action, to manage this refuge for the 15 years following approval of the Final CCP.

**DATES:** To ensure consideration, we must receive your written comments by July 14, 2008.

**ADDRESSES:** To provide written comments or to obtain a copy of the Draft CCP/EA, please contact Tina Chouinard, Refuge Planner, U.S. Fish and Wildlife Service, 6772 Highway 76 South, Stanton, TN 38069. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet site: *http://www.fws/southeast/planning.*

**FOR FURTHER INFORMATION CONTACT:** Tina Chouinard; *Telephone:* 731/780–8208; Fax: 731/772–7839; *e-mail: tina_chouinard@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

With this notice, we continue the CCP process for Shell Keys National Wildlife Refuge. We started this process through a notice in the **Federal Register** on June 27, 2007 (72 FR 35255).

Shell Keys National Wildlife Refuge is part of the Southwest Louisiana National Wildlife Refuge Complex, which also includes the Cameron Prairie, Lacassine, and Sabine National Wildlife Refuges. Shell Keys Refuge's eight acres are in the offshore waters of the Louisiana Gulf Coast to the west of the Atchafalaya River Delta, and south of the Louisiana Department of Wildlife and Fisheries' Marsh Island Refuge, in Iberia Parish, Louisiana. Shell Keys Refuge is within the Lower Mississippi River Ecosystem in the Gulf of Mexico.

President Taft established Shell Keys Refuge on August 17, 1907, by Executive Order 682, to serve ''* * * as a reserve and breeding ground for native birds.''

Shell Keys Refuge is one of the oldest refuges in the National Wildlife Refuge System. Its boundary was and still is rather loosely described as ''* * *a small group of unsurveyed islets located in the Gulf of Mexico about three and one-half miles south of Marsh Island, Louisiana, and approximately in latitude 29 degrees 26 minutes north, longitude 91 degrees 51 minutes west from Greenwich.* * *'' The boundary of the refuge has been interpreted to be those areas in this vicinity that are above mean high tide.

Shell Keys Refuge is a small group of islands that is subject to shell deposits and erosion, so the actual acreage above mean high water may, of course, be different at this time. How these islands change and move may affect ownership of that area lying above mean high water. Under certain circumstances, accreted areas above mean high water may belong to the State of Louisiana.

For a number of years, there has been only one islet at this location. This islet is composed almost entirely of shell fragments. It is extremely dynamic and builds or recedes with passing storms. Vegetation is almost entirely lacking. Species known to nest here include royal terns, sandwich terns, black skimmers, and laughing gulls. In addition, the islet is used at various times as a loafing area by white pelicans, brown pelicans, and various other species of terns and gulls. Recent hurricanes and storms have eroded the island to such an extent that no known nesting has occurred since 1992.

Public access to the refuge is limited due to its remoteness and the fact that it is accessible only by boat.

Significant issues addressed in the Draft CCP/EA include: Colonial nesting birds; endangered species; shorebirds; habitat restoration feasibility; cooperative management agreement with Louisiana Department of Wildlife and Fisheries (LDWF); law enforcement issues; visitor services (e.g., fishing, wildlife observation and photography, and environmental education and interpretation); and cultural resource protection.

**Background**

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

**CCP Actions We Are Considering, Including Proposed Action**

We developed three alternatives for managing the refuge and chose Alternative C as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below:

*Alternative A: Current Management (No Action)*

This is the ''status quo'' alternative in which current habitat, wildlife, and public use management would continue with no changes. On an annual basis, monitoring and trip report status are conducted. Periodically during winter migratory bird surveys, fly-over surveys are conducted to determine if the island is emergent. A cooperative law enforcement agreement will remain in effect with LDWF.

*Alternative B: Custodial Cooperative Management*

Under Alternative B, nature would be allowed to take its course regarding the future of the islands, with no restoration activities accomplished. If the islands fail to rebuild and continue to erode, areas available to birds may diminish. With the land area diminishing, the island would continue to support a reducing population of colonial nesting birds. Working with LDWF, routine and additional patrols would be provided in coordination with refuge law enforcement officers. Through the Southwest Louisiana National Wildlife Refuge Complex, interpretation would concentrate on the history of the formation and subsequent changes and erosion of the shell key shoal/island and reef complex habitat. Alternative B would open the refuge for public use by offering limited fishing and wildlife observation and photography.

*Alternative C: Large-Scale Habitat Restoration and Cooperative Management Approach (Proposed Alternative)*

Under Alternative C, our proposed alternative for Shell Keys Refuge, we would explore implementing large-scale restoration efforts in cooperation with partners. We would enter into a new cooperative agreement with the LDWF Fur and Refuge Division, focusing on natural resource monitoring and restoration as appropriate. Partners are necessary to supply expertise and funding for the daunting task of restoration. Feasibility studies would be performed to determine the costs associated with rebuilding and re-establishing the Shell Islands, or portions of the islands. Restoration efforts would adapt to changing conditions as practices and techniques are assessed. The refuge would be open to recreational fishing and wildlife observation and photography. Because the refuge is remote and few guests actually visit the islands, outreach would center around providing information in combination with the Southwest Louisiana National Wildlife Refuge Complex and on Internet web pages.

**Public Availability of Comments**

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.

**Next Step**

After the comment period ends for the Draft CCP/EA, we will analyze the comments and address them in the form of a Final CCP and Finding of No Significant Impact.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: May 5, 2008.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E8–13313 Filed 6–12–08; 8:45 am]

**BILLING CODE 4310–55–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–593]**

### In the Matter of Certain Digital Cameras and Component Parts Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 13) granting the joint motion to terminate the captioned investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 21, 2007, based on a complaint filed by St. Clair Intellectual Property Consultants, Inc. (''St. Clair''). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital cameras and component parts thereof by reason of infringement of various claims of five United States patents. The complaint names Eastman Kodak Company (''Kodak'') as respondent.

On May 16, 2008, St. Clair and Kodak jointly moved to terminate the investigation on the basis of a settlement agreement. On May 19, 2008, the Commission investigative attorney filed a response supporting the motion.

On May 20, 2008, the ALJ issued the subject ID granting the joint motion to terminate the investigation based on a settlement agreement. The ALJ found that the motion complied with the requirements of Commission Rule 210.21 (19 CFR 210.21). The ALJ also concluded that, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), there is no evidence that termination of this investigation will prejudice the public interest. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: June 9, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–13336 Filed 6–12–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–635]**

### In the Matter of Certain Pesticides and Products Containing Clothianidin; Notice of Commission Determination Not To Review an Initial Determination of the Administrative Law Judge Terminating the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'').

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On March 4, 2008, the Commission instituted this investigation based upon a complaint filed January 31, 2008, and supplemented February 19, 2008, on behalf of Sumitomo Chemical Co. Ltd. (Tokyo, Japan) and Valent U.S.A. Corporation (Walnut Creek, California) (collectively, ''Complainants''). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pesticides and products containing clothianidin that infringe claims 1 and 9 of U.S. Patent No. 5,034,404. The complainants named as respondents Syngenta AG (Basel, Switzerland), Syngenta India Ltd. (Mumbai, India), Syngenta Corp. (Wilmington, Delaware), Syngenta Seeds, Inc. (Golden Valley, Minnesota), Syngenta Crop Protection Inc., (Greensboro, North Carolina), Garst Seed Co. (Slater, Iowa), and Golden Harvest Seeds, Inc. (Waterloo, Nebraska) (collectively, ''Respondents'').

On March 31, 2008, Respondents filed a motion to terminate, or alternatively, stay the investigation based on an arbitration clause in a license agreement. On April 10, 2008, Complainants filed a response in opposition to the motion. On April 15, 2008, the Commission investigative attorney (''IA'') filed a response in support of the motion. On April 15, 2008, the Respondents filed a reply to the opposition. On April 21, 2008, Complainants filed a reply.

On May 8, 2008, the ALJ issued the subject ID, granting the motion to terminate the investigation.

On May 15, 2008, Complainants' filed a petition for review of the ID. On May 22, 2008, the Respondents and the IA filed responses to the petition for review.

Having examined the relevant portions of the record in this investigation, including the ID, the petition for review, and the responses thereto, the Commission has determined not to review the subject ID. The investigation is hereby terminated.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: June 9, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–13335 Filed 6–12–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–08–016]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** June 20, 2008 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–447 and 731–TA–1116 (Final) (Circular Welded Carbon-Quality Steel Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before July 2, 2008.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 10, 2008.

By order of the Commission.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. E8–13316 Filed 6–12–08; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 6, 2008, a proposed Consent Decree (''CSI Consent Decree'') in *United States and State of Colorado* v. *Colorado Structures, Inc.,* Civil Action No.08–CV–01217–MSK–KMT, was lodged with the United States District Court for the District of Colorado.

In this action, the United States and the State of Colorado filed a Complaint for injunctive relief and civil penalties pursuant to the Clean Water Act (CWA) and the Colorado Water Quality Control Act (CWQCA) against Colorado Structures, Inc. (CSI) for violations at 16 construction sites in Colorado, California, Nevada, and South Dakota, including violations of applicable permits and the failure to obtain a permit. Specifically, the United States and the State of Colorado filed a Complaint pursuant to CWA, 33 U.S.C. 1319(b) and (d), and CWQCA, §§ 25–8–607 and –608, C.R.S., against CSI for: (1) Violations of the conditions of several permits issued pursuant to 33 U.S.C. 1342 and 25–8–501 to –503, C.R.S., for the discharge of pollutants from storm water from construction sites in violation of 33 U.S.C. 1311 and 25–8–501 to –503, C.R.S; (2) the discharge of pollutants from storm water from construction sites without a permit in violation of 33 U.S.C. 1311 and § 25–8–501(1), C.R.S.; and (3) failing to provide information in violation of 33 U.S.C. § 1318 and § 25–8–304(1), C.R.S.

The CSI Consent Decree would resolve the claims against CSI as described in the Complaint. The ultimate entry by the District Court of Colorado of the CSI Consent Decree would end this litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the CSI Consent Decree. 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, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Civil Action No.08–CV–01217–MSK–KMT, D.J. Ref. No. 90–5–1–1–08391.

The CSI Consent Decree may be examined at the Office of the United States Attorney, 11225 Seventeenth Street, Suite 700 Seventeenth Street Plaza, Denver, Colorado 80202. It also may be examined at the offices of U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the CSI Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the CSI Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8–13301 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

**[OMB Number 1140–0035]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Firearms Transaction Record Low Volume Part I Over-the-Counter and Part II Intra-State Non-Over-the-Counter.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 68, page 19102 on April 8, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Transaction Record Low Volume Part I Over-the-Counter and Part II Intra-State Non-Over-the-Counter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4473 (5300.24) Part I (LV) and ATF F 4473

(5300.25) Part II (LV) and ATF REC 7502/2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The forms are used by low volume firearms dealers to record acquisition and disposition of firearms and to determine the eligibility of buyers to receive firearms. The forms are part of the licensee's permanent record and may be used to trace firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,666 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8–13297 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

**[OMB Number 1140–0030]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Records and Supporting Data: Importation, Receipt, Storage, and Disposition By Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 68, page 19103 on April 8, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition By Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Recordkeeping Number:* ATF REC 5400/3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* The records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40 Explosives. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent and if lost or stolen, ATF will be immediately notified.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,519 respondents, who will take 1 hour to maintain records.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 637,570 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8–13298 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

**[OMB Number 1140–0057]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: A National Repository for the Collection and Inventory of Information Related to Arson and the Criminal Misuse of Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 70, page 19529 on April 10, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* A National Repository for the Collection and Inventory of Information Related to Arson and the Criminal Misuse of Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* Federal Government. *Abstract:* All Federal agencies are required to report information relating to arson and the criminal misuse of explosives in a national repository database maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-United States Bomb Data Center (USBDC). State, Local and Tribal law enforcement agencies report this information on a voluntary basis. The ATF USBDC maintains all National Repository databases within the Department of Justice.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 2,000 respondents, who will report the information within approximately 10 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 333 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2008.

**Lynn Bryant**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8–13299 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Annual Determination of Average Cost of Incarceration

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice.

**SUMMARY:** The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2007 was $24,922. In addition, the average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2007 was $22,871.

**DATES:** *Effective Date:* June 13, 2008.

**ADDRESSES:** Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2007 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2007 was $24,922. In addition, the average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2007 was $22,871.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

[FR Doc. E8–13265 Filed 6–12–08; 8:45 am]

**BILLING CODE 4410–05–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–331]**

### FPL Energy Duane Arnold, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to FPL Energy Duane Arnold, LLC (the licensee) for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The proposed amendment would revise the Technical Specification (TS) Section 3.8.1 Actions for the Emergency Diesel Generators (EDG) to remove the conditional surveillance requirement to test the alternate EDG whenever one EDG is taken out of service for pre-planned preventive maintenance and testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under

the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change eliminates a conditional surveillance of the Operable EDG whenever the alternate division EDG is out of service for pre-planned preventive maintenance and testing. The EDG are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased.

The consequences of any accident previously evaluated are not increased, as the EDG will continue to meet its safety function to supply backup AC power as specified in the accident analysis, in a highly reliable manner, as a common cause problem between the two EDGs will have been precluded, the alternate division EDG will no longer be taken out of service for testing, and its normally scheduled surveillances will be met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis for EDG performance.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change eliminates a conditional surveillance of the Operable EDG whenever the alternate division EDG is out of service for pre-planned preventive maintenance and testing. The EDG will continue to meet its specified safety function in the safety analysis to provide backup AC power, in a highly reliable manner, as a common cause problem between the two EDGs will have been precluded, the alternate division EDG will no longer be taken out of service for testing, and its normally scheduled surveillances will be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's Rules of ''Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/

requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated February 19, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (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, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of June, 2008.

For the Nuclear Regulatory Commission.

**Justin C. Poole,**

*Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8–13323 Filed 6–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–04336]**

## Notice of Environmental Assessment Related to the Issuance of a License Amendment To Terminate Byproduct Material License No. 13–02249–01, for Bayer Healthcare, LLC, Elkhart, IN

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License termination.

**FOR FURTHER INFORMATION CONTACT:** George M. McCann, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9856; fax number: (630) 515–1259; or by e-mail at *Mike.McCann@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to terminate NRC Byproduct Materials License No. 13–02249–01, which is held by Bayer Healthcare, LLC (licensee). The issuance of the amendment would authorize the unrestricted release of the licensee's facilities located at 1884 Miles Avenue, Elkhart, Indiana, and 1000 Randolph Street, Elkhart, Indiana (the facilities). The addresses specified in the licensee's license, 1884 Miles Avenue, Elkhart, Indiana, and 1000 Randolph Street, Elkhart, Indiana all refer to the same licensed site.

The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve Bayer Healthcare's request to terminate its license and release the licensee's former facilities for unrestricted use in accordance with 10 CFR Part 20, Subpart E. The licensee requested termination of the Bayer Healthcare, LLC license in a letter dated October 23, 2006 (ADAMS Accession Number ML062970437), and the NRC's ''Certificate of Disposition of Materials,'' dated October 31, 2007 (ML073050274), with a ''Historical Site Assessment for the Elkhart, Indiana Facility'' (ML081400331), and a ''Final Status Survey Report for Selected Laboratories in Building 18,'' Report No. 2007006/G–4349, October 29, 2007 (ML081400331) attached. The Bayer Healthcare License No. 13–02249–01 was originally issued March 21, 1957, to Miles Laboratory, Inc. (later known as Miles-Ames Research Laboratory) pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct materials for conducting research and development activities involving animals, production of reagent test kits, and on laboratory bench tops and in hoods.

Since that time, research facilities were built on the Miles-Ames campus, consisting of approximately seven acres and as many as 41 buildings. The campus was operated by Miles, Inc. until 1978 when the property was purchased by Bayer Corporation. The company name, Bayer HealthCare, LLC, was changed in 1995. The licensee's research campus is bounded by Bristol Street (State Route 19) to the north, North Michigan Street to the east, Mishawaka Street to the south, and Oak Street to the west. Building 9, the C.S. Beardsley Building, was the principal building in which radioactive materials were used. This C.S. Beardsley Building was demolished in 1999, and research involving radioactive materials was moved to Building 18. The licensee's license was amended by the NRC on November 18, 1999 (Amendment No. 47), authorizing the release of the C.S. Beardsley Building.

Radioactive materials were used in Building 18 until 2006. The licensee had also used materials in other buildings and at remote locations approved by the NRC, which were subsequently removed from the license by previous amendments. A complete list of these locations of use, both at the Elkhart, Indiana research campus and at remote sites are discussed in the licensee's ''Historical Site Assessment for the Elkhart, Indiana Facility.''

Building 18 is located on the Elkhart, Indiana research campus, and is a multi-story brick building that was constructed to house various chemical research and development activities. Radioactive materials were used in Building 18 from 1975 to 2006. The Building 18 laboratories were equipped with cabinets, ventilation hoods, and sinks. The concrete floors in each of the laboratories were covered with an industrial-grade tile to restrict the absorption of liquids. The building is currently maintained by Bayer.

A wide range of research was conducted in Building 18, wherein both short- and long-lived radioisotopes were used. Several areas in Building 18 used hydrogen-3 and carbon-14 during the late 1970s and into the early 1990s. These isotopes were used in quantities ranging from microcuries to millcuries in different chemical forms. From 1995 until the present day, the use of radioactivity was limited primarily to microcurie quantities of iodine-125.

Miles Laboratories and Bayer did not dispose of radioactive waste via on-site burial. All waste containing long-lived radioisotopes was shipped offsite to a licensed landfill approved to receive and dispose of radioactive materials. There were no related environmental concerns identified during the record search or interviews of the radiation safety staff. There were no recorded spills or loss of control that required additional investigation.

The licensee ceased licensed activities and completed decontamination of the licensee's facilities in 2006. The licensee also completed ''in-house surveys,'' which were submitted to the NRC on October 23, 2006

(ML0629704371). The licensee completed a ''Historical Site Assessment for the Elkhart, Indiana Facility, Bayer Healthcare, LLC,'' and a ''Final Status Survey Report for Selected Laboratories in Building 18,'' which was completed between August 13 and 15, 2007. Based on the licensee's survey results, it was determined that only routine decontamination activities, in accordance with the licensee's NRC-approved operating radiation safety procedures, were required. The licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The licensee conducted surveys of the facilities and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

*Need for the Proposed Action*

The licensee has ceased conducting licensed activities at its facilities and it seeks the unrestricted use of its facilities.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the licensee conducted radiation surveys and decontamination activities, as necessary, in the areas of the facility affected by these radionuclides.

The licensee conducted a final status survey between August 13 and 15, 2007, in Building 18. Based on previous surveys by the licensee and the historical site assessment, surveys were only required in two rooms of Building 18, the previous Room C.05 (the former ''Rad Lab'') and the former Waste Storage Room. The licensee's surveys included the liquid drain and ventilation exhaust systems.

The licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable requirement of 10 CFR 20.1402. The NRC thus finds that the licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the licensee's final status survey data confirmed that the facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are, therefore, similar; and the no-action alternative is accordingly not further considered.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

The NRC provided a draft of this Environmental Assessment to the Emergency Response Program, Entomology and Epidemiology Labs, Radiation Control, Indiana State Department of Health, for review on May 18, 2008. On May 19, 2008, the Program Director of the Emergency Response Program, responded by e-mail indicating, ''We concur with the NRC decision that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action, meaning that the licensee's facilities can be utilized for unrestricted use and NRC Byproduct Materials License No. 13–02249–01 will subsequently be terminated.''

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

**III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

**IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/*

*reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers:

1. Shannon L. Gleason, Ph.D., Bayer HealthCare, letter to U.S. Nuclear Regulatory Commission, Region III, dated October 23, 2006 (ML062970437);

2. Certificate of Disposition of Materials, dated November 31, 2007, signed by Shannon L. Gleason, Ph.D. (ML073050274);

3. Bayer HealthCare, LLC, Report No. 2007006/G4349, ''Final Status Report for Selected Laboratories in Building 18'' (ML081400331);

4. Bayer HealthCare, LLC, Report No. 2007006/G–4351, ''Historical Site Assessment for the Elkhart, Indiana Facility'' (ML081400331);

5. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination'';

6. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'';

7. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'';

8. NUREG–1757 Consolidated NMSS Decommissioning Guidance.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 5th day of June 2008.

For the Nuclear Regulatory Commission.

**Christine A. Lipa,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.*

[FR Doc. E8–13327 Filed 6–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–293]**

## Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station Exemption

### 1.0 Background

Entergy Nuclear Operations, Inc. (Entergy or the licensee) is the holder of Facility Operating License No. DPR–35, which authorizes operation of the Pilgrim Nuclear Power Station (Pilgrim). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Plymouth County, Massachusetts.

### 2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, § 50.75(f)(3), requires that ''Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.'' Section 50.75(f)(5) requires a licensee at the same time to include, if necessary, plans to adjust funding levels to demonstrate a reasonable level of financial assurance, that funds will be available when needed for decommissioning. The current operating licensee expires on June 8, 2012.

In summary, by letter dated February 28, 2008, Agencywide Documents Access and Management System (ADAMS) accession number ML081000176, Entergy requested an exemption to the schedule requirement of 10 CFR 50.75(f)(3) to allow Entergy to submit the Pilgrim site-specific preliminary cost estimate 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.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. One of these special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

As documented in the Decommissioning Considerations for 1991 Rules and Regulations, the underlying purpose of 10 CFR 50.75(f)(3) is to provide a preliminary decommissioning plan, a cost estimate for implementing the plan, and any changes in funding necessary to ensure that there will be sufficient funds for decommissioning.

The NRC staff reviewed the licensee's evaluation in support of the subject exemption request. Entergy submitted the decommissioning funding status report for Pilgrim on March 26, 2008. The NRC staff calculated Pilgrim's required minimum funding assurance based on the formula under 10 CFR 50.75. The trust fund balances to the midpoint of decommissioning (December 2015), as effectively allowed under NRC regulations, was also calculated by applying a 2 percent real rate of return. Based on the formula amount, the Pilgrim decommissioning trust fund has an excess of $125 million as of December 31, 2007, and will have an excess of more than $200 million by the time of expiration of the license.

Entergy submitted a license renewal application (LRA) for Pilgrim on January 25, 2006, which was approximately 6.5 years prior to the expiration date of the operating license for Pilgrim Station. In connection with the LRA, the final supplemental environmental impact statement was issued on July 27, 2007, and the safety evaluation report for the LRA was issued on June 28, 2007. Subsequently, the safety evaluation report was issued as NUREG–1891 on November 30, 2007. Although the licensee stated that the review of the LRA and milestones achieved constitute ''a clear indication'' that the LRA will be granted, the NRC does not agree.

Entergy's exemption request essentially relies on the fact that its LRA is pending before the NRC, certain milestones have been met, and that Entergy anticipates the NRC will render a final decision on the LRA on or about August 1, 2008. Entergy cites selected language from the statement of considerations for the proposed rule for license renewal, as well as language from the statement of considerations for the final license renewal rule, to support its exemption request. Entergy argues that the level of review, thus far, on the

LRA and the achievement of certain milestones ''represent a clear indication that the Pilgrim LRA would be ultimately approved.'' Therefore, the Commission should waive the requirement for a preliminary cost estimate, according to Entergy. Entergy further argues that ''approximately four years prior to the expiration date of the current operating license * * * is within interpretation of the regulation'' requiring a preliminary cost estimate at or about 5 years prior to the projected end of operations.

The NRC does not agree that the review, thus far, of the LRA and milestones achieved constitute ''a clear indication'' that the LRA will be granted. Moreover, the NRC does not agree that submitting a preliminary cost estimate less than 4 years prior to license expiration is within interpretation of the requirements of 10 CFR 50.75(f)(3).[1] Therefore, based on the arguments presented by Entergy, an exemption is not warranted.

However, the NRC has considered the current funding levels of Pilgrim's decommissioning trust and the underlying purpose of 10 CFR 50.75(f)(3). Moreover, the NRC staff is not aware of any information indicating that the preliminary decommissioning cost estimate for Pilgrim is 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.

*Authorized by Law*

This exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. As stated in Section 3.0 above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk To Public Health And Safety*

The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. 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.

Based on the above, no new accident precursors are created by allowing Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. Similarly, the probability of postulated accidents is not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

*Consistent With Common Defense And Security*

The proposed exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. This change to the plant requirements for the preliminary decommissioning cost estimate submittal has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

*Special Circumstances*

One of the special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. The NRC staff finds 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.

Based upon consideration of the information in the licensee's submittal, the NRC staff concludes that this exemption meets the underlying purpose of the rule.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, a special circumstance is present such that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Entergy a schedule exemption from the requirement of 10 CFR 50.75(f)(3) to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (73 FR32607).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of June 2008.

For the Nuclear Regulatory Commission.

**Timothy McGinty,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8–13321 Filed 6–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

[1] If Entergy believes that submitting a preliminary cost estimate less than 4 years prior to the date of license expiration is ''within interpretation of the regulation,'' then it is not clear why Entergy has filed this exemption request. The NRC staff notes that Entergy has not claimed that the ''projected end of operations'' unexpectedly moved to an earlier date as a result in change of circumstance (for example, early permanent shutdown), thus resulting in a period of time spent to submit a preliminary cost estimate well short of the 5 years.

## NUCLEAR REGULATORY COMMISSION

**[EA–08–033]**

## In the Matter of; Certain Panoramic and Underwater Irradiators Authorized To Possess Greater Than 370 Terabecquerels 10,000 Curies Byproduct Material in the Form of Sealed Sources

### Order Imposing Compensatory Measures (Effective Immediately)

*I*

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR Part 36 or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under

water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

*II*

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2 [1] on all Licensees identified in Attachment 1 [2] of this Order who currently possess, or have near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when the licensee's reviewing official is determining access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources. These requirements will remain in effect until the Commission determines otherwise.

The Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information.* * *'' This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–07–050). The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–07–050), applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–07–051). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–07–051) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigations criminal history records check in conjunctions with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–07–051) dated March 8, 2007. Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA–07–051. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources in a panoramic or underwater irradiator shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

*III*

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, Part 36, and Part 73, it is hereby

[1] Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION are being released to the public.

[2] Attachment 1 contains sensitive information and will not be released to the public.

ordered, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements of this order as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. The licensee shall immediately start implementation of the requirements in Attachments 2 and 3 to the Order and shall complete implementation by December 3, 2008, or the first day that greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources is possessed, whichever is later.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–07–051) issued on March 8, 2007, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA–07–051. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to the panoramic or underwater irradiator sealed sources that equal or exceed 370 Terabecquerels (10,000 curies). Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Energy Policy of 2005 fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–07–051 do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to the panoramic or underwater irradiator sealed sources, in accordance with this Order, to continue to have unescorted access during the pendency of a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to the panoramic or underwater irradiator sealed sources. The licensee shall complete implementation of the requirements of Attachments 2 and 3 to this Order by December 3, 2008.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments 2 and 3.

G. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals i.e., no e-mail or FAX) to the NRC in accordance with Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–07–050).

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

*IV*

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a

statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer(™) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer(™) is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of June 2008.

For The Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Office of Federal and State Materials and Environmental Management Programs.*

**Attachment 1: List of Licensees—Redacted**

**Attachment 2: Compensatory Measures for Panoramic and Underwater Irradiator Licensees Revision 2**

These compensatory measures (CMs) are established to delineate licensee responsibility in response to the current threat environment in the aftermath of the terrorist attacks of September 11, 2001. The following security measures apply to Licensees who, now and in the future, possess greater than 370 TeraBecquerels (TBq) [10,000 Ci] of byproduct material in the form of sealed sources in panoramic irradiators that have dry or wet storage of the sealed sources, or in underwater irradiators in which both the source and the product being irradiated are underwater.

1. Use and store the radioactive material only within a security zone that isolates the material from unauthorized access and facilitates detection if such access occurs.

The security zone is an area, defined by the licensee, that provides for both isolation of radioactive material and access control. The licensee must demonstrate for this area a means to detect any attempt of unauthorized access to licensed material. ''Isolation'' means to deter persons, materials, or vehicles from entering or leaving through other than established access control points. ''Access control'' means to allow only approved individuals into the security zone. Thus, isolation and access control aid in the detection of unauthorized access or activities deemed by the licensee to be indicative of, or contributory to, the loss, theft, or release of material. The security zone does not have to be the same as the restricted area or controlled area, as defined in 10 CFR Part 20.

Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery and source replacement). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Continuously control access to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

A. For individuals granted access to safeguards information or unescorted access to the security zone, Licensees must provide reasonable assurance that individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

i. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of eligibility for employment in the United States.

ii. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

iii. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' may continue to make trustworthiness and reliability determinations. The licensee may also nominate another individual specifically for making unescorted access determinations using the process identified in the NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information.''

B. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

3. Implement a system (i.e., devices and/or trained individuals) to monitor, detect, assess and respond to unauthorized entries into or activities in the security zone.

A. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

B. Provide enhanced security measures when temporary security zones are established, during periods of maintenance, source delivery and shipment, and source replacement, that will provide additional assurance for enhanced detection and assessment of and response to unauthorized individuals or activities involving the radioactive material. Such security measures shall include, but not be limited to:

i. Advanced notification to the local law enforcement agency (LLEA) for radioactive source exchanges, deliveries, and shipments.

ii. For shipments of sources, establish a positive means of transferring the security responsibility, between the shipper/carrier and the consignee (receiver), for communicating with the LLEA.

C. Provide a positive measure to validate that there has been no unauthorized removal of the radioactive material from the security zone.

D. Maintain continuous communications capability among the various components for intrusion detection and assessment to bring about a timely response.

E. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

**Attachment 3: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information or Unescorted Access to the Panoramic or Underwater Irradiator Sealed Sources**

*General Requirements*

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to the panoramic or underwater irradiator sealed sources. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check (e.g. National Agency Check), Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and

clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 27 CFR Part 555, Hazardous Material security threat assessments for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trace Program [1] within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

*Prohibitions*

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*Procedures for Processing Fingerprint Checks*

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application (Note: other fees may apply to obtain fingerprints from your local law enforcement agency). Licensees should submit payments electronically via *http://www.pay.gov.* Payments through *Pay.gov* can be made directly from the Licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access *Pay.gov.* To establish an account, Licensee requests must be sent to *paygo@nrc.gov.* The request must include the Licensee's name, address, point of contact, e-mail address, and phone number. The NRC will forward each request to *Pay.gov* and someone from *Pay.gov* will contact the Licensee with all of the necessary account information.

Licensees shall make payments for processing before submitting applications to the NRC. Combined payment for multiple applications is acceptable. Licensees shall include the *Pay.gov* payment receipt(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

*Right to Correct and Complete Information*

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of

[1] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources shall not be granted to an individual during the review process.

*Protection of Information*

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to the panoramic or underwater irradiator sealed sources. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8–13326 Filed 6–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Senior Executive Service Performance Review Board Membership

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is given under 5 U.S.C. 4314(c)(4) of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

**DATE:** Membership is effective on June 13, 2008.

**SUPPLEMENTARY INFORMATION:** The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Terry T. Shelton, Associate Administrator, U.S. Department of Transportation, Federal Motor Carrier Safety Administration;
- Fran L. Leonard, Chief Financial Officer, Federal Mediation and Conciliation Service, Office of the Director;
- Cynthia G. Pierre, PhD, Enforcement Director, U.S. Department of Education, Office for Civil Rights; and
- Janice H. Brambilla, Director of Management Planning, Broadcasting Board of Governors.

**FOR FURTHER INFORMATION CONTACT:** Debra A. Hall, Deputy Director of Administration, U.S. Occupational Safety and Health Review Commission, 1120–20th Street, NW., Washington, DC 20036, (202) 606–5397.

Dated: June 9, 2008.

**Horace A. Thompson, III,**

*Chairman.*

[FR Doc. E8–13331 Filed 6–12–08; 8:45 am]

**BILLING CODE 7600–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57937; File No. SR–CBOE–2008–58]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow the Exchange To Determine To Permit Electronic Exposure of SAL, HAL, and/or COA Orders to All CBOE Market-Makers

June 6, 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 June 3, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 modify Rules 6.13A, *Simple Auction Liaison (''SAL'')*, 6.14, *Hybrid Agency Liaison (''HAL'')*, and 6.53C(d), *Process for Complex Order RFR Auction (''COA'')*,

[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).

so that the Exchange may determine on a class-by-class basis to permit electronic exposure of SAL, HAL and/or COA orders to all CBOE Market-Makers to give additional opportunities to provide the orders with the best price. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In classes where SAL, HAL and/or COA are activated, orders are electronically exposed to all Market-Makers appointed to the relevant option class as well as all members acting as agent for orders at the top of the Exchange's book (''Qualifying Members'') in the relevant options series. During the applicable exposure period, the orders that are subject to exposure are eligible to receive a better price.[5] At the conclusion of the SAL, HAL or COA process, as applicable, the order is then allocated pursuant to the allocation algorithms described in the relevant rules. In addition, in the case of HAL, if no responses are received or if there remains an unexecuted portion of a marketable order, then the remaining balance of the order will be routed through Linkage to a competing exchange(s).[6] When an order is sent through Linkage, the other exchange charges an execution fee. The cost of sending the order through Linkage can be substantial, particularly with respect to other options exchanges that have adopted a maker-taker fee schedule.[7]

In order to offer additional opportunities for price improvement and, in the case of HAL, to retain as much order flow as possible on CBOE and to help reduce costs associated with the number of orders sent through Linkage,[8] CBOE proposes to allow the Exchange to determine on a class-by-class basis to permit responses to orders exposed through SAL, HAL and/or COA to be submitted by all CBOE Market-Makers (not just Market-Makers appointed to the relevant option class) and Qualifying Members. This would provide for additional opportunities to provide orders with price improvement and, in the case of HAL, to provide those orders with the best price on CBOE instead of routing the order through Linkage.

For such classes, each CBOE Market-Maker that submits a response to trade with an order during the response period would be entitled to receive an allocation of the order in accordance with the existing allocation algorithms in effect for the option class, as described in the SAL, HAL and COA rules, as applicable. All other provisions of the SAL, HAL and/or COA rules, as applicable, would apply unchanged.

To the extent the Exchange determines to permit all CBOE Market-Makers to respond to SAL, HAL and/or COA, the Exchange may also determine to apply a seat cost, if any, to Market-Makers not assigned to the class that elect to receive the SAL, HAL and/or COA messages. Any such seat cost so determined by the Exchange would be submitted to the Commission in a separate rule filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5) of the Act[10] in particular in that it is designed 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

[5] SAL is a feature within CBOE's Hybrid System that auctions eligible marketable orders for price improvement over the national best bid or offer (''NBBO''). *See* Rule 6.13A. HAL is a feature within CBOE's Hybrid System that provides automated order handling for eligible market and limit orders if: (i) *The* market orders or limit orders are marketable against the Exchange's disseminated quotation while that quotation is not at the NBBO; (ii) the limit orders would improve the Exchange's disseminated quotation and are marketable against quotations disseminated by other exchanges participating in the Intermarket Options Linkage (''Linkage''); and (iii) for Hybrid 3.0 classes, the limit orders would improve the Exchange's disseminated quotation, except when the disseminated quotation is represented by a manual quote. *See* Rule 6.14. COA is a feature within CBOE's Hybrid System that auctions eligible complex orders for price improvement. *See* Rule 6.53C.

[6] If the remaining order balance is for the account of a public customer and is marketable against another exchange that is a participant in Linkage, then HAL will route a Principal Acting as Agent Linkage Order (''P/A Order'') on behalf of the remaining order balance through the Linkage and any resulting execution of the P/A Order will be allocated to that order. If the remaining order balance is marketable against another exchange that is a participant in Linkage but is *not* for the account of a public customer, then HAL will route a Principal Linkage Order (''P Order'') on behalf of the Remaining Order through the Linkage and any resulting execution of the P Order will be allocated to the remaining order. In either situation above, if the Linkage order cannot be transmitted from the Exchange because the price of the Linkage order (or a better price) is no longer available on any market, then HAL will, pursuant to normal order allocation processing, execute the remaining order balance against the Exchange's existing quote (provided such execution would not cause a trade-through) or, if the Exchange's quote is inferior to the Exchange's best bid or offer at the time the order was received by HAL (''Exchange Initial BBO''), against the Market-Makers that constituted the Exchange Initial BBO at a price equal to the Exchange Initial BBO. If the remaining order is not marketable (either on CBOE or another exchange), it will be entered into the Hybrid book for dissemination. *See* Rule 6.14(b)(i)—(iii).

[7] Several options exchanges have adopted a fee structure in which firms receive a rebate for the execution of orders resting in the limit order book (*i.e.*, posting liquidity) and pay a fee for the execution of orders that trade against liquidity resting on the limit order book (*i.e.*, taking liquidity). Taker fees currently range up to $0.45 per contract and are charged without consideration of the order origin category, including public customer orders. In contrast, CBOE does not generally charge a fee for the execution of public customer orders that are routed directly to our market. The effective price paid by a customer purchasing an option can be considerably higher on an exchange that charges a taker fee. For example, a customer that enters a marketable limit order to buy 10 contracts for $0.10 would pay $100 on CBOE and $104.50 if executed on an exchange that charges a $0.45 taker fee (an effective 4.5% increase). Because orders cannot be executed at prices inferior to the NBBO, members are effectively forced to pay taker fees when an exchange with a taker fee structure is at the NBBO and the members' orders are directly routed to such an exchange or indirectly routed to such an exchange through Linkage (where the fees are passed through).

[8] Outbound Linkage costs are incurred by CBOE and its members. CBOE currently rebates DPM transaction fees generated from transactions against customer orders that underlie outbound PA and P Orders (''CBOE Transactions''). In addition, when DPMs incur fees to execute PA or P Orders at other exchanges (''Away Transactions''), those DPMs are credited an additional amount per contract to offset such fees. CBOE also credits DPMs an additional amount per contract on both CBOE Transactions and Away Transactions to offset the Sales Value Fee (which offsets fees payable to the Commission under Section 31 of the Act), the Options Clearing Corporation (''OCC'') per contract fee applicable to market-makers and specialists set forth on the OCC Schedule of Fees, and an estimated average clearing firm per contract fee. In the case of a P Order, the Exchange also passes through the total amount of the credits above to the member that originated the order underlying the P Order. *See* Section 21 of the CBOE Fees Schedule.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

public interest. In particular, the Exchange believes that the proposed change would give additional opportunities to provide orders executions at improved prices and, in the case of HAL, executions at the NBBO on CBOE and reduce costs by reducing the number of Linkage orders sent to other exchanges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–58 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–CBOE–2008–58. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–58 and should be submitted on or before July 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13303 Filed 6–12–08; 8:45 am]

**BILLING CODE 8010–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57938; File No. SR–CBOE–2008–56]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

June 9, 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 30, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to adjust the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[5] is $10,079 per month and took effect on May 1, 2008. The Exchange proposes to revise the access fee to be $10,868 per month commencing on June 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate[6] designated by each of these clearing firms for the month of June 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of June 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of May 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of June 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 in support of that process and the original access fee for Temporary Members under Rule 3.19.02.[7]

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–56 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–CBOE–2008–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–56 and should be submitted on or before July 7, 2008.

[5] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[6] The term ''Clearing Firm Floating Monthly Rate'' refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

[7] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original access fee for Temporary Members under Rule 3.19.02, for detail regarding the rationale in support of the original access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13304 Filed 6–12–08; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57939; File No. SR–CBOE–2008–60]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Class Quoting Limit in Eight Option Classes

June 9, 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 June 4, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) 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 increase the class quoting limit in eight option classes. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal*), at the CBOE'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 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE Rule 8.3A, *Maximum Number of Market Participants Quoting Electronically per Product,* establishes class quoting limits (''CQL'') for each class traded on the Hybrid Trading System or Hybrid 2.0 Platform.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and Rule 8.3A, Interpretation .01(a) provides that the current levels are generally established at 50.

In addition, Rule 8.3A, Interpretation .01(b) provides a procedure by which the President of the Exchange may increase the CQL for an existing or new product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as ''substantial trading volume, whether actual or expected.'' [6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the following option classes as described below:

- Canadian Solar (CSIQ) from its current limit of 50 to 65
- Dryships, Inc. (DRYS) from its current limit of 65 to 70
- LDK Solar Co. Ltd. from its current limit of 50 to 65
- Petro Bras SA (PBR) from its current limit of 60 to 65
- Potash Corp. (POT) from its current limit of 50 to 55
- Solarfun Power Holdings Co. (SOLF) from its current limit of 50 to 65
- Sunpower Corporation (SPWR) from its current limit of 50 to 60
- Suntech Power Holdings Co. (STP) from its current limit of 50 to 60

The trading volume in these classes recently has increased substantially or is expected to increase. In addition, increasing these CQLs as proposed will accommodate Market-Makers that are currently on the wait-list to be appointed to the option classes. Increasing the CQLs in these options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. Lastly, CBOE represents that it has the systems capacity to support this increase in the CQLs.

2. Statutory Basis

Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. As indicated above, the Exchange believes that increasing the CQL in these option classes will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither received nor solicited written comments on the proposal.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' Rule 8.3A.01(b).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–60 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–CBOE–2008–60. 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, 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–60 and should be submitted on or before July 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13305 Filed 6–12–08; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11281]**

### Indiana Disaster # IN–00020

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana ( FEMA–1766–DR), dated 06/08/2008.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/06/2008 and continuing.

**DATES:** *Effective Date:* 06/08/2008.

*Physical Loan Application Deadline Date:* 08/07/2008.

**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 President's major disaster declaration on 06/08/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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:* Bartholomew, Boone, Brown, Clay, Daviess, Dearborn, Decatur, Franklin, Greene, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Monroe, Morgan, Ohio, Owen, Randolph, Ripley, Rush, Shelby, Sullivan, Union, Vermillion, Vigo, Wayne.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.250 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11281.

(Catalog of Federal Domestic Assistance Number 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–13384 Filed 6–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11279 and # 11280]**

### Massachusetts Disaster # MA–00016

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Commonwealth of MASSACHUSETTS dated 06/06/2008.

*Incident:* Apartment Fire.

*Incident Period:* 05/29/2008.

**DATES:** *Effective Date:* 06/06/2008.

*Physical Loan Application Deadline Date:* 08/05/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/06/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Essex.

*Contiguous Counties:*

Massachusetts: Middlesex, Suffolk.

New Hampshire: Hillsborough, Rockingham.

*The Interest Rates are:*

| | Percent |
|---|---|
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.250 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11279 5 and for economic injury is 11280 0.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Jovita Carranza,**

*Deputy Administrator.*

[FR Doc. E8–13387 Filed 6–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 09/79–0454]**

### Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to InsideView Technologies, Inc., 444 DeHaro Street, Suite 210, San Francisco, CA 94107 (''InsideView'').

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of InsideView, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

May 22, 2008.

**A. Joseph Shepard,**

*Associate Administrator for Investment.*

[FR Doc. E8–13342 Filed 6–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 6254]**

### Defense Trade Advisory Group; Notice of Meetings June 19, 2008

**SUMMARY:** On June 4, 2008, a **Federal Register** Notice (73 FR 31908) was published announcing the Defense Trade Advisory Group's (DTAG's) open meeting on June 19, 2008 from 9 a.m. to 12 noon in the East Auditorium at the U.S. Department of State, Harry S. Truman Building, Washington, DC. This notice serves to announce the closed meeting being held from 8 a.m. to 9 a.m. as well as the purpose and topics for discussion of the June 19th meetings.

**DATES:** There will be two meetings held the morning of June 19. The first meeting will be held from 8 a.m. to 9 a.m. and is for DTAG-members only. A second meeting will be held from 9 a.m. to 12 noon and is open to the public.

**ADDRESSES:** Both meetings on June 19th will be held in the East Auditorium at the U.S. Department of State, Harry S. Truman Building, Washington DC. DTAG members and non-member observers are required to pre-register due to security reasons; for further information regarding pre-registration requirements please see the notice published on June 4, 2008 (73 FR 31908).

**FOR FURTHER INFORMATION CONTACT:** Members of the public who need additional information regarding these meetings or the DTAG should contact the DTAG Executive Secretariat contact person, Allie Frantz, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 736–9220; FAX (202) 261–8199; or e-mail *FrantzA@state.gov.*

**SUPPLEMENTARY INFORMATION:**

**(a) Background**

The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. Individuals interested in defense trade issues are invited to attend the open session and will be able to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

*June 19, 2008, 8 a.m. to 9 a.m.* Meeting—The purpose of this DTAG-members only meeting is to provide the new DTAG membership for the 2008–2010 term an overview of administrative procedures, and to conclude other preparatory work. The meeting will be closed in accordance with 41 CFR 102–3.160. Individuals who have been appointed to the DTAG for the 2008–2010 term have already been notified.

*June 19, 2008, 9 a.m. to 12 noon* Meeting—Topics for discussion and assigned time frames are as follows: Self-Financing Options available for the Directorate of Defense Trade Controls 0900–1000; UK-US Defense Trade Cooperation Treaty Implementing Regulations—1000–1100; and the new USML Category VIII regulations implementing Section 17(c) of the Export Administration Act (EAA)—1100–1230.

**(b) Availability of Materials for the Meetings**

Please visit the Directorate of Defense Trade Controls' Web site at *http://pmddtc.state.gov/index.htm* for any available materials pertaining to the topics for discussion. Draft **Federal Register** Notices on the DTAG topics of discussion will be posted on the PM/DDTC Web site under the DTAG tab no later than June 12, 2008.

**(c) Procedures for Providing Public Comments**

The DTAG will accept written public comments as well as oral public comments. Comments should be relevant to the topics for discussion. Public participation at the open meeting will be based on recognition by the chair and may not exceed 5 minutes per speaker. Written comments should be sent to the DTAG Executive Secretariat contact person not later than June 17, 2008 so that the comments may be made available to the DTAG members for consideration. Written comments should be supplied to the DTAG

Executive Secretariat contact person at the mailing address or e-mail provided above, in Adobe Acrobat or Word format. **Note:** The DTAG operates under the provisions of the Federal Advisory Committee Act, as amended; all public comments will be treated as public documents and will be made available for public inspection, and might be posted on DDTC's Web site.

**(d) Meeting Accommodations**

Individuals requiring special accommodation to access the open meeting referenced above should contact Ms. Frantz at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 9, 2008.

**Robert S. Kovac,**

*Designated Federal Official, Defense Trade Advisory Group, Department of State.*

[FR Doc. E8–13374 Filed 6–12–08; 8:45 am]

**BILLING CODE 4710–25–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 29, 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–2007–0084.

*Date Filed:* February 25, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 17, 2008.

*Description:* Application of Pinnacle Airlines, Inc., requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between (i) a point or points in the United States and a point or points in all countries with existing ''Open Skies'' Air Services Agreements with the United States (''U.S. open-skies partners''), via intermediate points and beyond; and (ii) a point or points in the United States and a point or points in all countries that in the future become U.S. Open-skies partners, via intermediate points and beyond.

*Docket Number:* DOT–OST–2008–0072.

*Date Filed:* February 26, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 18, 2008.

*Description:* Application of Air One S.p.A., requesting a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between any point or points in the European Union and any point or points in the United States.

*Docket Number:* DOT–OST–2007–0075.

*Date Filed:* February 26, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 18, 2008.

*Description:* Application of NEOS S.p.A., requesting an expedited exemption and a foreign air carrier permit authorizing (i) foreign charter air transportation of persons, property, and mail between any point in the United States and any point in the European common Aviation Area; (ii) foreign charter air transportation of persons, property, and mail from any point or points behind any European Union Member State via any point or points in a European Union Member State, and via any intermediate point, to any point or points in the United States and beyond; and (iii) any other charters that may be authorized in the future under a U.S.–E.U. Agreement, or pursuant to the prior approval requirements of Part 212.

*Docket Number:* DOT–OST–2008–0074.

*Date Filed:* February 26, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 18, 2008.

*Description:* Application of Titan Airways Limited, requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in (i) foreign 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 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 charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. Titan requests a corresponding exemption necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13357 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements filed the Week Ending February 29, 2008

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number* DOT–OST–2006–26409.

*Date Filed* February 29, 2008.

*Parties* Members of the International Air Transport Association.

*Subject* TC23 Middle East, Africa—South West Pacific, Flex Fares Package, Expedited Resolutions, (Memo 0364/0366). Intended effective date: 1 July 2008.

*Docket Number* DOT–OST–2008–0077.

*Date Filed* February 29, 2008.

*Parties* Members of the International Air Transport Association.

*Subject* TC23 Middle East, Africa-South West Pacific, Expedited Composite Resoultions (Memo 0367/0365), Intended effective date: 1 July 2008.

*Docket Number* DOT–OST–2008–0078.

*Date Filed* February 29, 2008.

*Parties* Members of the International Air Transport Association,

*Subject* TC2 Within Africa, Resolutions and Specified Fares Tables

(Memo 0180). Intended effective date: 1 May 2008.

*Docket Number* DOT–OST–2008–0079.

*Date Filed* February 29, 2008.

*Parties* Members of the International Air Transport Association.

*Subject* TC2 Within Middle East, Expedited Resolution 002dk and Specified Fares Tables (Memo 0182). Intended effective date: 1 May 2008.

**Renee V. Wright,**

*Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. E8–13359 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### CSX Transportation

[Docket Number FRA–2008–0039]

CSX Transportation (CSXT) seeks a waiver of compliance from certain provisions of 49 CFR Part 231 *Safety Appliance Standards,* that requires uncoupling levers on each end of freight cars. Specifically, this request is to remove uncoupling levers on CSXT owned special equipment cars in rail train service while loading or unloading continuous welded rail throughout the CSXT system by CSXT forces.

CSXT believes that these welded rail cars can be operated safely with the uncoupling levers removed and couplers immobilized. These welded rail trains are operated as units and are not switched in yards as conventional freight cars. Due to the nature of moving welded rail for either loading or unloading, it is highly undesirable from a safety practice for cars to become uncoupled. The purpose of this waiver is to prevent these cars from being inadvertently uncoupled or vandalized to better ensure the safe movement of the rail trains, permitting only mechanical department personnel to uncouple the cars under blue flag protection.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2008–0039) and may be submitted by any of the following methods:

*Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 202–493–2251.

*Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

*Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on June 9, 2008.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E8–13376 Filed 6–12–08; 8:45 am]

**BILLING CODE 4910–06–P**

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