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Contents

Federal Register

Vol. 73, No. 133

Thursday, July 10, 2008

Agricultural Marketing Service
NOTICES
United States Standards for Grades of Beet Greens, 39646

Agriculture Department
See Agricultural Marketing Service

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39702–39704

Children and Families Administration
NOTICES
Single-Source Program Expansion Supplement, 39704

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39678–39679

Drug Enforcement Administration
RULES
Elimination of Exemptions:
Chemical Mixtures Containing the List I Chemicals Ephedrine and/or Pseudoephedrine, 39611–39614

Election Assistance Commission
NOTICES
Proposed Guidelines Regarding Help America Vote Act (HAVA) Section 254(a)(11), 39679–39680

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39724–39725

Employment Standards Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39725–39726

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Decisions Regarding Waivers:
Commercial Package Air Conditioner and Heat Pump Test Procedures; Residential Central Air Conditioner and Heat Pump Test Procedures, 39680–39684
Energy Conservation Program for Consumer Products:
Publication of the Petition for Waiver of Whirlpool Corp. From Residential Refrigerator and Refrigerator-Freezer Test Procedures, 39684–39688

Environmental Protection Agency
NOTICES
2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality:
A Preliminary Synthesis of Climate Change Impacts on O3, 39695–39696
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39696
Proposed Past Cost Administrative Settlement:
New Carlisle Well Contamination Site, New Carlisle, Clark County, OH, 39696–39697

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness Directives:
Agusta S.p.A. Model AB 139 and AW 139 Helicopters, 39572–39574
Airbus Model A300 and A300-600 Series Airplanes, 39580–39583
Bell Helicopter Textron Canada Model 206A, 206B, 206L, 206L-1, 206L-3, and 206L-4 Helicopters, 39577–39578
Bell Helicopter Textron Canada Model 206L, L-1, L-3, L 4, and 407 Helicopters, 39570–39572
Bell Helicopter Textron Canada Model 222, 222B, 222U, 230 and 430 Helicopters, 39569–39570
Boeing Model 747 100, et al., 39579–39580
Cirrus Design Corporation Model SR20 and SR22 Airplanes, 39583–39585
Lycoming Engines, Fuel Injected Reciprocating Engines, 39574–39577
PROPOSED RULES
Airworthiness Directives:
Dassault Model Mystere Falcon 50 Airplanes, 39628–39630
Pratt & Whitney (PW) JT9D-7 Series Turbofan Engines, 39627–39628

Federal Communications Commission
RULES
Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, 39623–39624

Federal Energy Regulatory Commission
NOTICES
Combined Notice of Filings, 39688–39690
Environmental Assessment; Availability:
Ketchikan Public Utilities, 39690–39691
Upper Peninsula Power Co., 39691
Environmental Assessment; Intent:
Empire Pipeline, Inc. and Empire State Pipeline, 39691–39693
Filings:
Union Electric Company, dba AmerenUE, 39693–39694
Records Governing Off-the-Record Communications, 39694–39695

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 39697
Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction, 39697
Meetings; Sunshine Act, 39697–39698
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies Engaged in Permissible Nonbanking Activities, 39698

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39698–39701

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Preble's Meadow Jumping Mouse, 39790–39838
PROPOSED RULES
Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Reclassify:
The Delta Smelt (Hypomesus transpacificus) from Threatened to Endangered, 39639–39643
NOTICES
Fish and Wildlife Service and Confederated Salish and Kootenai Tribes Sign Annual Funding Agreement, 39713–39714
Meetings:
Wind Turbine Guidelines Advisory Committee, 39714–39715

Food and Drug Administration
RULES
Applications for Approval to Market a New Drug; Complete Response Letter; Amendments to Unapproved Applications, 39588–39611
NOTICES
Draft Guidance; Industry on Voluntary Third-Party Certification Programs for Foods and Feeds; Availability, 39704–39705
Voluntary Third-Party Certification Programs for Imported Aquacultured Shrimp; Notice of Pilot Program, 39705–39708

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39678–39679

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 39712
Funding Availability for the Continuum of Care Homeless Assistance Program, 39840–39855
OIG Fraud Alert; Bulletin on Charging Excess Rent in the Housing Choice Voucher Program, 39712–39713

Indian Affairs Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Cowlitz Indian Tribes Proposed 151.87-Acre Fee-to-Trust Transfer, Reservation Proclamation, and Casino-Resort Project; Clark County, WA, 39715

Indian Health Service
NOTICES
Division of Nursing, Office of Public Health Nursing, 39708–39712

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
RULES
Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property, 39614–39623
PROPOSED RULES
Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans, 39630–39632

International Trade Administration
RULES
Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act (2006)
Imports of Certain Cotton Shirting Fabric, 39585–39587
NOTICES
Antidumping:
Non-Malleable Cast Iron Pipe Fittings from the Peoples Republic of China, 39656–39657
Antidumping Duty:
Carbon and Certain Alloy Steel Wire Rod from Canada, 39646–39650
Chlorinated Isocyanurates from Spain, 39650–39655
Forged Stainless Steel Flanges from India, 39655
Heavy Forged Hand Tools from the Peoples Republic of China, 39655–39656
Silicon Metal from the Peoples Republic of China, 39656
Countervailing Duty:
Circular Welded Austenitic Stainless Pressure Pipe from the Peoples Republic of China, 39657–39667
Raw Flexible Magnets from the People's Republic of China, 39667–39668
Exporters' Textile Advisory Committee; Solicitation for Members, 39668–39669
Extension of Time Limit for Final Results of Changed Circumstances Review:
Frozen Fish Fillets from Vietnam, 39669
Final Determination of Sales at Less Than Fair Value:
Raw Flexible Magnets from Taiwan, 39673–39675
Raw Flexible Magnets from the Peoples Republic of China, 39669–39672
Security and Prosperity Partnership of North America; Request for Public Comment:
Industry Involvement in Providing Information to the Trilateral Committee on Transborder Data Flows work program, 39675

International Trade Commission
NOTICES
Investigations:
Buffer Systems and Components Used in Container Processing Lines, 39717

Computer Systems, Printers and Scanners, 39717–39718
Denim Fabric; Use in Agoa Countries (During Fiscal Year 2007), 39718
Personal Computers and Digital Display Devices, 39718–39719
Rubber Antidegradants, Antidegradant Intermediates, and Products Containing the Same, 39719–39720

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
NOTICES
Consent Decree:
State of Colorado v. ASARCO Inc., et al., 39720–39721
State of Colorado v. ASARCO Incorporated et al.; Newmont USA Ltd and Resurrection Mining Co., 39720
United States and the State of Illinois v. Hamilton Sundstrand Corp., 39721
Privacy Act; Systems of Records, 39722–39724

Justice Programs Office
PROPOSED RULES
Public Safety Officers' Benefits Program, 39632–39639

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Eastern States, 39716
Meetings:
Southeast Oregon Resource Advisory Council, 39716
Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, 39716

Management and Budget Office
NOTICES
Public Availability of Fiscal Year 2007 Agency Inventories Under the Federal Activities Inventory Reform Act, 39736–39737

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39777–39778
Requested Administrative Waiver of the Coastwise Trade Laws, 39778–39779

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39678–39679

National Highway Traffic Safety Administration
NOTICES
Decision of Inconsequential Noncompliance
Chrysler, LLC, 39779–39780

National Oceanic and Atmospheric Administration
RULES
Fisheries off West Coast States; Pacific Coast Groundfish Fishery:
Suspension of the Primary Pacific Whiting Season, 39625–39626
Fisheries of the Exclusive Economic Zone Off Alaska:
Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska, 39626
Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery:
Framework Adjustment 19; Announcing OMB Approval of Information Collection, 39587–39588
Fisheries of the Northeastern United States; Northeast Multispecies Fishery;
Adjustment to the Total Allowable Catch of Georges Bank Yellowtail Flounder from the United States/Canada Management Area (Fishing Year 2008), 39624–39625
PROPOSED RULES
Fisheries of the Northeastern United States:
Monkfish Fishery, 39643–39645
NOTICES
Marine Mammals; Issuance of Permit Amendments, 39675–39676
Meetings:
Caribbean Fishery Management Council, 39676
Taking and Importing of Marine Mammals, 39676–39677

National Science Foundation
NOTICES
Permits Issued Under the Antarctic Conservation Act of 1978, 39726
Privacy Act; Systems of Records, 39726–39727

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39727–39728
Applications:
Lost Creek ISR, LLC, 39728–39731
Draft Regulatory Guide; Issuance, Availability, 39731–39732
Environmental Assessment; Availability, etc.:
Glaxosmithkline Biologicals-Hamilton Facility in Hamilton, MT, 39732–39734
Environmental Assessment; Availablility, etc.:
Department of Defense, Defense Intelligence Agency, Redstone Arsenal, AL, 39734–39735
Issuance and Availability of Regulatory Guide 10.6 (Revision 2), 39735–39736
Meetings:
The ACRS Subcommittee on Plant Operations & Fire Protection, 39736

Office of Management and Budget
See Management and Budget Office

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39677–39678

Pipeline and Hazardous Materials Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39780–39785

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39737–39741
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC, 39741–39746
Boston Stock Exchange, Inc., 39746–39747
Chicago Board Options Exchange, Inc., 39747–39749

Chicago Stock Exchange, Inc, 39749–39751
Financial Industry Regulatory Authority Inc., 39751–39753
International Securities Exchange, LLC, 39754–39755
NASDAQ Stock Market LLC, 39755–39758
National Securities Clearing Corp., 39758–39764
New York Stock Exchange LLC, 39764–39765
NYSE Arca, Inc., 39765–39769
Philadelphia Stock Exchange, Inc., 39769–39776
The NASDAQ Stock Market LLC, 39776
Suspension of trading—
VMT Scientific, Inc., 39776–39777

Small Business Administration
NOTICES
Disaster Declarations:
Massachusetts, 39777

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39785–39787

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 39790–39838

Part III
Housing and Urban Development Department, 39840–39855

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.

14 CFR
39 (8 documents) 39569, 39570, 39572, 39574, 39577, 39579, 39580, 39583
Proposed Rules:
39 (2 documents) 39627, 39628

15 CFR
336.....39585
902.....39587

21 CFR
312.....39588
314.....39588
600.....39588
601.....39588
1310.....39611

26 CFR
1.....39614
Proposed Rules:
1.....39630

28 CFR
Proposed Rules:
32.....39632

47 CFR
73.....39623

50 CFR
17.....39790
648 (2 documents) 39587, 39624
660.....39625
679.....39626
Proposed Rules:
17.....39639
648.....39643

Rules and Regulations

Federal Register
Vol. 73, No. 133
Thursday, July 10, 2008

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0039; Directorate Identifier 2006–SW–13–AD; Amendment 39–15596; AD 2008–14–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230 and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, 230 and 430 helicopters that requires rewiring and testing the fuel valve switch on each engine and testing the ignitor system. This amendment is prompted by an in-flight incident in which a fuel valve switch failed, causing the fuel valve to inadvertently close. The actions specified by this AD are intended to prevent interruption of the fuel supply caused by failure of the fuel switch, which could result in loss of engine power and subsequent loss of control of the helicopter.

DATES: Effective August 14, 2008.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 14, 2008.

ADDRESSES: You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov*, or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on January 23, 2008 (73 FR 3889). That action proposed to require, within 50 hours time-in-service (TIS), rewiring the switches that control the operation of the No. 1 and No. 2 engines' fuel valves, and testing the switches and the ignitor system.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, 230 and 430 helicopters. Transport Canada advises of an investigation into an incident involving a BHTC Model 222 helicopter, in which the fuel shut-off switch, part number (P/N) 10648BH1–1, failed during flight causing the fuel valve to close and the engine to shut down. Review of the Service Difficulty Report database identified two other incidents of switch failure.

Bell Helicopter Textron has issued the following technical bulletins, all dated June 11, 2003, which specify rewiring the fuel valve switch:

Technical bulletin	Helicopter models affected
No. 222–03–171	Model 222 and 222B helicopters.
No. 222U–03–96	Model 222U helicopters.
No. 230–03–35	Model 230 helicopters.
No. 430–03–33	Model 430 helicopters.

Transport Canada classified these technical bulletins as mandatory and issued AD No. CF–2006–03, dated February 28, 2006, to ensure the continued airworthiness of these helicopters in Canada. That AD requires compliance no later than May 3, 2006. This AD requires compliance within 50 hours TIS.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 165 helicopters of U.S. registry, and the required actions will take approximately four work hours per helicopter to rewire the 2 fuel valve switches, and test those switches and the ignitor system, at an average labor rate of $80 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $52,800 ($320 per helicopter).

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008–14–01 Bell Helicopter Textron Canada: Amendment 39–15596. Docket No. FAA–2008–0039; Directorate Identifier 2006–SW–13–AD.

Applicability: The following model helicopters, certificated in any category:

Model No.	Serial Nos.
222	47006 through 47089.
222B	47131 through 47156.
222U	47501 through 47574.
230	23001 through 23038.
430	49001 through 49101.

Compliance: Required within 50 hours time-in-service, unless accomplished previously.

To prevent interruption of the fuel supply caused by failure of the fuel switch, which could result in loss of engine power and subsequent loss of control of the helicopter, accomplish the following:

(a) Rewire the No. 1 and No. 2 engines' fuel valve switch, part number 10648BH1–1, and test the fuel valve switches and the ignitor system, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Technical Bulletin (TB) No. 222–03–171, Part 1, applicable to Model 222 helicopters, serial number (S/N) 47006–47038, and Part 2, applicable to Model 222 helicopters, S/N 47039–47089, and Model 222B helicopters, S/N 47131–47156; TB No. 222U–03–96, applicable to Model 222U helicopters; TB No. 230–03–35, applicable to Model 230 helicopters; and TB No. 430–03–33, applicable to Model 430 helicopters. All of the technical bulletins are dated June 11, 2003.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: George Schwab, Aviation Safety Engineer, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0110, telephone (817) 222–5114, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The rewiring and testing shall be done in accordance with the specified portions of Bell Helicopter Textron Technical Bulletin No. 222–03–171, No. 222U–03–96, No. 230–03–35, and No. 430–03–33, all dated June 11, 2003. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(d) This amendment becomes effective on August 14, 2008.

Note: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2006–03, dated February 28, 2006.

Issued in Fort Worth, Texas, on June 12, 2008.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–14718 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0258; Directorate Identifier 2007–SW–22–AD; Amendment 39–15601; AD 2008–14–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, L–1, L–3, L–4, and 407 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The Aviation Authority of Canada with whom we have a bilateral agreement states in the MCAI: ''Horizontal stabilizers part numbers 206–023–119–167 and 407–023–801–109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.''

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective on August 14, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 14, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the AD Docket: The AD docket contains the Notice of Proposed Rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the BHTC Model Bell Helicopter Textron Canada Models 206L, L–1, L–3, L–4, and 407 helicopters on February 28, 2008. That NPRM was published in the **Federal Register** on March 7, 2008 (73 FR 12303). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states: ''Horizontal stabilizers part numbers 206–023–119–167 and 407–023–801–109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.''

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed, except for correcting a typographical error in the preamble. Under the heading, ''Relevant Service Information,'' we have corrected the name of the manufacturer issuing the service bulletins to BHTC rather than Transport Canada. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Relevant Service Information

BHTC has issued Alert Service Bulletin No. 206L–06–141 and No. 407–06–72, both dated September 12, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, we have changed the alternate compliance time from May 9, 2007, to within 30 days, and we have not mandated replacing the horizontal stabilizer by a certain date. In making this change, we do not intend to differ substantively from the information provided in the MCAI.

Differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section in the proposed AD.

Costs of Compliance

We estimate this AD will affect 59 horizontal stabilizers (27–206L and 32–407 models) on about 1156 products of U.S. registry and will take about:

- 2.5 work hours to determine if the affected part is installed on the helicopter,
- 4 work hours to perform the initial and 600-hour recurring inspection, and
- 8 work hours to remove and replace an affected part.

The average labor rate is $80 per work-hour and required parts cost about $20,173 for the Model 206L series and $25,669 for the Model 407 helicopters. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,663,519, assuming the entire fleet is examined for the affected part; 59 helicopters with the affected parts undergo the initial inspection; 30 helicopters with the affected part undergo one recurring 600-hour inspection; and all 59 affected parts are replaced.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–06 Bell Helicopter Textron Canada: Amendment 39–15601, Docket No. FAA–2008–0258; Directorate Identifier 2007–SW–22–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on August 14, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 206L, 206L–1, 206L–3, and 206L–4 helicopters with

horizontal stabilizer, part number (P/N) 206–023–119–167, and Model 407 helicopters with horizontal stabilizer, P/N 407–023–801–109, installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: ''Horizontal stabilizers part numbers 206–023–119–167 and 407–023–801–109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.''

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts. This AD requires actions that are intended to address all these unsafe conditions.

Actions and Compliance

(e) Within the next 100 hours time-in-service (TIS) or 30 days, whichever occurs first, unless done previously.

(1) Determine whether you have an affected serial numbered horizontal stabilizer installed by removing the elevators from the horizontal stabilizer. Access the horizontal stabilizer identification tag containing the horizontal stabilizer serial number as shown in Figure 1 and remove the elevators by following the Accomplishment Instructions, Part I, of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 206L–06–141, dated September 12, 2006, applicable to the Model 206L series helicopter (206L ASB) or BHTC ASB No. 407–06–72, dated September 12, 2006, applicable to the Model 407 helicopters (407 ASB).

(2) If the serial number on the identification tag is a serial number listed in Table 1 of the 206L ASB or 407 ASB, inspect the horizontal stabilizer as follows:

(i) Using a 10× or higher magnifying glass, inspect the horizontal stabilizer for a crack or deformation around the areas of the inserts. Also, using a tap test method, inspect for debonding between the inserts by following the Accomplishment Instructions, Part II, of either the 206L ASB or 407 ASB, as applicable.

(ii) If you find a crack, deformation, or debonding, replace the horizontal stabilizer with an airworthy horizontal stabilizer that does not have a serial number listed in Table 1 of the 206L ASB or 407 ASB. Replace the horizontal stabilizer by following the Accomplishment Instructions, Part III, of either the 206L ASB or the 407 ASB, as applicable.

(iii) If you do not find a crack, deformation, or debonding, thereafter, at intervals not to exceed 600 hours TIS or during each annual inspection, whichever occurs first, repeat the inspection required by paragraph (e)(2)(i) of this AD.

(f) Replacing any horizontal stabilizer containing a serial number listed in Table 1 of 206L ASB or 407 ASB with a horizontal stabilizer that does not contain such a serial number by following the Accomplishment Instructions, Part III, of either the 206L ASB or 407 ASB, as applicable, constitutes terminating actions for the requirements of this AD.

Differences Between This AD and the MCAI AD

(g) The MCAI requires compliance ''within the next 100 hours air time but no later than 9 May 2007.'' This AD requires compliance within the next 100 hours TIS or 30 days, whichever occurs first, unless done previously. Also, the MCAI requires replacing the horizontal stabilizer by September 30, 2008, and we have not mandated a compliance time for replacing the horizontal stabilizer.

Other Information

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

Related Information

(i) MCAI Transport Canada AD No. CF–2007–03, dated March 27, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(j) ATA Code 5510: Horizontal Stabilizer Structure.

Material Incorporated by Reference

(k) You must use the specified portions of Bell Helicopter Textron Canada Alert Service Bulletin No. 206L–06–141 or No. 407–06–72, both dated September 12, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

Judy I. Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–14719 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0256; Directorate Identifier 2007–SW–01–AD; Amendment 39–15597; AD 2008–14–02]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB 139 and AW 139 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. Model AB 139 and AW 139 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, which indicates that the Agusta AB 139's and AW 139's Fuselage Frame 5700 middle section is prone to fatigue damage. The actions are intended to detect cracks in the fuselage frame structure and to prevent structural failure in this area.

DATES: This AD becomes effective on August 14, 2008.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of August 14, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

Examining the AD Docket: The AD docket contains the NPRM, the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5227) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer,

FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to Agusta S.p.A. Model AB 139 and AW 139 helicopters. That NPRM was published in the **Federal Register** on March 7, 2008 (73 FR 12299). That NPRM proposed to require repetitive inspections of the fuselage frame structure for a crack, and if a crack is found, repairing the crack before further flight in accordance with an FAA-approved procedure. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed except for some formatting changes. These changes will neither increase the economic burden on any operator nor increase the scope of this AD.

Relevant Service Information

Agusta S.p.A. has issued Bollettino Tecnico No. 139–018, Revision B, dated October 18, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

This AD differs from the MCAI in that the MCAI states ''When damage or cracks are found, before next flight, contact the TC Holder for further instructions.'' This AD requires repairing the crack before further flight in accordance with an FAA-approved procedure if a crack is found. Also, this AD requires that the inspection be performed based on ''hours time-in-service'' rather than ''flight hours,'' as stated in the MCAI.

Costs of Compliance

We estimate that this AD will affect about 17 helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per helicopter to comply with the initial and each subsequent recurring inspection required by this AD. The average labor rate is $80 per work-hour. Assuming that 3 recurring inspections will be performed on each of the affected helicopters every year after the initial inspection, and that 2 of the affected helicopters will require repairs to the fuselage middle frame section at $10,000 per repair during the service life of these helicopters, we estimate the cost of this AD as follows:

- Initial Inspection Costs: $1 \times 80 \times 17 = \$1360$.
- Subsequent Recurring Inspection Costs over the next 20 years: $1 \times 3 \times 20 \times 80 \times 17 = \$81,600$.
- Repair Costs: $2 \times 10,000 = \$20,000$.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $102,960, or $6,056 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–02 Agusta S.p.A.: Amendment 39–15597. Docket No. FAA–2008–0256; Directorate Identifier 2007–SW–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on August 14, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Agusta S.p.A. Model AB 139 and AW 139 helicopters, certificated in any category.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, which indicates that the Agusta AB/AW 139's Fuselage Frame 5700 middle section is prone to fatigue damage. These fatigue cracks constitute an unsafe condition. The actions are intended to detect cracks in the fuselage frame structure and to prevent structural failure in this area.

Actions and Compliance

(e) Required as indicated, unless already done.

(1) Within the next 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, inspect the fuselage frame 5700 middle section in accordance with the Compliance Instructions, pargraphs 1. through 4., of Agusta Bollettino Tecnico No. 139–018, Revision B, dated October 18, 2006;

(2) Thereafter, at intervals not exceeding 100 hours TIS, repeat the inspection as required by paragraph (e)(1) of this AD.

(3) If a crack is found, before further flight, repair the crack in accordance with an FAA-approved procedure.

Differences Between This AD and the MCAI AD

(f) This AD differs from the MCAI as follows:

(1) The MCAI states ''When damage or cracks are found, before next flight, contact the TC Holder for further instructions.'' If a crack is found, this AD requires repairing the crack before further flight in accordance with an FAA-approved procedure.

(2) This AD requires that the inspection be performed based on ''hours time-in-service'' not ''flight hours.''

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) European Aviation Safety Agency (EASA) Airworthiness Directive No. 2006–0357, dated November 29, 2006, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) ATA Code 5700: Fuselage frame middle section.

Material Incorporated by Reference

(j) You must use the specified portions of Agusta Bollettino Tecnico No. 139–018, Revision B, dated October 18, 2006, to do the actions required.

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

(2) For service information identified in this AD, contact Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Judy Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–14720 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD; Amendment 39–15602; AD 2008–14–07]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines, Fuel Injected Reciprocating Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain fuel injected reciprocating engines manufactured by Lycoming Engines. That AD currently requires inspection, and replacement if necessary, of externally mounted fuel injector fuel lines. This AD requires the same actions but adds additional engine models and clarifies certain compliance time wording. This AD also exempts engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection and replacement, if necessary, of externally mounted fuel injector lines. This AD results from Lycoming Engines revising their Mandatory Service Bulletin to add new engine models requiring inspection, and from the need to clarify a repetitive inspection compliance time. We are issuing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

DATES: This AD becomes effective August 14, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 14, 2008.

ADDRESSES: You can get the service information identified in this AD from Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, or go to *http://www.lycoming.textron.com.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; e-mail: *Norman.perenson@faa.gov*; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2002–26–01, Amendment 39–12986 (67 FR 78965, December 27, 2002), with a proposed AD. The proposed AD applies to certain fuel injected reciprocating engines manufactured by Lycoming Engines. We published the proposed AD in the **Federal Register** on January 2, 2008 (73 FR 87). That action proposed to:

- Require the same actions as AD 2002–26–01; and
- Add additional engine models, clarify certain compliance time wording; and
- Exempt engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection and replacement, if necessary, of externally mounted fuel injector lines.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

One commenter, a private citizen, states that in the proposed AD, we wish to exempt engines that have a maintenance manual that deals with this subject. He asks how the mechanic is to know if an engine has a maintenance manual, if the mechanic does not have access to that manual, unless we list the specific engines that are not applicable to the proposed AD. He states that we should either make the AD applicable to fuel injected Lycoming Engines and then list the applicable and nonapplicable engines, or do not change the AD.

We do not agree. If the engine has an ''I'' in the prefix of the engine model and the engine has external fuel lines, the fuel lines require inspection. For engines that have a Maintenance Manual, the required inspection will be described in the Airworthiness

Limitations Section (ALS) in the engine's Maintenance Manual. For engines that do not have a Maintenance Manual, the required inspection will be described in this AD and Lycoming Mandatory Service Bulletin No. 342E. The mechanic is required to have the Instructions for Continued Airworthiness when performing maintenance (refer to 14 CFR 43.13). Having the manual or access to the manual, of an airplane or engine undergoing maintenance is just as important as having the proper tools to perform the maintenance on an aircraft or engine. We added language in paragraph (e) to clarify that engine models with an ALS are not included in Table 1 and therefore are exempted from compliance with this AD.

One commenter, a private citizen, states that the proposed AD should be expanded to include any other certified engines utilizing the same fuel injection setup and parts as the Lycoming engines. One example is the Jacobs R–755 engine that can be converted to a fuel injection system via Supplemental Type Certificate held by Radial Engines, LTD. This installation uses a modified IO–720 fuel injection system, including the same fuel injection lines that are the subject of the AD.

We do not agree. The unsafe condition for this AD is the lack of proper maintenance of the fuel injector lines and support clamps. The unsafe condition is not a problem with the design or manufacture of fuel injector lines. Some of the clamps are difficult to install on the fuel injector lines and then to the engine, resulting in support clamps being omitted during field overhaul or repair. The support clamps dampen fuel line vibration due to the impact of cooling air and vibration from the aircraft/engine. When the lines and clamps are accessible and support clamp installation is easier, as in the case of the Jacobs R–755 engine, the clamps are properly installed and there has not been a reported problem. Since there has not been a reported problem with the fuel injector lines on the R–755 engine, or any other engine, there is no reason to include any other engine in the AD. We did not change the AD.

Conclusion

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

Costs of Compliance

We estimate that 17,740 engines installed on aircraft of U.S. registry will be affected by this AD. We also estimate that it will take about 1 work-hour to inspect and replace all lines on a four-cylinder engine, 1.5 work-hours to inspect and replace all lines on a six-cylinder engine, and 2 work-hours to inspect and replace all lines on an eight-cylinder engine. We also estimate that the average labor rate is $80 per work-hour. Required parts will cost about $484 for a four-cylinder engine, $726 for a six-cylinder engine, and $968 for an eight-cylinder engine. Based on these figures, the total cost per airplane of the AD to U.S. operators is estimated as follows:

- $564 for a four-cylinder engine.
- $846 for a six-cylinder engine.
- $1,128 for an eight-cylinder engine.

We estimate the total cost to U.S. operators to be $11,062,860.

Special Flight Permits Paragraph Removed

Paragraph (e) of the superseded AD, AD 2002–26–01, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives. See Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12986 (67 FR 78965, December 27, 2002), and by adding a new airworthiness directive, Amendment 39–15602, to read as follows:

2008–14–07 Lycoming Engines (formerly Textron Lycoming Division, AVCO Corporation): Amendment 39–15602. Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 14, 2008.

Affected ADs

(b) This AD supersedes AD 2002–26–01, Amendment 39–12986.

Applicability

(c) This AD applies to fuel injected reciprocating engines manufactured by

Lycoming Engines that incorporate externally mounted fuel injection lines (engines with an ''I'' in the prefix of the engine model designation) as listed in the following Table 1:

TABLE 1.—ENGINE MODELS AFFECTED

Engine	Model
AEIO–320	–D1B, –D2B, –E1B, –E2B.
AIO–320	–A1B, –BIB, –C1B.
IO–320	–B1A, –B1C, –C1A, –D1A, –D1B, –E1A, –E1B, –E2A, –E2B.
LIO–320	–B1A, –C1A.
AEIO–360	–A1A, –A1B, –A1B6, –A1D, –A1E, –A1E6, –B1F, –B2F, –B1G6, –B1H, –B4A, –H1A, –H1B.
AIO–360	–A1A, –A1B, –B1B.
HIO–360	–A1A, –A1B, –B1A, –C1A, –C1B, –D1A, –E1AD, –E1BD, –F1AD, –G1A.
IO–360	–A1A, –A1B, –A1B6, –A1B6D, –A1C, –A1D, –A1D6, –A2A, –A2B, –A3B6, –A3B6D, –B1B, –B1D, –B1E, –B1F, –B1G6, –B2F, –B2F6, –B4A, –C1A, –C1B, –C1C, –C1C6, –C1D6, –C1E6, –C1F, –C1G6, –C2G6, –F1A, –J1A6D, –M1B, –L2A, –M1A.
IVO–360	–A1A.
LIO–360	–C1E6.
TIO–360	–A1B, –C1A6D.
IGO–480	–A1B6.
AEIO–540	–D4A5, –D4B5, –D4D5, –L1B5, –L1B5D, –L1D5.
IGO–540	–B1A, –B1C.
IO–540	–A1A5, –AA1A5, –AA1B5, –AB1A5, –AC1A5, –AE1A5, –B1A5, –B1C5, –C1B5, –C4B5, –C4D5D, –D4A5, –E1A5, –E1B5, –G1A5, –G1B5, –G1C5, –G1D5, –G1E5, –G1F5, –J4A5, –V4A5D, –K1A5, –K1A5D, –K1B5, –K1C5, –K1D5, –K1E5, –K1E5D, –K1F5, –K1H5, –K1J5, –K1F5D, –K1G5, –K1G5D, –K1H5, –K1J5D, –K1K5, –K1E5, –K1E5D, –K1F5, –K1J5, –L1C5, –M1A5, –M1B5D, –M1C5, –N1A5, –P1A5, –R1A5, –S1A5, –T4A5D, –T4B5, –T4B5D, –T4C5D, –V4A5, –V4A5D, –W1A5, –W1A5D, –W3A5D.
IVO–540	–A1A.
LTIO–540	–F2BD, –J2B, –J2BD, –N2BD, –R2AD, –U2A, –V2AD, –W2A.
TIO–540	–A1A, –A1B, –A2A, –A2B, –A2C, –AE1A5, –AE2A, –AH1A, –AA1AD, –AF1A, –AF1B, –AG1A, –AB1AD, –AB1BD, –AH1A, –AJ1A, –AK1A, –C1A, –E1A, –G1A, –F2BD, –J2B, –J2BD, –N2BD, –R2AD, –S1AD, –U2A, –V2AD, –W2A.
TIVO–540	–A2A.
IO–720	–A1A, –A1B, –D1B, –D1BD, –D1C, –D1CD, –B1B, –B1BD, –C1B.

Engine models in Table 1 are installed on, but not limited to, Piper PA–24 Comanche, PA–30 and PA–39 Twin Comanche, PA–28 Arrow, and PA–23 Aztec; Beech 23 Musketeer; Mooney 20, and Cessna 177 Cardinal airplanes.

(d) This AD is not applicable to engines having internally mounted fuel injection lines, which are not accessible.

(e) This AD is not applicable to engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection of externally mounted fuel injector lines. Those engines models are not included in Table 1 of this AD.

Unsafe Condition

(f) This AD results from Lycoming Engines revising their Mandatory Service Bulletin (MSB) to add new engine models requiring inspection, and from the need to clarify a repetitive inspection compliance time. We are issuing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

Compliance

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

Engines That Have Had Initial Inspections

(h) For engines that have had initial inspections in accordance with Textron Lycoming MSB No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992; Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001; and Lycoming Engines MSB No. 342E, dated May 18, 2004, inspect in accordance with paragraph (j) of this AD.

Engines That Have Not Had Initial Inspections

(i) For engines that have not had initial inspections previously done in accordance with Textron Lycoming MSB No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992; Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001; or Lycoming Engines MSD No. 342E, dated May 18, 2004, inspect as follows:

(1) For engines that have not yet had any fuel line maintenance done, or have not had any fuel line maintenance done since new or since the last overhaul, inspect in accordance with paragraph (k) of this AD within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) For all other engines, inspect in accordance with paragraph (k) of this AD within 10 hours TIS after the effective date of this AD.

Repetitive Inspections

(j) Thereafter, inspect at intervals of 100 hours TIS (not to exceed 110 hours), at each engine overhaul, and after any maintenance has been done on the engine where any clamp (or clamps) on a fuel injector line (or lines) has been disconnected, moved, or loosened, in accordance with paragraph (k) of this AD.

Inspection Criteria

(k) Inspect the fuel injector fuel lines and clamps between the fuel manifold and the fuel injector nozzles, and replace as necessary any fuel injector fuel line and clamp that does not meet all conditions specified in Lycoming Engines MSB No. 342E, dated May 18, 2004.

Alternative Methods of Compliance

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

Related Information

(m) FAA Special Airworthiness Information Bulletin No. NE–07–49, dated September 20, 2007, is not mandatory, but has additional information on this subject.

(n) Contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; e-mail: *Norman.perenson@faa.gov;* telephone (516)

228–7337; fax (516) 794–5531, for more information about this AD.

Material Incorporated by Reference

(o) You must use Lycoming Engines Mandatory Service Bulletin No. 342E, dated May 18, 2004, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, or go to *http://www.lycoming.textron.com* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 24, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–14734 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0040; Directorate Identifier 2007–SW–13–AD; Amendment 39–15598; AD 2008–14–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The aviation authority of Canada, with which we have a bilateral agreement, states in the MCAI: ''It has been determined that some helicopters have been fitted with a CRES steel fitting, part number (P/N) 407–030–750–103, and the installation of the tailboom attachment bolt does not meet the design criteria.'' We are issuing this AD to require actions that are intended to address the unsafe condition that results from an improper installation of the tailboom attachment bolt in the upper left-hand tailboom attachment CRES steel fitting.

DATES: This AD becomes effective on August 14, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 14, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from BHTC, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the AD Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5227) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 23, 2008 (73 FR 3887). That NPRM proposed to correct an unsafe condition for the specified products which results from an improper installation of the tailboom attachment bolt in the upper left hand tailboom attachment CRES steel fitting. The MCAI states: ''It has been determined that some helicopters have been fitted with a CRES steel fitting, part number (P/N) 407–030–750–103, and the installation of the tailboom attachment bolt does not meet the design criteria.''

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

BHTC has issued Alert Service Bulletin No. 206–06–110 and No. 206L–06–140, both dated September 7, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

There are no differences between this AD and the MCAI AD.

Costs of Compliance

We estimate that this AD will affect about 2,206 helicopters (1,471 Model 206A and 206B helicopters and 735 Model 206L helicopters) of U.S. registry. We also estimate that it will take about .5 work-hour per helicopter to determine if a tailboom attachment bolt must be replaced and, if so, 1 additional work hour to replace the tailboom attachment bolt. The average labor rate is $80 per work-hour. Required parts will cost about $133 for Model 206L series helicopters, and $71 for Model 206A and 206B series helicopters. Based on these figures, we estimate the cost of this AD on U.S. operators to be $466,916, or $253 for each Model 206L series helicopter and $191 for each Model 206A and 206B series helicopter.

Authority for This Rulemaking

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

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

product(s) identified in this rulemaking action.

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–03 Bell Helicopter Textron Canada: Amendment 39–15598. Docket No. FAA–2008–0040; Directorate Identifier 2007–SW–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on August 14, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, with an upper left-hand tailboom attachment CRES steel fitting, part number (P/N) 407–030–750–103, installed, certificated in any category.

Reason

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

''It has been determined that some helicopters have been fitted with a CRES steel fitting, part number (P/N) 407–030–750–103, and the installation of the tailboom attachment bolt does not meet the design criteria.''

We have determined that an improper installation of the tailboom attachment bolt in the upper left-hand tailboom attachment CRES steel fitting, P/N 407–030–750–103, creates an unsafe condition.

Actions and Compliance

(e) Within the next 50 hours time-in-service (TIS), unless already done, do the following:

(1) For those helicopters with an upper left-hand CRES tailboom attachment fitting, P/N 407–030–750–103, determine if the correct number and type of washers are installed, the tailboom attachment bolt is oriented in the correct direction, and the correct number of bolt threads are exposed in accordance with the NOTES on Figure 1 of the applicable Alert Service Bulletin (ASB) in the following Table I.

TABLE I

Model	ASB No. and date
206A, 206B	206–06–110, dated September 7, 2006.
206L, L–1, L–3, L–4.	206L–06–140, dated September 7, 2006.

(i) If the correct number and type of washers are installed, the tailboom attachment bolt is oriented in the correct direction, and the correct number of tailboom attachment bolt threads is exposed, do a torque inspection of the nut.

(A) If the torque is below the minimum required amount, replace the tailboom attachment bolt in accordance with the Accomplishment Instructions, Part II, step 1 of the applicable ASB listed in Table I of this AD.

(B) If the torque is above the maximum amount, adjust the torque to within the allowable range.

(ii) If an incorrect number or type of washer is installed or the tailboom attachment bolt is oriented in the wrong direction, reconfigure as necessary to meet the requirements of the NOTES on Figure 1 of the applicable ASB listed in Table I of this AD.

(iii) If there is less than 1 tailboom attachment bolt thread exposed, adjust the number of washers and retorque the nut so that between 1 and 3 tailboom attachment bolt threads are exposed at the proper nut torque.

(iv) If more than 3 tailboom attachment bolt threads are exposed, replace the attachment bolt in accordance with the Accomplishment Instructions, Part II, step 1 of the applicable ASB listed in Table 1 of this AD.

(2) If a tailboom attachment bolt must be replaced based on a requirement of this AD, at 100 hours TIS after the tailboom attachment bolt is replaced, do a torque inspection of the nut.

Differences Between This AD and the MCAI AD

(f) None.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to FAA, Rotorcraft Directorate, Regulations and Policy Group, ATTN: Sharon Miles, Aerospace Engineer; Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

Related Information

(h) MCAI Transport Canada Airworthiness Directive CF–2007–01, dated January 19, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) Air Transport Association of America (ATA) Code 5340, Fuselage Main, Attach Fittings.

Material Incorporated by Reference

(j) You must use the specified portions of Bell Helicopter Textron Alert Service Bulletin No. 206–06–110 or No. 206L–06–140, both dated September 7, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas on June 12, 2008.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–14736 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0166; Directorate Identifier 2007–NM–329–AD; Amendment 39–15603; AD 2008–14–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 747 airplanes listed above. This AD requires repetitive inspections for broken or missing fasteners in the single-row hinge fasteners of the forward and aft cargo doors, and related investigative/corrective actions. This AD results from reports of broken and missing fasteners in the hinges of the forward and aft cargo doors in both the body hinge segments and the door hinge segments. We are issuing this AD to detect and correct broken or missing fasteners in the hinge segments with a single fastener row, which could lead to opening of the cargo door during flight and result in rapid decompression of the airplane.

DATES: This AD is effective August 14, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 14, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. That NPRM was published in the **Federal Register** on February 13, 2008 (73 FR 8248). That NPRM proposed to require repetitive inspections for broken or missing fasteners in the single-row hinge fasteners of the forward and aft cargo doors, and related investigative/corrective actions.

Comments

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

Request To Cite Corrected Service Bulletin

Japan Airlines (JAL) states that it informed Boeing of an error in Boeing Alert Service Bulletin 747–52A2287, dated October 25, 2007, which we referred to as the appropriate source of service information for doing the actions proposed in the NPRM. JAL found an error in torque values and fastener quantities in Figures 9, 25, and 26 of that service bulletin. Therefore, JAL requests that we delay issuance of the AD until Boeing revises its service information with the corrected values and quantities. Boeing states that it has revised the service bulletin and recommends that the AD refer to Revision 1.

We agree with the commenter. Boeing has issued Service Bulletin 747–52A2287, Revision 1, dated April 17, 2008, which contains the corrected torque values and fastener quantities. Revision 1 of the service bulletin also corrects errors in certain part numbers and station locations. We have revised paragraph (f) of the AD to refer to Revision 1 and to remove the actions to take if there is one or more fasteners missing from a hinge segment. That information is included in Revision 1 of the service bulletin. We have also added a new paragraph (g) to the AD to give credit to operators who accomplished the required actions in accordance with the original issue of the service bulletin. We have re-identified subsequent paragraphs accordingly.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 165 airplanes of U.S. registry. The ''Estimated Costs'' table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection	3	$80	$240, per inspection cycle	165	$39,600, per inspection cycle.
Torque application (for any hinge segment with no broken or missing fastener).	7	$80	$560, per inspection cycle	Up to 165	Up to $92,400, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–08 Boeing: Amendment 39–15603. Docket No. FAA–2008–0166; Directorate Identifier 2007–NM–329–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of broken and missing fasteners in the hinges of the forward and aft cargo doors in both the body hinge segments and the door hinge segments. We are issuing this AD to detect and correct broken or missing fasteners in the hinge segments with a single fastener row, which could lead to opening of the cargo door during flight and result in rapid decompression of the airplane.

Compliance

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

Repetitive Inspection and Related Investigative/Corrective Actions

(f) Before the accumulation of 7,200 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed inspection for broken or missing fasteners of the single-row hinge fasteners of the forward and aft cargo door hinge segments, and do all applicable related investigative (torque application) and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–52A2287, Revision 1, dated April 17, 2008. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

Actions Accomplished According to Earlier Revision of Service Bulletin

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–52A2287, dated October 25, 2007, are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 747–52A2287, Revision 1, dated April 17, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information 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 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14972 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0222; Directorate Identifier 2007–NM–300–AD; Amendment 39–15604; AD 2008–14–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the

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

Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published * * * in order to control or correct the development of cracks, which could affect the structural integrity of the aircraft.

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

DATES: This AD becomes effective August 14, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 14, 2008.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 29, 2008 (73 FR 11067). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins [SBs] rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published in order to render mandatory an inspection subsequent to accomplishment of repair SB A300–53–0282 or A300[–53]–0291 or A300–57–6069 in the affected area. The SB A300–53–0381, A300–53–0383 and A300–57–6102 define the various configurations for the mandatory [repetitive] inspections to be conducted in order to control or correct the development of cracks [in the center wing box at FR47], which could affect the structural integrity of the aircraft.

The inspections include x-ray, high frequency eddy current, visual, and ultrasonic inspections. Corrective actions include contacting Airbus if any cracking is found, repairing if any cracking is found, and doing other specified actions. The other specified actions include contacting Airbus for oversizing fastener holes, oversizing fastener holes, installing new fasteners, and installing new plugs. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Revise Cost

Air Transport Association (ATA), on behalf of its member, American Airlines, states that the cost estimate of $1,760 specified in the NPRM is far too low. ATA states that Airbus Service Bulletin A300–57–6102, dated January 12, 2007 (which is referred to as an appropriate source of service information for doing certain actions specified in the NPRM), specifies that an accomplishment kit costs $1,650 for one wing and that the labor requirement for inspecting one wing is 19 hours. ATA notes that costs will double for airplanes on which Airbus A300–57–6102 is accomplished on both wings.

We agree that the cost estimate is too low. We have revised the labor hours in the Costs of Compliance section of this AD to reflect the 38 hours necessary to inspect both wings.

However, we do not agree to add the cost of the kits necessary to do applicable corrective actions. The information in the Costs of Compliance section is limited to the cost of actions actually required by the AD. It does not consider the costs of ''on-condition'' actions (e.g., ''repair, as applicable'') because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

New Service Information

Airbus has issued Service Bulletins A300–53–0381, A300–53–0383, and A300–57–6102, all including Appendix 1, all Revision 01, all dated May 27, 2008 (we referred to the original issues of the service bulletins as the appropriate source of service information for accomplishing the actions specified in the NPRM). Revision 01 of the service bulletins specify that no more action is needed on airplanes on which actions specified in the original issues have been done. Revision 01 of the service bulletins updates the Effectivity section and clarifies the unit of measurement for the values of certain tables in the Compliance section of the service bulletins.

We have revised this final rule to refer to Revision 01 of the service bulletins. We have not restated paragraph (f)(1)(ii) of the NPRM in this AD because Revision 01 of the service bulletins addresses the unit of measurement for the specified tables. We have also added paragraph (f)(5) of this AD to give credit for actions done in accordance with the original issues of the service bulletins.

Revision to Airplane Model Reference

For clarity, we have revised the airplane model references in paragraphs (c)(1), (c)(2), (c)(3) of this AD by adding the word ''airplanes'' to the model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 107 products of U.S. registry. We also estimate that it will take about 38 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $325,280, or $3,040 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–09 Airbus: Amendment 39–15604. Docket No. FAA–2008–0222; Directorate Identifier 2007–NM–300–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 and A300–600 series airplanes, certificated in any category, as listed in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A300 B2–1C, B2–203 and B2K–3C airplanes, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–53–0282.

(2) Airbus Model A300 B4–103, B4–203, and B4–2C airplanes, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–53–0291.

(3) Airbus Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, C4–605R Variant F, and F4–605R airplanes, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–57–6069.

Subject

(d) Air Transport Association (ATA) of America Codes 53 and 57: Fuselage and Wings.

Reason

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

Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins [SBs] rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published in order to render mandatory an inspection subsequent to accomplishment of repair SB A300–53–0282 or A300[–53]–0291 or A300–57–6069 in the affected area. The SB A300–53–0381, A300–53–0383 and A300–57–6102 define the various configurations for the mandatory [repetitive] inspections to be conducted in order to control or correct the development of cracks [in the center wing box at FR47], which could affect the structural integrity of the aircraft.

The inspections include x-ray, high frequency eddy current, visual, and ultrasonic inspections. Corrective actions include contacting Airbus if any cracking is found, repairing if any cracking is found, and doing other specified actions. The other specified actions include contacting Airbus for oversizing fastener holes, oversizing fastener holes, installing new fasteners, and installing new plugs.

Actions and Compliance

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

(1) Except as provided by paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD, at the threshold defined in paragraph 1.E., ''Compliance,'' of the applicable service bulletin listed in Table 1 of this AD and according to the Accomplishment Instructions of the applicable service bulletin, perform all applicable inspections and, before further flight, perform all applicable other specified actions, of FR47 forward fitting vertical splice (including crack stop hole), crack stop hole (depending on crack's length and position), center wing box lower panel, and reinforced parts (internal angle, lower external splice and external fitting).

TABLE 1.—AIRBUS SERVICE BULLETINS

Service Bulletin	Revision	Date
A300–53–0381 ..	01	May 27, 2008.
A300–53–0383 ..	01	May 27, 2008.
A300–57–6102 ..	01	May 27, 2008.

(i) Where the tables in paragraph 1.E., ''Compliance,'' of the service bulletins listed in Table 1 of this AD contain compliance times in both flight cycles and flight hours, this AD requires that the corresponding actions be done at the earlier of the flight cycle and flight hour compliance times.

(ii) Where any table in paragraph 1.E., ''Compliance,'' of the service bulletins listed in Table 1 of this AD specifies exact measurements in the rows of the table for LA, use the ranges specified in Table 2 of this AD.

TABLE 2.—RANGES FOR LA

Where row of the table specifies—	Use—
LA = 0	LA = 0.
LA = 10	0 < LA ≤ 10 mm.

TABLE 2.—RANGES FOR LA—Continued

Where row of the table specifies—	Use—
LA = 15	10 mm < LA ≤ 15 mm.
LA = 20	15 mm < LA ≤ 20 mm.

(iii) Where in paragraph 1.E., ''Compliance,'' of the service bulletins listed in Table 1 of this AD the service bulletins specify a compliance time after receipt of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(iv) Where any table in paragraph 1.E., ''Compliance,'' of the service bulletins listed in Table 1 of this AD specifies measurements of LA > 40 mm, this AD requires that the corresponding action be done if LA ≥ 40 mm.

(2) If any crack is detected during any inspection required by paragraph (f)(1) of this AD, before further flight, contact Airbus and repair.

(3) Repeat the actions specified in paragraph (f)(1) of this AD at the intervals defined in paragraph 1.E., ''Compliance,'' of the applicable service bulletin listed in Table 1 of this AD and according to the Accomplishment Instructions of the applicable service bulletin, except as provided by paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iv) of this AD.

(4) Within 30 days after doing the inspection required by paragraph (f)(1) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the first inspection results, whatever they may be, to Airbus as specified in the applicable service bulletin listed in Table 1 of this AD.

(5) Actions accomplished before the effective date of this AD according to the applicable service bulletin specified in Table 3 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 3.—CREDIT SERVICE BULLETINS

Airbus Service Bulletin	Date
A300–53–0381	Jan. 15, 2007.
A300–53–0383	Jan. 11, 2007.
A300–57–6102	Jan. 12, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI and service bulletin did not provide adequate descriptions for certain compliance requirements. We have clarified the compliance requirements in paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0150, dated May 22, 2007 [corrected May 23, 2007], and the Airbus service bulletins listed in Table 1 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the applicable service information specified in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies 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/cfr/ibr-locations.html.*

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision	Date
A300–53–0381, including Appendix 1	01	May 27, 2008.
A300–53–0383, including Appendix 1	01	May 27, 2008.
A300–57–6102, including Appendix 1	01	May 27, 2008.

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

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15265 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD; Amendment 39–15608; AD 2008–14–13]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Model SR20 and SR22 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This AD requires you to replace the cabin door rod ends with new parts including a redesigned non-binding hinge pin that replaces the existing pin at the upper door hinge. This AD results from two known occurrences of in-flight cabin door separation (one total separation and one retained by the door strut). The rod ends, a component of the door hinges, may fail and result in a door separation from the airplane while in flight. We are issuing this AD to prevent in-flight failure of the cabin door, which

could result in door separation from the airplane.

DATES: This AD becomes effective on August 14, 2008.

On August 14, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *www.cirrusdesign.com*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–28245; Directorate Identifier 2007–CE–047–AD.

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, Chicago Aircraft Certification Office (ACO), 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On March 26, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain SR20 and SR22 airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on April 2, 2008 (73 FR 17935). The NPRM proposed to replace the cabin door rod ends with new parts including a redesigned non-binding hinge pin that replaces the existing pin at the upper door hinge.

Comments

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

Conclusion

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

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

Costs of Compliance

We estimate that the AD affects 2,308 airplanes in the U.S. registry.

The costs vary from 3.5 work-hours to incorporate Cirrus Kit 70186–004 and 2.5 work-hours to incorporate Cirrus Kit 70186–005. Parts cost for either kit is $270. For the purposes of this AD, we will use 3.5 work-hours for all airplanes. Based on this, the cost of this AD is:

Labor cost	Parts cost	Total cost per airplane	Total fleet cost
3.5 work-hours × $80 per hour = $280	$270	$550	$1,269,400

Note: CDC will provide warranty credit to the extent noted in CDC Service Bulletin 2X–52–07 R4, dated January 24, 2008.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–14–13 Cirrus Design Corporation: Amendment 39–15608; Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD.

Effective Date

(a) This AD becomes effective on August 14, 2008.

Affected ADs

(b) None.

Applicability

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

Models	Serial Nos.
SR20	1423 through 1906.
SR22	0795 and 0820 through 2912.

Unsafe Condition

(d) This AD results from two known occurrences of in-flight cabin door separation (one total separation and one retained by the door strut). We are issuing this AD to prevent in-flight failure of the cabin door, which could result in door separation from the airplane.

Compliance

(e) Unless already done, within the next 50 hours time-in-service (TIS) after August 14, 2008 (the effective date of this AD) or within 180 days after August 14, 2008 (the effective date of this AD), whichever occurs first, following Cirrus Design Corporation Service Bulletin SB 2X–52–07 R4, dated January 24, 2008, do one of the following:

(1) If threaded sleeve is installed at the cabin door rod end, install cabin door rod end Kit 70186–004.

(2) If threaded sleeve is not installed at the cabin door rod end, install cabin door rod end Kit 70186–005.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wess Rouse, Aerospace Engineer, Chicago ACO, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 294–7834. 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.

Related Information

(g) To get copies of the service information referenced in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811, telephone: (218) 788–3000. To view the AD docket, go to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD.

Material Incorporated by Reference

(h) You must use Cirrus Design Corporation Service Bulletin SB 2X–52–07 R4, dated January 24, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *www.cirrusdesign.com*.

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

Issued in Kansas City, Missouri, on July 1, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15474 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 336

Docket No.: 070712324-8763-02

RIN 0625-AA74

Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 2006

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Final Rule.

SUMMARY: The Department of Commerce (''the Department'') publishes this final rule to adopt, without change, an interim final rule that implemented tariff rate quotas (''TRQ'') for a limited quantity of certain cotton shirting fabrics pursuant to Section 406 of the Tax Relief and Health Care Act of 2006 (''the Act''), which President Bush signed into law on December 20, 2006 (Pub. L. 109-432). Section 406(b)(1) of the Act authorizes the Secretary of Commerce to issue licenses to eligible manufacturers under headings 9902.52.08 through 9902.52.19 of the Harmonized Tariff Schedule of the United States, specifying the restrictions under each such license on the quantity of cotton woven fabrics that may be entered each year by or on behalf of the manufacturer.

DATES: This final rule is effective July 10, 2008.

ADDRESSES:

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

A. Background

President Bush signed the Tax Relief and Health Care Act of 2006 into law on December 20, 2006 (Pub. L. 109-432). Section 406(b)(1) of the Act authorizes the Secretary of Commerce to issue licenses to eligible manufacturers under headings 9902.52.08 through 9902.52.19 of the Harmonized Tariff Schedule of the United States, specifying the restrictions under each such license on the quantity of cotton woven fabrics that may be entered each year by or on behalf of the manufacturer.

The Act creates an annual tariff rate quota providing for temporary reductions through December 31, 2009 in the import duties of cotton woven fabrics suitable for making cotton shirts (new Harmonized Tariff Schedule of the United States (HTS) headings 9902.52.08, 9902.52.09, 9902.52.10, 9902.52.11, 9902.52.12, 9902.52.13, 9902.52.14, 9902.52.15, 9902.52.16, 9902.52.17, 9902.52.18, and 9902.52.19). The reduction in duty is limited to 85 percent of the total square meter equivalents of all imported woven fabrics of cotton containing 85 percent or more by weight of cotton used by manufacturers in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturers during calendar year 2000.

The Act requires that the Secretary of Commerce must issue licenses and ensure that the tariff rate quotas are fairly allocated to eligible manufacturers under such headings 9902.52.08 through 9902.52.19.

On July 24, 2007, the Department published an interim final rule that established eligibility criteria and application requirements to receive an allocation under the TRQ. S**ee Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 200**6, 72 FR 40235 (July 24, 2007). The interim regulations were effective upon publication to prevent costs incurred by TRQ recipients that would have, in effect, nullified duty benefits, particularly for those TRQ recipients who had small shipments.

The Department intends to make its determination regarding allocation of the tariff rate quota no later than December 31 of the year preceding the tariff rate quota year. Commerce anticipates publishing a **Federal Register** Notice (FRN) each September soliciting license applications for the following calendar year. Applications will be due within 30 days of the FRN's publication and licenses will be issued to eligible manufacturers within 60 days of the application deadline.

The tariff rate quota licenses will be issued to eligible manufacturers on the basis of the percentage of each manufacturer's quantity of imported woven fabrics described under HTS

headings 9902.52.08 through 9902.52.19 during calendar year 2000, compared to the imports of such fabric by all manufacturers that qualify for a tariff rate quota allocation.

Pursuant to statutory requirements, the tariff rate quota allocation will be limited to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' cotton shirts in the United States and who, during calendar year 2000, were manufacturers cutting and sewing men's and boys' cotton shirts in the United States from imported woven fabrics of cotton containing 85 percent or more by weight of cotton of the kind described in HTS headings 9902.52.08 through 9902.52.19 purchased by such manufacturers during calendar year 2000. Any manufacturer who becomes a successor-of-interest to a manufacturer of the cotton woven shirts described in HTS headings 9902.52.08 through 9902.52.19 during 2000 because of a reorganization or otherwise, shall be eligible to apply for a TRQ.

In order to receive a license, eligible manufactures must submit ITA Form 4156P entitled ''Affidavit for Application for TRQ License Cotton Shirting Fabric Tariff Rate Quota'' containing the following information:

(1) Company name, address, contact telephone number, e-mail address, federal tax identification number, name of person submitting the application, and title, or capacity in which the person is acting for the applicant.

(2) The name and address of each plant and/or contractor location in the United States where men's and boys' cotton shirts of imported woven fabric of the kind described in HTS headings 9902.52.08 through 9902.52.19 was cut and sewn in calendar year 2000.

(3) The date of purchase shall be (a) the invoice date if the manufacturer is not the importer of record; and (b) the date of entry if the manufacturer is the importer of record.

(4) The quantity of imported woven fabrics of cotton containing 85 percent or more by weight of cotton purchased during calendar year 2000 for use in the cutting and sewing of men's and boys' shirts in the United States.

At the conclusion of the application the applicant must attest that ''all information contained in the application is complete and correct and no false claims, statements or representations have been made.'' Applicants should be aware that, generally, pursuant to 31 U.S.C. §3729 persons providing false or fraudulent claims, and pursuant to 18 U.S.C. §1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively. All applications must be notarized by a licensed public notary.

Any business confidential information provided in an application must be marked ''business confidential.'' Such information will be kept confidential and protected from disclosure to the full extent permitted by law.

The applicant must retain records substantiating the information provided in the application for a period of 3 years. Such records must be made available upon request by an appropriate government official.

Conditions of License Use

The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. A Licensee may only authorize an importer to import fabric under the license on its behalf by making such authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. The authorization must include the unique number of the license, must specify the type of fabric imported by micron count, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501) or its electronic equivalent. The authorization also must include the unique PIN assigned by the licensee to the importer. A copy of the authorization and PIN assigned to each importer must be provided to the Department by fax (202) 482-0858 or by mail to the Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, D.C. 20230. This authorization may only be withdrawn by notifying the importer, in writing or by electronic notice, with a copy provided to the Department. The Licensee also must advise the Department of each authorized importer's Importer of Record Identification Number.

The Licensee should inform its authorized importers that if they enter an amount less than the exact amount requested and authorized by the Import Approval, the importer must annotate the Import Approval form and send a copy to the Department and to the Licensee. This annotation will be used to correct the record of use of the license. Failure to provide such information could disrupt the orderly use of the license. Imports in excess of the amount of import approval are not authorized.

Public Comments

While the interim regulations became effective on July 24, 2007, the Department of Commerce solicited comments on the interim regulations and expressed particular interest in comments concerning any impact the regulations might have on small or medium sized businesses. The public comment period closed on September 24, 2007. The Department did not receive any comments on the interim regulations.

Action Being Taken by the Department of Commerce

The Department of Commerce is adopting without change the interim final rule that became effective July 24, 2007. Title 15, Part 336 of the Code of Federal Regulations sets forth regulations regarding the issuance and effect of licenses for the allocation of certain cotton shirting fabrics under the tariff rate quotas established by Section 406 of the Act.

Classification

Executive Order 12866: This rule has been determined to be not significant under EO 12866.

Paperwork Reduction Act: These regulations contain information collection requirements subject to the Paperwork Reduction Act (PRA). The information collection requirements have been approved by the Office of Management and Budget (OMB) under Control Number 0625-0260.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a current valid OMB control number. The information collected will be used by the Department to allocate the tariff rate quota among manufacturers. Responses to the collection of information are required for a manufacturer to receive allocation of the tariff rate quota. Records substantiating information provided in an application must be retained. It is estimated that the annual burden for the collection will average one hour per application. This includes 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget,

Washington, DC, 20503 (Attention: ITA Desk Officer).

Dated: July 3, 2008.

David Spooner,

Assistant Secretary for Import Administration.

List of Subjects in 15 CFR Part 336

Imports, Quotas, Reporting and Record-keeping, Tariffs, Textiles.

For reasons stated in the preamble, the Interim Final Rule, which was published on July 24, 2007 at 72 FR 40235, is adopted as final without change.

[FR Doc. E8–15754 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 070817467–8744–03]

RIN 0648–AV90

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19; Announcing OMB Approval of Information Collection

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

ACTION: Final rule; effective date of OMB control numbers.

SUMMARY: The National Marine Fisheries Service (NMFS) announces that the Office of Management and Budget (OMB) has approved the following collection of information pursuant to the Paperwork Reduction Act of 1995: OMB 0648–0546, ''Northeast Region Observer Providers Requirements.'' This rule publishes the OMB control number for these collections and makes effective the collection-of-information requirements published in a final rule to implement measures included in Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP).

DATES: This final rule is effective August 11, 2008. The amendments to 50 CFR 648.11(h)(5)(vii)(G) through (J), and the collection-of-information requirements published on May 29, 2008 (73 FR 30790), are effective August 11, 2008.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 19, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. The Final Regulatory Flexibility Analysis (FRFA) was published in the Classification section of the final rule (73 FR 30790, May 29, 2008). Copies of the FRFA are available upon request from the Regional Administrator at the address listed in the next paragraph.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator at 1 Blackburn Drive, Gloucester, MA 01930 and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, Fishery Policy Analyst, phone 978–281–9220; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: On May 29, 2008 (73 FR 30790), NMFS published a final rule to implement measures included in Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the Council. Framework 19 included, in part, adjustments to the industry-funded observer program for the scallop fishery, which included a collection of information associated with regulations at 50 CFR 648.11(h)(5)(vii)(G) through (J). OMB's approval of NMFS PRA submission on the collection of information did not happen in time to publish their determination with the final rule on Framework 19.

The PRA and its implementing regulations require Federal agencies to display OMB control numbers and inform respondents of their legal significance after OMB has approved an Agency's information collection. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. In accordance with the requirements of the PRA and its implementing regulations, NMFS notifies the public that the following information collection has been approved by OMB following the Agency's submission of an information collection request (ICR):

OMB Control Number: 0648–0546.

OMB Approval Date: 06/03/08.

Expiration Date: 06/30/2011.

Title: Northeast Region Observer Providers Requirements.

This notice announces approval of the information collection listed above, publishes the OMB control number, and announces the effectiveness of the implementing regulations in 50 CFR 648.11(h)(5)(vii)(G) through (J).

Classification

NMFS determined that Framework 19 was necessary for the conservation and management of the Atlantic sea scallop fishery and was consistent with the Magnuson-Stevens Act and other applicable law. This rule announces OMB approval of a collection of information pursuant to the PRA and the effectiveness of regulations that were published in the final rule for Framework 19 dated May 29, 2008. Therefore, NMFS has also determined that this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This rule contains a collection-of-information requirement subject to the PRA. The collection of this information was approved by OMB on June 3, 2008, under OMB Control Number 0648–0546. Public reporting burden for these collections of information are estimated to average as follows:

1. Service provider observer contact information reports, OMB # 0648–0546—5 min per response;
2. Service provider observer availability reports, OMB # 0648–0546—1 min per response;
3. Copies of service provider outreach materials, OMB # 0648–0546—30 min per response;
4. Copies of service provider contracts, OMB # 0648–0546 —30 min per response.

More detail on these collections of information is available in the final rule for Framework 19 (73 FR 30790, May 29, 2008) and on the following website listing OMB approved PRA submissions: *http://www.cio.noaa.gov/itmanagement/prasubs.html*. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to

David_Rostker@omb.eop.gov, or fax to 202–395–7285.

NMFS, pursuant to Section 604 of the Regulatory Flexibility Act (RFA), included a final regulatory flexibility analysis (FRFA) in the classification section of the Framework 19 final rule. This final rule only announces OMB approval of a collection of information and effectiveness of regulations contained in the Framework 19 final rule and analyses. Therefore, the FRFA is not repeated here. The FRFA described the economic impact the Framework 19 final rule will have on small entities. It incorporated the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 19, the comments and responses in the Framework 19 final rule, and the corresponding economic analyses prepared for Framework 19 (e.g., the EA and the RIR). A copy of the IRFA, the RIR, and the EA for Framework 19 is available upon request (see **ADDRESSES**).

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping.

Dated: July 2, 2008.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR part 902 is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under ''50 CFR'' is amended by revising the existing entry for § 648.11 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
648.11	–0202,–0546, and –0555
* * * *	*

[FR Doc. E8–15610 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312, 314, 600, and 601

[Docket No. FDA–2004–N–0510] (formerly Docket No. 2004N–0267)

Applications for Approval to Market a New Drug; Complete Response Letter; Amendments to Unapproved Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on new drug applications (NDAs) and abbreviated new drug applications (ANDAs) for approval to market new drugs and generic drugs (drugs for which approval is sought in an ANDA). The final rule discontinues FDA's use of approvable letters and not approvable letters when taking action on marketing applications. Instead, we will send applicants a complete response letter to indicate that the review cycle for an application is complete and that the application is not ready for approval. We are also revising the regulations on extending the review cycle due to the submission of an amendment to an unapproved application and starting a new review cycle after the resubmission of an application following receipt of a complete response letter. In addition, we are adding to the regulations on biologics license applications (BLAs) provisions on the issuance of complete response letters to BLA applicants. We are taking these actions to implement the user fee performance goals referenced in the Prescription Drug User Fee Amendments of 2002 (PDUFA III) that address procedures and establish target timeframes for reviewing human drug applications.

DATES: This rule is effective August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6304, Silver Spring, MD 20993, 301–796–3504; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
  A. The Proposed Rule
  B. Changes to the Proposed Rule
II. Summary of the Final Rule
  A. Complete Response Letters
  B. Resubmissions
  C. Amendments to Unapproved Applications
III. Comments on the Proposed Rule
  A. General Comments
  B. Definitions (Proposed § 314.3(b))
  C. Timeframes for Review (Proposed § 314.100)
  D. Complete Response Letters (Proposed § 314.110)
  E. Complete Response Letters for BLAs
  F. Miscellaneous Provisions Related to Complete Response Letters
  G. Amendments to NDAs (Proposed § 314.60)
  H. Amendments to ANDAs (Proposed § 314.96)
IV. Analysis of Economic Impacts
  A. Impact of the Final Rule
  B. Summary of Impacts
  C. Comments
  D. Conclusion
V. Environmental Impact
VI. Paperwork Reduction Act of 1995
VII. Federalism

I. Background

In the **Federal Register** of July 20, 2004 (69 FR 43351), we published a proposed rule to replace approvable and not approvable letters with complete response letters and to make other changes to our regulations on NDAs, ANDAs, and BLAs. Previous § 314.110 (21 CFR 314.110) set forth provisions on the issuance of and response to approvable letters; § 314.120 (21 CFR 314.120) addressed the issuance of and response to not approvable letters. The proposed rule proposed to replace those provisions with a revised § 314.110 regarding the issuance of complete response letters upon completion of our review of NDAs and ANDAs.

A. The Proposed Rule

The preamble to the proposed rule stated that the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) agreed to revise their regulations and procedures to provide for the issuance of complete response letters as part of our prescription drug

user fee performance goals. We first made the commitment regarding complete response letters as part of the user fee performance goals established in conjunction with the enactment of the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115) (the user fee provisions of this act are known as ''PDUFA II''). We repeated this commitment in the performance goals developed in conjunction with the enactment of the Prescription Drug User Fee Amendments of 2002 (PDUFA III), set forth in title V, subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188). Section 502 of PDUFA III states that user fees will be dedicated to expediting the drug development process and the process for review of human drug applications in accordance with the new performance goals, which are set forth in an enclosure to letters from Tommy Thompson, Secretary of Health and Human Services, to the Chairman of the House Committee on Energy and Commerce and the Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions (June 4, 2002) (Goals Letter).

The proposed rule stated that, because there are no provisions on action letters in the biological product regulations, CBER had only to change its standard operating procedures to incorporate the issuance of a complete response letter at the end of a review cycle for a biological product. We noted that although CBER had already done this, we proposed to add a regulation (proposed § 601.3) on the issuance of complete response letters concerning BLAs and BLA supplements.

As we stated in the proposed rule, our intent in replacing approvable and not approvable letters with complete response letters is to adopt a more consistent and neutral mechanism to convey that we cannot approve an application in its present form. We believe that issuance of complete response letters will provide a more consistent approach to informing sponsors of changes that must be made before an application can be approved, with no implication as to the ultimate approvability of the application.

The proposed rule stated our intent to incorporate into the regulations for NDAs the terminology based on the user fee performance goals regarding class 1 and class 2 resubmissions to original NDAs and efficacy supplements. In addition, we proposed to revise our regulations on amendments to unapproved applications, efficacy supplements, and resubmissions to be consistent with user fee performance goals for these amendments.

B. Changes to the Proposed Rule

We received 11 comments on the proposed rule. Several comments expressed support for the adoption of complete response letters and for several of the proposed changes to incorporate user fee goals into the regulations. However, some comments objected to certain portions of the proposed rule, including the following:

- The codification of different initial review cycles for human drug applications and supplements to such applications (proposed § 314.100);
- The absence of a provision to allow applicants to request an extension of time in which to submit a resubmission following receipt of a complete response letter (proposed § 314.110(c));
- The review cycle applicable to a resubmission of a supplement other than an efficacy supplement (proposed § 314.110(b)(1)(iii));
- FDA's discretion to defer review of an amendment until the next review cycle (proposed § 314.60(b)).

We address all of the comments in section III of this document.

After considering the comments, we have concluded that it is appropriate to make several revisions to the proposed rule. The final rule deletes the reference in proposed § 314.100(a)(2) to the adjustment of the initial review cycle for human drug applications and supplements to such applications. Adjustment of the initial review cycle to fewer or greater than 180 days for human drug applications and supplements, accepted by mutual agreement between industry and FDA under the agency's user fee performance goals, is provided for under the adjustment by mutual agreement provision in revised § 314.100(c) (see the response to comment 7 in section III.C.1 of this document).

The final rule also revises § 314.110(c) to allow applicants an extension of time in which to resubmit an application, to avoid having the applicant's failure to resubmit within 1 year be regarded as a request to withdraw the application. This revision addresses some comments' concerns that 1 year might not be enough time in which to resubmit an application after receipt of a complete response letter. The final rule also revises § 314.110(b)(1)(iii) to state that resubmission of an NDA supplement other than an efficacy supplement constitutes an agreement by the applicant to start a new review cycle, beginning on the date we receive the resubmission, that is the same length as the initial review cycle for the supplement (excluding any extension due to a major amendment of the initial supplement).

In addition to these revisions, the final rule includes other changes to the proposed rule in response to comments.

Several comments objected to the regulations in proposed § 314.60(b) that give FDA the option to defer review of different types of amendments until the subsequent review cycle. However, we have determined that we need to have the ability to defer review of amendments to the next review cycle under appropriate circumstances. Although our policy, as reflected in guidance, is to try to review most amendments during the initial review cycle, there are circumstances under which deferral is necessary and appropriate, as discussed in section III.G.1 of this document.

On our own initiative, we also have revised § 314.60(b) to correct an inadvertent omission of a user fee performance goal regarding major amendments to manufacturing supplements. Revised § 314.60(b)(4) now specifies that submission of a major amendment to a manufacturing supplement submitted within 2 months of the end of the initial review cycle constitutes an agreement to extend the cycle by 2 months.

Also on our own initiative, we have revised the proposed rule to clarify the definition of ''efficacy supplement'' in § 314.3(b) (21 CFR 314.3(b)), to state the correct address to which requests for a hearing on the denial of approval of an NDA or ANDA must be submitted in § 314.110(b)(3), and to state the correct addresses to which NDAs and ANDAs must be submitted in § 314.440(a)(1) and (a)(2) (21 CFR 314.440(a)(1) and (a)(2)), respectively.

II. Summary of the Final Rule

A. Complete Response Letters

We are revising our regulations to substitute complete response letters for approvable and not approvable letters at the completion of the review cycle for an NDA or ANDA. Under revised § 314.110, we will send a complete response letter if we determine that we will not approve an NDA or ANDA in its present form for one or more reasons. A complete response letter usually will describe all of the specific deficiencies that the agency has identified in an application. Table 1 of this document summarizes the changes to our regulations that we are making related to the adoption of complete response letters:

TABLE 1.—SUMMARY OF CHANGES REGARDING SUBSTITUTION OF COMPLETE RESPONSE LETTERS FOR APPROVABLE AND NOT APPROVABLE LETTERS

Previous Regulations	Revised Regulations (changes to proposed rule in italics)
Approvable Letter for NDA • States that NDA is basically approvable if certain issues are resolved. • Indicates that NDA substantially meets requirements of part 314 and FDA can approve it if applicant submits additional information or agrees to specific conditions (e.g., labeling changes). *Approvable Letter for ANDA* • Indicates that ANDA substantially meets requirements of part 314 and is approvable if minor deficiencies are corrected. • Describes deficiencies and states when applicant must respond. *Not Approvable Letter for NDA or ANDA* • States that NDA cannot be approved for one of reasons in § 314.125 or ANDA cannot be approved for one of reasons in § 314.127. • Describes deficiencies in NDA or ANDA.	*Complete Response Letter* • States that FDA will not approve NDA or ANDA in its present form. • Describes all specific deficiencies that FDA has identified in the application (except when the agency determines that data submitted are inadequate to support approval and issues a complete response letter without first conducting required inspection and/or reviewing labeling). Deficiencies could be minor (e.g., requiring labeling changes) or major (e.g., requiring additional clinical trials). • Reflects complete review of data in NDA or ANDA and any amendments FDA has reviewed. • When possible, recommends actions applicant might take to place application in condition for approval.

For products for which approval of a BLA is required for marketing, we are adopting a new regulation, § 601.3, which states that we will send an applicant a complete response letter if we determine that we will not approve a BLA or BLA supplement in its present form.

B. Resubmissions

We are revising our regulations on the extension of the review period due to resubmission of an NDA or ANDA after receipt of a complete response letter. A class 2 resubmission of an NDA following receipt of a complete response letter starts a new 6-month review cycle. A class 1 resubmission of an NDA starts a new 2-month review cycle.

These provisions on class 1 and class 2 resubmissions also apply to efficacy supplements to NDAs. For other types of NDA supplements, resubmission starts a new review cycle the same length as the initial review cycle of the supplement under § 314.100(a), excluding any extension due to a major amendment of the initial supplement.

A ''major'' resubmission of an ANDA following receipt of a complete response letter starts a new 6-month review cycle. A ''minor'' resubmission of an ANDA starts a new review cycle of an unspecified length; under current FDA guidance, a minor resubmission usually starts a new review cycle of between 30 to 60 days.

The changes to our regulations on applicants' responses to action letters are summarized in the following Table 2.

TABLE 2.—SUMMARY OF CHANGES TO REGULATIONS REGARDING APPLICANT'S RESPONSE TO AGENCY ACTION LETTERS

Previous Regulations	Revised Regulations (changes to proposed rule in italics)
Applicant's Response to Approvable Letter or Not Approvable Letter for NDA (or NDA Supplement) Within 10 days of date of letter, NDA applicant must do one of following: • Amend application or notify FDA of intent to file amendment. • Withdraw application. • Request opportunity for hearing. • Agree to extend review period to decide which of above actions to take. *Response to Approvable Letter for ANDA (or ANDA Supplement)* • Correct deficiencies by specified date or FDA will refuse to approve ANDA or ANDA supplement. • Request opportunity for hearing within 10 days. *Response to Not Approvable Letter for ANDA (or ANDA supplement)* • Same as for NDAs except that 10-day period does not apply (with exception of request for opportunity for hearing). • FDA may regard failure to respond within 180 days as request to withdraw.	*NDA or ANDA Applicant's Response to Complete Response Letter* Review period is extended until applicant takes one of following actions: • Resubmit NDA or ANDA, addressing identified deficiencies. —Class 1 resubmission of NDA or efficacy supplement starts new 2-month review cycle —Class 2 resubmission of NDA or efficacy supplement starts new 6-month cycle —Resubmission of NDA supplement other than efficacy supplement starts new cycle *same length as initial review cycle for supplement (excluding any extension due to major amendment)* —Major resubmission of ANDA or ANDA supplement starts new 6-month cycle —Minor resubmission of ANDA or ANDA supplement starts new cycle of variable length • Withdraw NDA or ANDA. • Request opportunity for hearing. FDA may consider failure to take action within 1 year to be request to withdraw, *unless applicant has requested extension of time in which to resubmit*.

C. Amendments to Unapproved Applications

We are also revising our regulations in § 314.60 on extending the review cycle following the submission of an amendment to an unapproved NDA. Under revised § 314.60(b)(1), submission of a major amendment within 3 months of the end of the initial review cycle constitutes an agreement to extend the review cycle by 3 months. Under § 314.60(b)(2), submission of a major amendment more than 3 months before the end of the initial review cycle will not extend the cycle; nor will the initial review cycle for a nonmajor amendment be extended under § 314.60(b)(3). These provisions apply to

amendments to original applications, efficacy supplements, and resubmissions of applications and efficacy supplements. Under § 314.60(b)(4), submission of a major amendment to a manufacturing supplement within 2 months of the end of the initial review cycle constitutes an agreement to extend the review cycle by 2 months. Under § 314.60(b)(5), submission of an amendment to a supplement other than an efficacy or manufacturing supplement will not extend the review cycle. For all of these amendments, we may, at our discretion, defer review of the amendment until the subsequent review cycle, rather than extend the initial cycle or review the amendment during the initial cycle.

Table 3 of this document summarizes the changes to our regulations on amendments submitted before an action letter.

TABLE 3.—SUMMARY OF CHANGES TO REGULATIONS ON AMENDMENTS SUBMITTED BEFORE ACTION LETTER

Previous Regulations	Revised Regulations (changes to proposed rule in italics)
Amendments to Unapproved NDAs and NDA Supplements • Submission of major amendment constitutes agreement to extend deadline for FDA decision. • FDA may not extend review period more than 180 days. • Submission of nonmajor amendment will not extend review period. *Amendments to Unapproved ANDAs and ANDA Supplements* • Submission of amendment containing significant data or information constitutes agreement to extend review period up to 180 days. • Same for amendments to unapproved ANDA supplements.	*Amendments to Unapproved NDAs, Efficacy Supplements, and Resubmissions of NDAs and Efficacy Supplements* • Submission of major amendment within 3 months of end of initial review cycle may extend cycle by 3 months; FDA may instead defer review to subsequent cycle. • Initial review cycle may be extended only once for major amendment. • Submission of major amendment more than 3 months before end of initial review cycle will not extend cycle; FDA may instead defer review. • Submission of nonmajor amendment will not extend review cycle; FDA may instead defer review. *Amendments to Unapproved Manufacturing Supplements* • *Submission of major amendment within 2 months of end of initial review cycle may extend cycle by 2 months; FDA may instead defer review.* *Amendments to Unapproved NDA Supplements Other Than Efficacy* and Manufacturing *Supplements* • Submission of any amendment will not extend initial review cycle; FDA may instead defer review. *Amendments to Unapproved ANDAs* • Unchanged.

III. Comments on the Proposed Rule

We received written comments from 6 drug manufacturers; 4 associations representing the drug, biologic, and medical device industries; and an individual (11 comments in all). A summary of the comments received and our responses follow.

A. General Comments

(Comment 1) One comment stated that throughout the proposed rule the word ''response'' is used without identifying whose response. As an example, the comment cites proposed § 314.101(f)(1)(ii), under which we would issue a notice of opportunity for hearing if an applicant asked us to provide it an opportunity for a hearing on an application ''in response to a complete response letter.'' To clarify whose response is being referenced in a particular provision, the comment recommended that the provision always identify the respondent (e.g., use ''an applicant's response to a complete response letter'' in the above example).

(Response) We do not believe that it is necessary to revise § 314.101(f)(1)(ii) as requested because only an applicant (not FDA) can respond to a complete response letter as defined in § 314.3(b). We reviewed the other provisions in the proposed rule to ensure that the language does not suggest that the agency might respond to a complete response letter and that the use of the term ''response'' is not otherwise confusing. We conclude that it is unnecessary to revise the regulations in parts 314, 600, and 601 (21 CFR parts 314, 600, and 601) to identify who is responding to a complete response letter, as it is always the applicant who is responding.

(Comment 2) One comment encouraged us to consider an approval process whereby once we issue an approval letter, the applicant may begin marketing upon notification of approval and not have to address any additional regulatory hurdles, other than perhaps waiting for the exclusivity period of a previously approved drug to end.

(Response) The comment is beyond the scope of this rulemaking. With the exception of § 314.430 on public disclosure of information in applications, this rule does not address approval or post-approval regulatory matters.

B. Definitions (Proposed § 314.3(b))

1. Class 1 and Class 2 Resubmissions

Proposed § 314.3(b) would have defined ''Class 1 resubmission'' as the resubmission of an application, following receipt of a complete response letter, that contains final printed labeling, draft labeling, certain safety updates, stability updates to support provisional or final dating periods, commitments to perform Phase 4 studies (including proposals for such studies), assay validation data, final release testing on the last lots used to support approval, minor reanalyses of previously submitted data, and other comparatively minor information.

(Comment 3) Two comments stated that the proposed definition of class 1 resubmission lists items that qualify a resubmission as class 1 and concludes the list with the conjunction ''and,'' implying that a class 1 resubmission contains all of the listed items. The comments recommended that a class 1 resubmission be defined as a

resubmission that ''contains one or more of the following'' listed items.

(Response) We agree that this change is appropriate and have revised the definition of class 1 resubmission accordingly. Also, on our own initiative, but in a similar spirit of clarifying what was proposed, we are further revising the definition of class 1 resubmission to state that it includes not only the resubmission of an application but also the resubmission of an efficacy supplement. We are making a corresponding revision to the definition of ''Class 2 resubmission'' in § 314.3. This makes these definitions consistent with the provisions on class 1 and class 2 resubmissions of applications and efficacy supplements in § 314.110(b)(1)(i) and (b)(1)(ii). In addition, because we now refer to Phase 4 studies as ''postmarketing'' studies (see 21 CFR 314.81(b)(2)(viii)), we are revising the definition of class 1 resubmission accordingly.

(Comment 4) One comment asked how we intended to ensure consistency across review divisions regarding the classification of resubmissions.

(Response) We believe that the definition of class 1 resubmission provides adequate information on the types of resubmissions that are regarded as class 1 resubmissions and, by omission, the types of resubmissions that are regarded as class 2 resubmissions. For several years, CDER review divisions have been applying these definitions in reviewing resubmissions of applications that are subject to user fees. Nevertheless, CDER will provide training and information to help ensure that the final rule is applied consistently among the review divisions.

2. Complete Response Letter

Proposed § 314.3(b) would have defined ''complete response letter'' as a written communication to an applicant from FDA usually identifying all of the deficiencies in an application or abbreviated application that must be satisfactorily addressed before it can be approved.

(Comment 5) One comment stated that absent unusual circumstances, a complete response letter should clearly define the specific deficiencies in an application to avoid presentation of new issues at a later date and minimize the potential for cycles of complete response letters. Two comments stated that specifying that a complete response letter ''usually'' identifies all of the deficiencies in an application is contrary to the plain meaning of ''complete response'' because any response that does not identify all of the deficiencies in an application is not complete. The comments stated that the use of vague language makes the regulation impossible to interpret and leaves the regulatory process open to inconsistencies across divisions. The comments stated that the user fee goals do not include similarly vague language but instead reflect FDA's commitment to review and act on certain percentages of applications within specified timeframes. The comments noted that the user fee goals state that the term ''review and act on'' means the issuance of a complete action letter after the complete review of a filed complete application. The comments acknowledged that, for drug products, we might issue a complete response letter without first conducting inspections or reviewing labeling (under proposed § 314.110(a)(3)), but the comments requested that we revise the definition of complete response letter to specify which aspects of a complete review might be postponed while allowing the agency to issue a complete response letter. One of the comments suggested that the definition specify that we may issue a complete response letter ''without first conducting required inspections and/or reviewing proposed product labeling when FDA determines that the data submitted are inadequate to support approval as described in § 314.110(a)(3).''

(Response) We do not agree that the definition of complete response letter should be revised as suggested. The statement that a complete response letter ''usually'' identifies all of the deficiencies in an application is appropriate because § 314.110(a)(1) states that a complete response letter will describe all of the deficiencies ''except as stated in paragraph (a)(3) * * *'' In turn, paragraph (a)(3) states that if we determine that the data submitted are inadequate to support approval, we might issue a complete response letter without first conducting required inspections and/or reviewing proposed product labeling. Those are the only circumstances under which the complete response letter would not describe all of the known deficiencies in an application. We do not believe that it is necessary for the definition of complete response letter to specify which particular aspects of a complete review might be postponed.

However, we believe that it is necessary to revise the definition of complete response letter to make clear that a complete response letter is a communication ''usually describing all of the deficiencies that the agency has identified in an application or abbreviated application that must be satisfactorily addressed before it can be approved'' (§ 314.3(b)). This addresses the possibility that an applicant's response to a deficiency that we have identified in an application might reveal other deficiencies that we had not identified and which we accordingly had been unable to describe in the complete response letter. Although we seek to identify all deficiencies during the initial review period, we sometimes become aware of deficiencies only during a subsequent review period. It would be inconsistent with section 505(d) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(d)) and FDA regulations to approve an application despite an applicant's failure to address deficiencies solely because those deficiencies were identified only after issuance of a complete response letter, and we do not intend to allow this result.

(Comment 6) One comment recommended that we add to the definition of complete response letter the following statement: ''Where appropriate, a complete response letter will describe the actions necessary to place the application in condition for approval.''

(Response) Because this statement appears in revised § 314.110(a)(4), we do not believe that it is necessary to add this statement to the definition of complete response letter in § 314.3.

3. Efficacy Supplement

Proposed § 314.3(b) would have defined ''efficacy supplement'' as a supplement to an approved application proposing to make one or more of the following changes to product labeling:

1. Add or modify an indication for use;
2. Revise the dose or dose regimen;
3. Provide for a new route of administration;
4. Make a comparative efficacy claim naming another drug product;
5. Significantly alter the intended patient population;
6. Change the marketing status from prescription to over-the-counter use;
7. Complete the traditional approval of a product originally approved under subpart H of this part; or
8. Incorporate other information based on at least one adequate and well-controlled clinical study.

On our own initiative, we are making three changes to the proposed definition of efficacy supplement. First, we are revising the definition to state that an efficacy supplement means a supplement to an approved application proposing ''to make one or more related changes from among the following changes to product labeling * * *''.

This change makes the definition consistent with our user fee ''bundling'' policy, which allows certain related changes (such as a change in indication and a related change in dose regimen) to be made in the same supplement with only one fee (see the FDA guidance for industry entitled ''Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees'').

The second change that we are making to the definition of efficacy supplement is to replace the term ''indication for use'' (in the first listed change) with the term ''indication or claim.'' The definition of ''human drug application'' in section 735(1) of the act (21 U.S.C. 379g(1)) includes the term ''indication for a use.'' As part of our user fee assessment policy, we have interpreted the term ''indication for a use'' more broadly than the term ''indication,'' as the latter term is commonly used (i.e., to mean a claim that a drug is effective for a particular use, for purposes of complying with the requirements on the content and format of labeling for prescription drugs in 21 CFR 201.57(c). This change clarifies that an efficacy supplement can be submitted to add or modify an indication or claim.

The third change that we are making to the definition of efficacy supplement concerns efficacy supplements that involve the traditional approval of a product that was originally approved under part 314, subpart H, regarding accelerated approval for drugs for serious or life-threatening illnesses. It is possible that an efficacy supplement might be intended to provide evidence of effectiveness for the traditional approval of a subpart H drug but not actually complete the traditional approval of the drug. Therefore, we are revising the definition of efficacy supplement to clarify that such a supplement can be submitted to provide for the traditional approval of a product originally approved under subpart H or to provide evidence of effectiveness necessary for traditional approval of such a product.

C. Timeframes for Review (Proposed § 314.100)

1. Initial Review Cycle

Proposed § 314.100(a)(1) stated that, except as provided in § 314.100(a)(2), within 180 days of receipt of an NDA or ANDA, we will review the application and send the applicant an approval letter or a complete response letter; this 180-day period is called the initial review cycle. Proposed § 314.100(a)(2) stated that, for drug applications that are human drug applications, as defined in section 735(1)(A) and (B) of the act, or supplements to such applications, as defined in section 735(2) of the act, the initial review cycle will be adjusted to be consistent with the agency's user fee performance goals for reviewing such applications and supplements.

(Comment 7) One comment objected to proposed § 314.100(a)(2), stating that although the user fee goals recognize that we typically do not meet the 180-day statutory review deadline, this should not be memorialized in a regulation. The comment stated that even though the statutory review period is regarded mainly as aspirational, it is important to maintain it within the regulations.

(Response) We agree with the comment that a specific provision solely addressing the adjustment of the initial review cycle for human drug applications and supplements to these applications is not necessary. Therefore, we have deleted proposed § 314.100(a)(2). However, we note that, since the enactment of the Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571), there has been a mutual understanding between industry and the agency that the review cycle for an application or supplement subject to user fees may be adjusted (either shortened or lengthened) in accordance with the user fee performance goals. Previous § 314.100(c) provided for an extension of the review cycle by mutual agreement between FDA and an applicant (as well as an extension as a result of a major amendment under §§ 314.60 or 314.96). Consistent with the long-standing approach to applications subject to user fees, we have revised § 314.100(c) to state that the initial review cycle may be adjusted by mutual agreement between FDA and an applicant or as provided in §§ 314.60 and 314.96.

Correspondingly, the final rule also deletes proposed § 314.101(f)(2). Current § 314.101(f)(1) states that within 180 days after the date of filing, plus the period of time the review period was extended (if any), FDA will either approve the application or issue a notice of opportunity for hearing. Proposed § 314.101(f)(2) stated that, for human drug applications and supplements, the 180-day period after the date of filing would be adjusted to be consistent with the user fee performance goals. Proposed § 314.101(f)(2) is not needed because § 314.101(f)(1) encompasses extension of the review period beyond 180 days as well as circumstances under which FDA might approve an application in less than 180 days, regardless of whether such actions are the result of conformance to user fee performance goals.

2. Withdrawal and Later Submission

Proposed § 314.100(b) stated that at any time before approval, an applicant may withdraw an application under § 314.65 (21 CFR 314.65) or an abbreviated application under § 314.99 (21 CFR 314.99) and later submit it again for consideration.

(Comment 8) Two comments stated that § 314.100(b) should be revised to address the withdrawal of an application after receipt of a complete response letter. The comments stated that if a complete response letter is followed by withdrawal of the application, the subsequent submission of ''the same'' application would also constitute a ''resubmission.'' The comments suggested adding the following to § 314.100(b): ''Except when preceded by a complete response letter, applications withdrawn prior to approval that are submitted again for the same product are not considered resubmissions as defined in § 314.3(b) of this part.''

(Response) We do not agree with the comments because we regard an application that is withdrawn at any time before approval and submitted again for the same product as an original application, rather than a resubmission. The final rule defines ''original application'' (in § 314.3(b)) as a pending application for which FDA has never issued a complete response letter or approval letter, or an application that was submitted again after FDA had refused to file it or after it was withdrawn without being approved. Under the proposed rule, a ''resubmission'' was defined (in proposed § 314.110(b)(1)) as ''submission by the applicant of all materials needed to fully address all deficiencies identified in the complete response letter.'' Consistent with our approach to applications that are withdrawn before approval and later submitted again, we have added the following statement to the definition of resubmission: ''An application or abbreviated application for which FDA issued a complete response letter, but which was withdrawn before approval and later submitted again, is not a resubmission.'' For clarity, we are moving the definition of resubmission to § 314.3 from § 314.110(b)(1).

D. Complete Response Letters (Proposed § 314.110)

1. Content of Complete Response Letters

Proposed § 314.110(a) would have required us to send an applicant a

complete response letter if we determined that we will not approve the application or abbreviated application in its present form for one or more of the reasons given in § 314.125 or § 314.127, respectively.

(Comment 9) One comment stated that it concurred with our view that the complete response letter should be a neutral mechanism to convey that an application cannot be approved in its present form. The comment agreed that use of the complete response letter will ensure consistency in how sponsors are informed of changes needed for approval, without implying anything about ultimate approvability. One comment stated that use of the complete response letter will provide a more efficient mechanism for application review.

(Response) As stated in the preamble to the proposed rule, we agree that the use of complete response letters will provide a more neutral and consistent mechanism than the use of approvable and not approvable letters to convey that an application cannot be approved in its present form.

a. *Specific deficiencies*. Under proposed § 314.110(a)(1), a complete response letter would have described all of the specific deficiencies in an application or abbreviated application, except as stated in § 314.110(a)(3).

(Comment 10) One comment stated that we should clearly identify and define the specific deficiencies in an application when drafting a complete response letter, adding that one purpose of the complete response letter is to minimize paperwork and delays between an applicant and the agency.

(Response) We agree with the comment. The intent of § 314.110(a)(1) is that we will identify and describe all of the known deficiencies (except as provided in § 314.110(a)(3)) to enable applicants to provide appropriate responses. However, consistent with our response to comment 5, we have revised § 314.110(a)(1) to state that a complete response letter will describe all of the specific deficiencies that we have identified in an application at the time we issue the complete response letter. This change reflects the possibility that we might become aware of certain deficiencies only during a subsequent review period, such as while reviewing an applicant's response to a previously identified deficiency.

(Comment 11) One comment asked that we clarify what mechanisms of communication we will use during the review cycle to convey to sponsors potential deficiencies that we have discovered to enable sponsors to address these deficiencies as quickly as possible. The comment stated that there would be few, if any, applications that would completely satisfy FDA reviewers in the first review cycle.

(Response) Because this comment concerns communication before issuance of the complete response letter, it is beyond the scope of this rulemaking. Nevertheless, it is worth noting that the user fee goals include mechanisms to improve communications about potential deficiencies during the review cycle. For example, the Goals Letter (2002) states that it is the intention of CDER and CBER to notify a sponsor of deficiencies in an application when each discipline has finished its initial review of its section of the pending application. In addition, the Goals Letter states that the review division and the safety group assigned to the review of a particular application will try to communicate their comments on a proposed risk management tool and plan, as well as on protocols for observational studies, as early in the review process as possible.

b. *Complete review of data*. Proposed § 314.110(a)(2) stated that a complete response letter reflects our complete review of the data submitted in an original application or abbreviated application (or, where appropriate, a resubmission) and any amendments for which the review cycle was extended. It further stated that the complete response letter will identify any amendments for which the review cycle was not extended that we have not yet reviewed.

(Comment 12) Two comments stated that it was unclear whether complete review of the data includes review of information submitted in major amendments submitted more than 3 months before the end of the initial cycle or nonmajor amendments (which do not trigger extensions under the user fee goals or the proposed rule). The comments stated that the regulation should not define the scope of material included in a complete response letter as ''amendments for which the review cycle was extended.''

(Response) We agree that § 314.110(a)(2) should include any amendments that we have reviewed, whether or not they resulted in an extension of the review cycle. Therefore, we are revising § 314.110(a)(2) to state that a complete response letter reflects our complete review of the data submitted in an original application or abbreviated application (or, where appropriate, a resubmission) and any amendments that we have reviewed. Correspondingly, we are also revising § 314.110(a)(2) to state that the complete response letter will identify any amendments that we have not yet reviewed.

c. *Determination that data are inadequate*. Under proposed § 314.110(a)(3), if we determined, after an application is filed or an abbreviated application is received, that the data submitted are inadequate to support approval, we might issue a complete response letter without first conducting required inspections and/or reviewing proposed product labeling.

(Comment 13) One comment maintained that stating that we ''might'' issue a complete response letter without conducting required inspections and/or reviewing labeling adds ambiguity to agency actions. The comment stated that if we determine that the data are inadequate during the first half of the review cycle, it might be acceptable for us to issue a complete response letter without conducting inspections or reviewing labeling; however, a complete response letter sent toward the end of the cycle should thoroughly evaluate all components of the NDA. The comment stated that leaving to the review divisions the decision on whether we issue a complete response letter before we conduct inspections and review the labeling would unintentionally encourage inconsistency. The comment recommended that we revise § 314.110(a)(3) to state that if we determine ''early in the review cycle'' or ''within the first half of the review cycle'' that the data are inadequate, we might issue a complete response letter without conducting inspections or a labeling review.

(Response) We understand the comment's concern about possible uncertainty as to the timing of a decision to issue a complete response letter without conducting an inspection or labeling review. However, it is possible that we might not determine until later in the review cycle that the data in the application are inadequate. Therefore, we believe that it is not appropriate to specify in § 314.110(a)(3) a time after which we could no longer conclude that the data submitted are inadequate to support approval.

(Comment 14) One comment stated no objection to this proposal under the circumstances described but maintained that the complete response letter should indicate the status of each review team (labeling, chemistry and manufacturing, microbiology, bioequivalence, and/or clinical reviews and inspection status).

(Response) Rather than having the complete response letter state the status of each review team, we believe that it is appropriate for the letter to specify what portions, if any, of the review are

incomplete, as review of a portion of an application may require input from more than one review team, and it is the status of the portion of a review, not the status of the review team, that is most relevant. This is the approach that we currently use in issuing approvable and not approvable letters.

(Comment 15) One comment asked us to comment on the future of CDER's Pre-Approval Inspection Program and how it would be incorporated into the proposed new review scheme.

(Response) Inspection of the facilities used in the manufacture of a proposed drug product is an essential part of the application review process. The Pre-Approval Inspection Program will not be affected by this rulemaking.

d. *Actions to place application in condition for approval*. Proposed § 314.110(a)(4) stated, ''Where appropriate,'' a complete response letter will describe the actions necessary to place the application or abbreviated application in condition for approval.

(Comment 16) One comment stated that we should delete ''Where appropriate'' from § 314.110(a)(4). The comment stated that a complete response letter should describe the actions and/or specify the data needed to place the application in condition for approval. One comment stated that we should specify precisely the amendments or procedures we will require as an appropriate reply to a complete response letter so that an applicant does not have to guess what is necessary to remedy the deficiencies cited in the letter. The comment stated that this would help applicants address FDA concerns more effectively.

(Response) We agree with the comments that the complete response letter should provide an applicant with information, whenever possible, on what the applicant could do to obtain approval. However, there may be times when what the applicant has submitted to the agency simply does not permit us to specify what the applicant would need to do to put the application in a position for approval. The intent of § 314.110(a)(4) is for us to provide the applicant with sufficient detail on what actions might be necessary to resolve the deficiencies cited in the complete response letter. Providing clear guidance to applicants in the complete response letter will be helpful both to applicants and the agency.

However, at the time of issuance of the complete response letter, we may not have enough information to be certain about precisely what actions, including possibly conducting studies and/or submitting data, may ultimately be necessary to place an application in condition for approval. For example, we might have determined that there is a problem with the formulation of a proposed drug product but not be able to tell the applicant what it could do to resolve the problem, except in a general sense. Because of such potential circumstances, we have replaced ''Where appropriate'' with ''When possible'' in § 314.110(a)(4).

In addition, we recognize that although it is appropriate for us to recommend actions that an applicant might take to place its application in condition for approval, we cannot require an applicant to take specific actions—and only those actions—to obtain approval. There might be multiple acceptable approaches that an applicant could take to remedy a deficiency in its application, and we might lack information that would affect our views on what actions an applicant should take. Therefore, we have revised § 314.110(a)(4) to state that, when possible, a complete response letter will, rather than describe the actions necessary to place an application or abbreviated application in condition for approval, ''recommend actions that the applicant might take to place the application or abbreviated application in condition for approval.''

2. Responses to Complete Response Letters

Under proposed § 314.110(b)(1) to (b)(3), an applicant was required to take one of three actions after receiving a complete response letter: Resubmit the application, withdraw the application, or request an opportunity for a hearing on whether there are grounds for denying approval of the application.

a. *Resubmission*. Under proposed § 314.110(b)(1), an applicant could, in response to a complete response letter, resubmit the application or abbreviated application, addressing all deficiencies identified in the complete response letter. Proposed § 314.110(b)(1) further stated that, for purposes of § 314.110, a resubmission would mean submission by the applicant of all materials needed to fully address all deficiencies identified in the complete response letter.

As stated in our response to comment 8, we are relocating the definition of resubmission to § 314.3 from § 314.110(b)(1) and adding a sentence clarifying that an application or abbreviated application for which we issued a complete response letter, but which was withdrawn before approval and later submitted again, is not a resubmission.

i. *Resubmission of an NDA supplement other than an efficacy supplement*. Under proposed § 314.110(b)(1)(iii), a resubmission of an NDA supplement other than an efficacy supplement would constitute an agreement by the applicant to start a new 6-month review cycle beginning on the date we receive the resubmission.

(Comment 17) Three comments objected to the proposed 6-month cycle for resubmissions of other-than-efficacy supplements. One comment stated that it seemed unreasonable that a resubmission not requiring clinical data would require an additional 6 months for review. Two comments stated that because one of our user fee goals is to act on 90 percent of manufacturing supplements that require prior approval within 4 months, a 6-month review time for a resubmission of such a supplement would be longer than the review time for the original supplement. The comments stated that this is inappropriate because many of these resubmissions need only include data necessary to answer questions from the initial cycle and do not require as much review time as the initial supplement. The comments recommended that we revise § 314.110(b)(1)(iii) to state that the length of the review cycle for the resubmission of an other-than-efficacy supplement will not exceed that for the original supplement. The comments further recommended that we establish a ''Type 1/Type 2'' scheme for resubmissions of prior approval chemistry and manufacturing supplements that would be similar to the approach for resubmissions of original applications and efficacy supplements, but with a 2-month review cycle for Type 1 resubmissions and a 4-month cycle for Type 2 resubmissions.

(Response) We agree with the comments that the review cycle for the resubmission of a supplement that is not an efficacy supplement should be the same as the initial review cycle for the original supplement. Therefore, we have revised § 314.110(b)(1)(iii) to state that a resubmission of an NDA supplement other than an efficacy supplement constitutes an agreement by the applicant to start a new review cycle the same length as the initial review cycle for the supplement (excluding any extension due to a major amendment), beginning on the date FDA receives the resubmission. Under § 314.100(a), the initial review cycle for a supplement other than an efficacy supplement is 180 days, unless it is adjusted by mutual agreement or as a result of a major amendment under § 314.100(c). Under revised § 314.110(b)(1)(iii), because the initial review cycle for a manufacturing supplement requiring prior approval is 4 months under the user fee goals, the

review cycle for a resubmission of a manufacturing supplement would be 4 months (it would not be increased to reflect any extension of the initial review cycle for the manufacturing supplement resulting from a major amendment of the initial supplement). Given this change to § 314.110(b)(1)(iii), we believe that establishing a separate ''Type 1/Type 2'' classification scheme for resubmissions of prior approval chemistry and manufacturing supplements is not needed to ensure appropriate review cycles for these resubmissions and would create unnecessary administrative burdens.

ii. *Minor resubmission of an ANDA*. Proposed § 314.110(b)(1)(v) stated that a minor resubmission of an ANDA constitutes an agreement by the applicant to start a new review cycle beginning on the date we receive the resubmission.

(Comment 18) One comment opposed this provision, stating that the failure to specify the length of the new review cycle would seriously hinder an applicant's ability to predict the approval date for its application, resulting in substantial commercial disadvantage. The comment stated that any delay in the onset of launch preparation due to an unpredictable approval date could harm the manufacturer's ability to prepare for the initial marketing of their products. The comment maintained that without a target date for completion of review, an applicant would be forced to follow up with FDA continually, contrary to requests by CDER's Office of Generic Drugs that applicants follow up only at the targeted time. The comment claimed that the statement in the preamble that the review cycle for a minor resubmission of an ANDA might last ''from 30 days to a few months'' was contrary to the guidance on ''Major, Minor and Telephone Amendments to Abbreviated New Drug Applications'' (ANDA amendments guidance), which purportedly was revised to produce more minor amendments and fewer major amendments to move applications through the review process more quickly. The comment maintained that without a definition of ''a few months,'' performance standards would be reduced as much as 50 percent or more, and the distinction between major and minor amendments would blur.

The comment also disagreed with the statement in the preamble that the proposed revisions for ANDA resubmissions are ''similar'' to those for NDA resubmissions. The comment stated that user fee goals apparently are being implemented at the expense of generic drug manufacturers by reducing the transparency of the review process and extending review times for minor resubmissions. The comment asked that we revise § 314.110(b)(1)(v) to state that minor resubmissions of ANDAs are reviewed 30 to 60 days from receipt. The comment also stated that we should assess the issuance and classification of all complete response letters to uphold the intent to reduce ANDA approval times and resolve more deficiencies by telephone rather than complete a response letter.

(Response) We do not agree that the provision on minor resubmissions of ANDAs will interfere with generic drug manufacturers' ability to market their products in a timely manner. Under the ANDA amendments guidance, which the Office of Generic Drugs applies to major and minor resubmissions of ANDAs, we attempt to review minor resubmissions within 30 to 60 days, although not all can be reviewed within 60 days. In accordance with the ANDA amendments guidance, we will continue to work closely with ANDA sponsors to provide them with sufficient information about our review of ANDA resubmissions to enable sponsors to plan for the marketing of approved products. We agree with the comment that resolving deficiencies by telephone rather than by complete response letter benefits both applicants and the agency, and we will seek to do so where appropriate in accordance with the ANDA amendments guidance.

b. *Request for a hearing*. Under proposed § 314.110(b)(3), after receiving a complete response letter, an applicant could ask us to provide it with an opportunity for a hearing on the question of whether there are grounds for denying approval of the NDA or ANDA.

On our own initiative, we have revised § 314.110(b)(3) to update the information on the address to which requests for a hearing on the denial of approval of an NDA or ANDA must be submitted, as a result of the recent relocation of certain CDER offices.

(Comment 19) One comment stated that we should consider having an independent evaluator within FDA attend the hearings to confirm or negate grounds for denying approval. The comment also asked whether these hearings would be open public hearings.

(Response) With respect to the nature of hearings on the denial of approval of applications, § 314.201 states that parts 10 through 16 (21 CFR parts 10 through 16) apply to these hearings. These hearings are not open public hearings; appearance and participation are governed by § 12.40 through § 12.45.

We do not believe that an independent evaluator is needed for hearings on grounds for denial of approval. Section 314.200(f) provides for separation of functions between CDER and the Commissioner of Food and Drugs (the Commissioner) upon receipt of a request for a hearing. CDER prepares an analysis of the request and a proposed order ruling on the issue and submits them to the Commissioner for review and decision. When CDER recommends denial of a hearing on all issues, no CDER representative will participate or advise in the review and decision by the Commissioner. When CDER recommends that a hearing be granted on one or more issues, separation of functions terminates as to those issues. The Commissioner may modify the text of those issues but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which CDER has recommended denial of a hearing. The Commissioner will neither evaluate nor rule on CDER's recommendation on such issues, and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the presiding officer for the inclusion of any such issue in the hearing. Under § 12.60, the presiding officer of any hearing will be the Commissioner, a member of the Commissioner's office to whom responsibility for the matter has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105. Separation of functions on all issues resumes upon issuance of a notice of a hearing. We believe that these provisions provide an adequate means of ensuring that the Commissioner makes an independent assessment of the evidence for and against approval of an application. Therefore, no independent evaluator is needed.

3. Failure to Take Action

Under proposed § 314.110(c), an applicant would be considered to agree to extend the review period under section 505(c)(1) of the act until it takes any of the actions listed in § 314.110(b) (i.e., resubmission of the application, withdrawal, or request for a hearing). Proposed § 314.110(c) further stated that for an NDA, we might consider an applicant's failure to take any of these actions within 1 year after receiving a complete response letter to be a request by the applicant to withdraw the NDA (for an ANDA, the specified period was 6 months).

(Comment 20) Several comments objected to the elimination of the opportunity, available in previous §§ 314.110(a)(5) and 314.120(a)(5), for

an applicant to notify us within 10 days of receipt of an action letter that it agrees to an extension of the review period so that it can determine how to respond further. One comment stated that it was not clear whether any sponsor communication with us regarding an intent to resubmit or amend an application would cancel or postpone the proposed 1-year timeframe. The comment stated that if an applicant believed that it must resubmit within 1 year to avoid automatic withdrawal, the result could be a less-than-complete resubmission. Three comments stated that the absence of a resubmission within 1 year of receipt of a complete response letter cannot reasonably be characterized as failure to take action. Several comments stated that it might take several months for an applicant to reach agreement with us on what studies are needed for approval and then more time to conduct the studies and submit the results.

The comments suggested several ways to revise the regulations to allow applicants to request an extension of the review period. One comment stated that we should expand the first option in § 314.110(b) (resubmission) to permit a sponsor to resubmit its application addressing all deficiencies or state its intent to do so (if the sponsor estimates that it will take more than 1 year to address all deficiencies).

Several comments recommended revisions to § 314.110(c). One comment stated that § 314.110(c) should be revised to clarify that additional time for resubmission will be granted if the applicant is diligently working to address all deficiencies. The comment stated that inaction for 1 year should be regarded as a request to withdraw the application if the applicant has not communicated an intent to resubmit or submitted evidence of progress being made toward the completion of work needed to address all deficiencies.

One comment stated that § 314.110(c) should be revised to allow an applicant to notify us, within a specified time, of its intent to resubmit or to agree to a specified extension of time to reflect an agreed-upon action plan to address deficiencies; absent such notification, we could consider the application withdrawn if it was not resubmitted within 1 year. The comment further stated that if an additional study was required, we should allow an extension beyond the 1-year period.

Two comments recommended that § 314.110(c) be revised in one of two ways. One approach would be to add an option for the applicant to notify us, within a specified time after receipt of a complete response letter, of an intent to resubmit. If the application is not resubmitted within 1 year, the applicant would be required to provide annual confirmation of its intent to resubmit; if the applicant provided no such notification, we could consider the application withdrawn. The alternative approach would require us to notify the applicant requesting a reply within a specified time regarding its intention to resubmit; failure to respond within the specified time would constitute a request for withdrawal.

One comment recommended that applicants be given the option to state their intention to address deficiencies as well as how and when this will be done. The comment suggested that we would use the target date as the closing date for the application. If the applicant later determined that it could not meet this deadline, it could seek another extension, which we could grant or deny at our discretion.

(Response) We agree that proposed § 314.110(c) should be revised to allow applicants to request an extension of time in which to submit a resubmission. We acknowledge that in some circumstances it might take more than 1 year after issuance of a complete response letter for an applicant to reach agreement with us on what clinical studies might be needed, to conduct any required studies, and to provide the results in a resubmission. Therefore, we are revising § 314.110(c) (renumbered as § 314.110(c)(1)) to state that, for an NDA or ANDA, we may consider an applicant's failure to take any of the actions in § 314.110(b) within 1 year after issuance of a complete response letter to be a request by the applicant to withdraw the application, unless the applicant has requested an extension of time in which to resubmit the application. Section 314.110(c) further states that we will grant any reasonable request for such an extension. In addition, § 314.110(c) states that we may consider an applicant's failure to resubmit the application within the extended time period or to request an additional extension to be a request by the applicant to withdraw the application.

Although, as stated in the proposed rule, ANDA resubmissions usually do not involve generation of clinical data, for consistency we have decided to apply the 1-year period (subject to extension) to ANDA resubmissions as well as NDA resubmissions. In addition, we have revised § 314.110(c)(1) to state that the applicant's 1–year deadline for taking action begins ''after issuance of a complete response letter'' rather than ''after [the applicant] receiv[es]'' the complete response letter. This change provides certainty as to the start of the 1-year period. In addition, on our own initiative we have revised the first sentence of § 314.110(c)(1) to make clear that this paragraph addresses extension of the review period (until any of the actions listed in § 314.110(b) are taken) for an NDA under section 505(c)(1) of the act or an ANDA under section (j)(5)(A) of the act (the proposed rule inadvertently referred only to section 505(c)(1) for NDA applicants).

(Comment 21) Two comments stated that because deeming an application withdrawn is optional under proposed § 314.110(c), differences between and within centers might create an uneven playing field in which some applications are withdrawn while similarly situated applications are not. The comments stated that the decision to withdraw should rest with the applicant.

(Response) We believe that it is reasonable and within the scope of our authority to consider an applicant's failure to take any significant action within a reasonable period of time to be a request to withdraw the application. Nevertheless, we do not believe that § 314.110(c) should require us to deem an application to be withdrawn under these circumstances. Although we agree with the comments that there should not be significant differences across CDER regarding this matter, decisions on whether to regard an applicant's failure to take action as a request to withdraw the application will reflect the circumstances surrounding each particular application.

(Comment 22) One comment stated that we should notify an applicant before deeming an application withdrawn within 1 year for failure to take action under § 314.110(c), and applicants should have reasonable time to respond.

(Response) We agree that it is appropriate for us to notify an applicant that we intend to regard an application as withdrawn for failure to take action. Therefore, we are adding § 314.110(c)(2), which states that if we consider an applicant's failure to take action in accordance with § 314.110(c)(1) to be a request to withdraw the application, we will notify the applicant in writing. Section 314.110(c)(2) further states that the applicant will have 30 days from the date of the notification to explain why the application should not be withdrawn and request an extension of time in which to resubmit the application. Additionally, § 314.110(c)(2) states that we will grant any reasonable request for an extension. Finally, § 314.110(c)(2) states that if the

applicant does not respond to the notification within 30 days, the application will be deemed to be withdrawn.

E. Complete Response Letters for BLAs

To incorporate the use of complete response letters into the biologics regulations, the proposed rule added a definition of complete response letter to § 600.3 and added § 601.3 regarding complete response letters. We received comments on these proposed regulations as well as on the lack of regulations on other matters related to BLAs.

1. General

(Comment 23) One comment stated that although we proposed many changes to § 314.110 regarding complete response letters for NDAs and ANDAs, we proposed only select changes for the corresponding regulations for BLAs in § 601.3. The comment specifically noted the lack of a definition of resubmission in § 601.3 and the fact that NDA and ANDA applicants have three options for responding to a complete response letter under § 314.110(b) while BLA applicants have only two options under § 601.3(b). The comment recommended that we revise § 601.3 to include the topics in § 314.110 or explain the brevity of the biologics regulations. One comment recommended that we revise the biologics regulations to be consistent with the procedures and timeframes for review of resubmissions and amendments of drug applications in part 314.

(Response) BLAs have long been reviewed under procedures and timelines that differ from those for NDAs and ANDAs. In addition, the biologics regulations are less prescriptive and detailed than the NDA and ANDA regulations, and we have relied on guidance documents to specify many of the procedures under which we review BLAs. With respect to the biologics regulations, the proposed rule primarily was intended to codify CBER's practice of issuing complete response letters for BLAs. A comprehensive revision of the regulations on the review of BLAs was not intended, and we do not believe it is necessary. It also should be noted that although many of the procedures and timeframes in the NDA regulations reflect user fee goals and resources, many of the biological products subject to the licensing regulations in part 601 are not subject to user fees. For these reasons, we will not, at this time, establish more detailed regulations on amendments to BLAs or resubmissions of BLAs following issuance of a complete response letter.

With respect to the two examples of inconsistency noted by one comment, we are adding a definition of resubmission to the biologics regulations at § 600.3 (see the response to comment 27), and we have concluded that it is not necessary that § 601.3(b) specify the right to request a hearing because that right is stated elsewhere in the biologics regulations (see the response to comment 26).

2. Definitions (Proposed § 600.3)

Proposed § 600.3(jj) would have defined ''complete response letter'' as a written communication to an applicant from FDA usually identifying all of the deficiencies in a BLA or BLA supplement that must be satisfactorily addressed before it can be approved.

(Comment 24) Three comments objected to the definition of complete response letter for essentially the same reasons that two of those comments provided for objecting to the definition of complete response letter for NDAs and ANDAs in § 314.3(b). Specifically, the comments maintained that stating that a complete response letter ''usually'' identifies all of the deficiencies in a BLA that must be satisfactorily addressed is contrary to the plain meaning of ''complete response,'' makes the regulation too vague and open to varying interpretation across review divisions, and is inconsistent with statements in the user fee goals. One comment stated that according to CBER's Standard Operating Procedures and Policies (SOPP) 8405, ''Complete Review and Issuance of Action Letters,'' the complete response letter will summarize all of the deficiencies remaining in a BLA. The comments stated that there might be circumstances when it would be reasonable for us to postpone certain aspects of a complete review; these circumstances, which are set forth in SOPP 8405, are limited to testing of submitted product lots, pre-licensing inspections, and evaluation of final printed labeling.

Two comments recommended that the definition of complete response letter for BLAs specifically note those aspects of a complete review that may be postponed while allowing the agency to issue the letter. One of those comments specifically recommended defining a complete response letter as ''a written communication to the applicant from FDA identifying all of the specific deficiencies in a biologics license application or supplement that must be satisfactorily addressed before it can be approved. A complete response letter may be issued without conducting testing of submitted product lots, required inspections, or evaluation of final printed labeling or suitable alternative.'' One comment recommended that the definition state that a complete response letter identifies all deficiencies in a BLA ''except when such communication is issued without conducting testing of submitted product lots, required inspections, or evaluation of final printed labeling.'' The comment recommended that the preamble to the final rule state that ''evaluation of final printed labeling'' does not include the communication of deficiencies pertaining to intended use or product claims. The comment stated that early communication and resolution of such items are critical to efficient review, and deficiencies in these areas might require additional studies.

(Response) We agree with the comments that, generally, a complete response letter will identify all of the deficiencies in a BLA. Consistent with our response to comment 5, we have revised the definition of complete response letter in § 600.3 to state that a complete response letter is a communication ''usually describing all of the deficiencies that the agency has identified in a biologics license application or supplement that must be satisfactorily addressed before it can be approved.'' (The definition of complete response letter is set forth in § 600.3(ll), rather than § 600.3(jj) as proposed, because two other definitions have been added to § 600.3 since the issuance of the proposed rule.) We also agree with the comments that exceptions to this general rule include when the complete response letter concerns a BLA with respect to which we have not conducted required inspections, tested product lots, and/or reviewed proposed product labeling. Therefore, we are revising § 601.3(a) (rather than the definition of complete response letter in § 600.3) to state in § 601.3(a)(1) that a complete response letter will describe all of the deficiencies that the agency has identified in a BLA or BLA supplement, except as stated in § 601.3(a)(2). Section 601.3(a)(2) states that if we determine, after a BLA or BLA supplement is filed, that the data are inadequate to support approval, we might issue a complete response letter without first conducting required inspections, testing submitted product lots, and/or reviewing proposed product labeling. The provision refers to proposed product labeling rather than the suggested final printed labeling because we generally review the latter only after an applicant has addressed

any major deficiencies in an application.

(Comment 25) One comment stated that the definition of complete response letter should include the statement, ''Where appropriate, a complete response letter will describe the actions necessary to place the application in condition for approval.''

(Response) Consistent with § 314.110(a)(4) (see our response to comment 16), we have added the following statement in § 601.3(a)(3) (rather than to the definition of complete response letter in § 600.3): ''When possible, a complete response letter will recommend actions that the applicant might take to place its biologics license application or supplement in condition for approval.''

3. Complete Response Letter (Proposed § 601.3)

a. *Complete response letter*. Proposed § 601.3(a) stated that we would send the BLA applicant or BLA supplement applicant a complete response letter if we determined that we would not approve the application or supplement in its present form. As stated in our response to comment 24, we have added § 601.3(a)(1) stating that a complete response letter will describe all of the deficiencies that the agency has identified in a BLA or BLA supplement, except as stated in § 601.3(a)(2). As discussed in our response to comment 25, we also are adding § 601.3(a)(3) stating that, when possible, a complete response letter will recommend actions that the applicant might take to place its BLA or BLA supplement in condition for approval.

b. *Applicant actions*. i. *General*. Under proposed § 601.3(b), after receiving a complete response letter, the biologics license applicant or supplement applicant was required to either resubmit the application or supplement or withdraw it.

(Comment 26) One comment stated that although NDA and ANDA applicants have three options following receipt of a complete response letter (resubmit the application, withdraw it, or request a hearing), BLA applicants have only two options (resubmit or withdraw the application). The comment recommended that we either revise § 601.3 or explain this omission from the biologics regulations.

(Response) We do not believe that it is necessary to include, in § 601.3, a reference to the option to request a hearing. Under § 601.4(b) (21 CFR 601.4(b)), if we determine that an establishment or product that is the subject of a BLA does not meet the requirements for approval, we will deny the BLA and inform the applicant of the grounds for, and of an opportunity for a hearing on, the decision. Section 601.4(b) further states that if the applicant requests, we will issue a notice of opportunity for a hearing on the matter pursuant to § 12.21(b). Because the right to request a hearing regarding a denial of approval is set forth in § 601.4(b), we do not believe that it is necessary to revise § 601.3 as requested.

ii. *Resubmission*. Under proposed § 601.3(b)(1), after receiving a complete response letter, a BLA applicant or supplement applicant could resubmit the application or supplement, addressing all deficiencies identified in the complete response letter.

(Comment 27) Two comments stated that describing a resubmission without any qualifying language appears to require resubmission of the original application or supplement (as opposed to a resubmission limited to responses to the deficiencies listed in the complete response letter). Three comments recommended that the biologics regulations include a definition of resubmission.

(Response) We agree that the regulations should define ''resubmission.'' Therefore, we have added a definition of resubmission in § 600.3(mm), stating that a resubmission is a submission by the biologics license applicant or supplement applicant of all materials needed to fully address all deficiencies identified in the complete response letter. This parallels the definition of resubmission in § 314.3(b).

(Comment 28) Two comments stated that the biologics regulations (like the drug regulations) should clarify that applications withdrawn prior to approval that are submitted again for the same product are not considered resubmissions.

(Response) We agree. Therefore, consistent with the definition of resubmission in § 314.3(b) for NDAs and ANDAs (see the response to comment 8), the definition of resubmission in § 600.3(mm) includes the statement, ''A biologics license application or supplement for which FDA issued a complete response letter, but which was withdrawn before approval and later submitted again, is not a resubmission.''

c. *Failure to take action*. Under proposed § 601.3(c), we could consider a BLA applicant or BLA supplement applicant's failure to either resubmit or withdraw the application or supplement within 1 year after receiving a complete response letter to be a request by the applicant to withdraw the application or supplement.

(Comment 29) As with proposed § 314.110(c) concerning complete response letters to NDA and ANDA applicants, several comments objected to the lack of an option in § 601.3(c) to seek an extension of time in which to resubmit an application or supplement. Two comments stated that the absence of a resubmission within 1 year of receipt of a complete response letter cannot reasonably be characterized as failure to take action. Three comments stated that it might take at least several months for an applicant to reach agreement with us on what studies are needed for approval and then more time to conduct the studies and submit the results. One comment maintained that although the preamble to the proposed rule stated that § 601.3 is intended to incorporate current CBER policy, § 601.3(c) does not reflect current policy and does not afford applicants the opportunity to notify us of their intent to resubmit an application to prevent us from considering it withdrawn.

Four comments suggested revisions to § 601.3(c). One comment recommended that it be revised to state as follows: ''FDA may consider a biologics license applicant or supplement applicant's failure to resubmit, amend the application to request an extension of time to respond, or withdraw the application or supplement within 1 year after receiving a complete response letter to be a request by the applicant to withdraw the application or supplement.'' One comment recommended that the first option in proposed § 601.3(b) be revised to permit sponsors to resubmit the BLA or supplement addressing all deficiencies or state their intention to do so (if they conclude that it will take more than 1 year to address all deficiencies).

Two comments recommended that § 601.3(c) be revised in one of two ways. One approach would be to add an option for the BLA or BLA supplement applicant to notify us, within a specified time after receipt of a complete response letter, of an intent to resubmit. If the resubmission is not submitted within 1 year, the applicant would be required to provide annual confirmation of its intent to resubmit; if the applicant provides no such notification, we could consider the application or supplement withdrawn. The alternative approach would require us to notify the applicant requesting a reply within a specified time regarding its intention to resubmit; failure to respond within the specified time would constitute a request for withdrawal.

(Response) For the reasons stated in the discussion of § 314.110(c) (see the response to comments 20 and 22), we

agree that § 601.3(c) should be revised to, among other things, allow applicants to seek an extension of time in which to resubmit an application (beyond 1 year after issuance of the complete response letter), and to notify applicants when we decide to consider an applicant's failure to take action as required under § 601.3 to be a request to withdraw the application. Therefore, we are revising § 601.3(c) to state, in § 601.3(c)(1), that we may consider a BLA applicant or BLA supplement applicant's failure to either resubmit or withdraw the application or supplement within 1 year after issuance of a complete response letter to be a request by the applicant to withdraw the application or supplement, unless the applicant has requested an extension of time in which to resubmit the application or supplement. Section 601.3(c)(1) further states that we will grant any reasonable request for such an extension. Finally, § 601.3(c)(1) states that we may consider an applicant's failure to resubmit the application or supplement within the extended time period or to request an additional extension to be a request by the applicant to withdraw the application.

We also are adding § 601.3(c)(2), which states that if we consider an applicant's failure to take action in accordance with § 601.3(c)(1) to be a request to withdraw the application, we will notify the applicant in writing. Section 601.3(c)(2) further states that the applicant will have 30 days from the date of the notification to explain why the application or supplement should not be withdrawn and request an extension of time in which to resubmit the application or supplement, and we will grant any reasonable request for an extension. Finally, § 601.3(c)(2) states that if the applicant does not respond to the notification within 30 days, the application or supplement will be deemed to be withdrawn.

As with revised § 314.110(c)(1), we are substituting the phrase ''after issuance of a complete response letter'' for the phrase ''after receiving a complete response letter'' to provide certainty about the start of the 1–year period.

F. Miscellaneous Provisions Related to Complete Response Letters

1. Content and Format of Applications (Proposed § 314.50)

Proposed § 314.50(d)(5)(vi)(b) would have required NDA applicants to submit safety update reports 4 months after the initial submission, in a resubmission following receipt of a complete response letter, and at other times as requested by us. Previous § 314.50(d)(5)(vi)(b) had required the submission of safety updates 4 months after the initial submission, after receiving an approvable letter, and when otherwise requested by us.

(Comment 30) One comment stated that in most cases, a sponsor would receive the complete response letter toward the end of the initial cycle, normally well after it had submitted the traditional 4-month safety update. The comment stated that the amount of data needed in a resubmission could be substantial if there are many ongoing studies. Therefore, the comment requested that we include in the preamble to the final rule general guidance on whether there would be any difference in expectations on the content of the safety update provided in the resubmission.

(Response) We will expect applicants to provide the same type of data and other information in safety updates included in a resubmission as we did with safety updates included in a resubmission following receipt of a not approvable letter. Not approvable letters set forth in detail the information that we expected applicants to include in the safety update. As the comment suggests, this could include substantial information regarding any ongoing clinical studies. We will expect applicants to provide the same level of information in a resubmission following receipt of a complete response letter.

2. Withdrawal by the Applicant of an Unapproved Application (Proposed § 314.65)

Proposed § 314.65 stated in part that if, by the time we received notice of an applicant's request to withdraw an unapproved application, we had identified any deficiencies in the application, we would list such deficiencies in the letter we sent the applicant acknowledging the withdrawal.

(Comment 31) One comment stated that all communications before the issuance of approval or tentative approval should remain confidential. Therefore, the comment recommended that the following statement be added to § 314.65: ''This communication, like all communications prior to approval or tentative approval, will not be publicly disclosed.''

(Response) We agree with the comment that the letter to an applicant acknowledging the withdrawal of its application is a confidential communication. However, we do not believe that it is necessary to add to § 314.65 the language suggested by the comment. The confidential nature of such communications is already addressed in § 314.430.

3. Public Disclosure of Existence of Applications (Proposed § 314.430)

Proposed § 314.430(b) stated that we would not publicly disclose the existence of an application or abbreviated application before an approval letter was sent to the applicant under § 314.105 or a tentative approval letter was sent to the applicant under § 314.107, unless the existence of the application or abbreviated application had been previously publicly disclosed or acknowledged. Previous § 314.430(b) stated that we would not make such a disclosure before issuance of an approvable letter. In the proposed rule, we acknowledged that our proposed change might result in later disclosure than sometimes occurred under the previous regulation with respect to those applications for which we issued approvable letters. But we stated that the proposed change was consistent with our presumption that, before approval, the existence of an application is confidential commercial information under § 20.61 (21 CFR 20.61). However, we invited comment on whether it would be appropriate for us to disclose the existence of an application following issuance of a complete response letter and, if so, under what conditions.

(Comment 32) Six comments agreed with the proposal to not disclose the existence of an NDA or ANDA before we send an approval letter or tentative approval letter unless the existence of the application has been previously publicly disclosed or acknowledged. Two comments stated that it was appropriate to continue our current policy on disclosure; one comment stated that this was consistent with the presumption that the existence of an application is confidential commercial information. One comment specifically opposed the alternative approach we suggested in the proposed rule, under which we could disclose the existence of an NDA or ANDA following issuance of a complete response letter unless the applicant notified us by a specified date that the applicant had not publicly disclosed or acknowledged the application's existence. The comment stated that such disclosure could be harmful, particularly in the generic drug sector, to any competitive advantage that a sponsor might have in a race to product launch. The comment also agreed with the statement in the proposed rule that requiring applicants to notify us to prevent our disclosing the existence of their applications would

create the potential for error and would be burdensome.

One comment preferred the alternative approach suggested in the proposed rule. One comment, although opposed to routine disclosure of the existence of an application following issuance of a complete response letter, appeared to suggest that we revise the regulation to state that we could make such a disclosure provided the applicant asked us to do so within 10 days of receipt of the complete response letter. The comment stated that this would place the onus on the applicant to request disclosure and would prevent inadvertent disclosure by the agency prior to approval.

(Response) We believe that it is appropriate to not publicly disclose the existence of an NDA or ANDA (unless the existence has already been disclosed or acknowledged) until we have issued an approval letter or tentative approval letter for that application. As we stated in the preamble to the proposed rule, this is consistent with our long-standing presumption that before approval or tentative approval, the existence of an application is confidential commercial information. In addition, we believe that this approach is preferable to one that would require applicants to notify us, after issuance of a complete response letter, that they object to disclosure. As we stated in the preamble to the proposed rule, such a notification system would create the potential for inadvertent disclosure and pose administrative burdens for applicants and the agency. Similarly, we do not believe that it is appropriate to codify a procedure under which an applicant could notify us that we may disclose the existence of its application. An applicant may publicly disclose the existence of its application at any time.

4. Addresses for Applications and Abbreviated Applications (Proposed § 314.440)

The proposed rule would have revised § 314.440(a)(1) to state that, except as provided in § 314.440(a)(4), an application under § 314.50 or § 314.54 submitted for filing should be directed to the Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852–1833.

The proposed rule correctly revised the title of the office to which applications must be submitted under § 314.440(a)(1) from ''Document and Records Section'' to ''Central Document Room,'' but it inadvertently changed the address for the office. The final rule states the correct address to which these applications must be submitted as follows: Central Document Room, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

In addition, on our own initiative we are revising § 314.440(a)(2) concerning addresses for ANDAs to specify the current address for the Office of Generic Drugs and to update related information.

G. Amendments to NDAs (Proposed § 314.60)

We proposed several revisions to § 314.60 concerning amendments to unapproved NDAs. Previous § 314.60 stated in part that submission of a major amendment ordinarily would extend the application's review period only for the time necessary to review the new information, but not more than 180 days; submission of an amendment that was not a major amendment would not extend the review period. We proposed to revise § 314.60 to, among other things, specify how long the review cycle would be extended for several types of amendments. In addition, proposed § 314.60(b) would allow us to defer all of these amendments to the next review cycle.

1. General

(Comment 33) Several comments objected to the proposal to give us discretion to defer review of these amendments. One comment stated that unilateral deferrals by FDA are inappropriate and requested that we explain the conditions under which reviews would be deferred. Two comments stated that the user fee goals do not suggest that we should have an unlimited option to unilaterally defer review of amendments. The comments maintained that the user fee goal concerning extension of the review cycle for a major amendment submitted within 3 months of the end of the review cycle was intended to encourage a single, contiguous review leading to a complete response. These comments recognized, however, that deferral might sometimes result in more efficient review and effective use of resources. Therefore, the comments recommended that the regulations list the specific conditions under which we could defer review of amendments.

One comment stated that the regulations should emphasize that we will ordinarily strive to complete full review of an application, including amendments, by the user fee goal date. The comment maintained that deferral of review is only appropriate if an amendment is submitted so late in the cycle that it cannot be reviewed by the goal date or contribute to an approval decision because there are other major deficiencies that cannot be addressed in the initial cycle.

(Response) We do not agree with the comments concerning our discretion to defer review of amendments. We believe that it is necessary for the efficient review of applications for us to have the ability to defer review of amendments where appropriate. Our current policy on the review of amendments is set forth in our guidance document entitled ''Good Review Management Principles and Practices for PDUFA Products'' (the GRMP guidance). The GRMP guidance states that during the initial review cycle, we ordinarily review all amendments that we ask the applicant to make during the review and any amendments previously agreed upon (e.g., during the pre-NDA/BLA meeting). The guidance further states that we might review substantial amendments submitted late in the review cycle during a subsequent cycle, depending, in part, on other identified deficiencies. As for all other amendments, the guidance states that we attempt to review them during the first review cycle but might not be able to do so or might decide not to do so in some circumstances (e.g., when the content of such an amendment does not address a known deficiency in the application).

The GRMP guidance notes that under the user fee goals, submission of a major amendment during the last 3 months of a review may trigger a 3-month extension of the review clock. The guidance states that we decide whether to extend the review clock based on consideration of a variety of factors, including content of the amendment, FDA workload and resources, and the existence of other known deficiencies possibly affecting approval that have not been addressed by the amendment. The guidance states that the underlying principle guiding our decision is to consider the most efficient path toward completion of a comprehensive review that addresses the deficiencies in an application and leads toward a first cycle approval when possible.

As the GRMP guidance states, although we strive to review amendments during the initial review cycle for an application, there are circumstances under which this is not possible or would not be an efficient use of resources. Although the GRMP guidance specifies some of the circumstances in which deferral of review of an amendment to the next review cycle might be appropriate, we do not believe that we can codify in the regulations all of the circumstances under which we might defer review of an amendment. Therefore, we conclude that § 314.60 must provide us with the

discretion to defer review of various types of amendments until the subsequent review cycle, when appropriate.

(Comment 34) Two comments stated that § 314.60 should require us to provide written notification to the applicant when we defer an amendment to the next cycle because deferral is essentially an action decision. The comments stated that such notification should describe the deficiencies that preclude approval.

(Response) We agree with the comments that we should provide written notification to an applicant when we defer review of an amendment to the subsequent review cycle. We currently provide such notice in our approvable and not approvable letters. Therefore, we have added a new § 314.60(b)(7) stating as follows: ''When FDA defers review of an amendment until the subsequent review cycle, the agency will notify the applicant of the deferral in the complete response letter sent to the applicant under § 314.110.'' We do not believe that it is necessary to codify in the regulations that we will provide a reason for the deferral. Usually, the reasons for deferral are general in nature (e.g., the amendment contains substantial new information or does not address a known deficiency). We would be willing to discuss the reasons for deferral after the applicant receives the complete response letter.

2. Major Amendment Within 3 Months of the End of the Cycle (Proposed § 314.60(b)(1))

Under proposed § 314.60(b)(1), submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement within 3 months of the end of the initial review cycle constituted an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 3 months. Proposed § 314.60(b)(1) further stated that we might instead defer review of the amendment until the subsequent review cycle. Proposed § 314.60(b)(1) also stated that the initial review cycle for an original application, efficacy supplement, or resubmission of an application or efficacy supplement may be extended only once due to the submission of a major amendment. It further stated that we might, at our discretion, review any subsequent major amendment during the initial review cycle (as extended) or defer review to the subsequent cycle.

On our own initiative, we are revising § 314.60(b)(1) with respect to amendments to resubmissions. Unlike applications and supplements (21 CFR 314.71(c)), resubmissions are not subject to the ''initial review cycle'' provision in § 314.100(a); they just have a ''review cycle.'' Therefore, we are adding to § 314.60(b)(1) a statement clarifying that, for references to a resubmission of an application or efficacy supplement in § 314.60(b), the timeframe for reviewing the resubmission is the ''review cycle'' rather than the ''initial review cycle.''

(Comment 35) One comment stated that, for clarity, the regulations should include a definition of ''major amendment.''

(Response) We do not believe that it is necessary to include a definition of major amendment in the regulations. Previous § 314.60(a) did not define a major amendment; it only gave an example of a major amendment (i.e., ''an amendment that contains significant new data from a previously unreported study or detailed new analyses of previously submitted data''). Because we are uncertain that we can define major amendment in a way that encompasses all types of amendments that should be treated as major amendments, we decline to add a definition to the regulations.

(Comment 36) Two comments recommended not codifying the 3-month extension for a major amendment submitted within 3 months of the end of the initial review cycle because, although this is consistent with current user fee goals, those goals could change as a result of future negotiations on user fees. The comments stated that the timeframes agreed upon in the user fee negotiations historically have taken precedence over existing regulatory timeframes, as was recognized in proposed § 314.100(a)(2). The comments stated that if we believed it was necessary to codify user fee goals on extensions, we should revise § 314.60(b) to state that for human drug applications, any extension of review due to a major amendment will be consistent with the user fee goals, similar to proposed § 314.100(a)(2).

(Response) As stated in the preamble to the proposed rule, we are revising § 314.60 to state that submission of a major amendment within 3 months of the end of the review cycle will extend the review cycle by 3 months because we want to make the regulation consistent with the current user fee goal on these amendments. At present, we do not anticipate a change in this goal. If this goal does in fact change as a result of a future user fee agreement, we could issue a proposed rule proposing to make the regulation match the user fee goal on this matter.

(Comment 37) Four comments specifically addressed the provision in proposed § 314.60(b)(1) allowing deferral of review of a major amendment submitted within 3 months of the end of the initial review cycle. One comment stated that the option to defer review was arbitrary and inconsistent with the user fee goals. The comment stated that neither the proposed codified provision nor the preamble gave examples of when it might be appropriate to defer review. The comment claimed that because the overwhelming majority of these amendments are submitted in response to FDA requests, it would be unreasonable to penalize applicants by deferring review of the amendments. The comment also stated that early communication of information and data requests in accordance with GRMP principles will ordinarily result in receipt of responses early in the initial cycle, giving us more time to complete our review by the goal date. Therefore, the comment recommended that § 314.60(b)(1) be revised to state that the agency will make every effort to complete its review of the full application, including amendments, by the user fee goal date. The comment maintained that review of these major amendments should only be deferred when the amount of new information and the timing of the submission make it impossible to review the amendment in the initial cycle.

One comment recommended revising § 314.60(b)(1) to state that we would not be required to review a major amendment that pertains to one section of the application if we have previously identified deficiencies in another section that prevent first-cycle approval. Two comments recommended revising § 314.60(b)(1) to state that we may defer review of a major amendment submitted within the last 3 months of the initial cycle that meets any of the following criteria: (1) It amends technical sections of an application in which we have identified deficiencies that prohibit approval during the initial cycle and that do not contain information needed to put the application in condition for approval; (2) it amends a technical section other than sections in which we have identified deficiencies preventing approval, where review of the amendment will not result in approval during the current cycle; or (3) it is an amendment for which, under the user fee goals, we could not extend the review cycle (e.g., a second major amendment submitted within the last 3 months of the initial cycle).

(Response) We do not agree with any of the proposed revisions to § 314.60(b)(1). As stated in the GRMP guidance, we usually seek to review

amendments, including major amendments, during the initial review cycle. However, we do not believe that it is necessary to codify this intent in § 314.60(b)(1) or elsewhere in this section. As stated in our response to comment 33, we do not believe that we can codify all of the circumstances under which it might be appropriate to defer review of major amendments. In addition, we do not agree with the claim that the overwhelming majority of amendments are submitted in response to agency requests, and the comment provides no evidence supporting this statement. For these reasons, we believe that it is appropriate to include in § 314.60(b)(1) a statement that we can defer review of a major amendment submitted within 3 months of the end of the initial review cycle rather than extend the cycle by 3 months.

(Comment 38) One comment stated that § 314.60(b)(1) also should specify that we would not be required to review a second major amendment submitted within 3 months of the goal date with no accompanying extension of the review clock.

(Response) We do not agree with the suggested change. Proposed § 314.60(b)(1) stated that the initial review cycle may be extended only once due to the submission of a major amendment, and any subsequent major amendment would either be reviewed during the initial review cycle or deferred. We believe that it is appropriate that § 314.60(b)(1) include these provisions to make clear that we will not extend the review cycle for a second major amendment.

3. Major Amendment More Than 3 Months Before the End of the Cycle (Proposed § 314.60(b)(2))

Under proposed § 314.60(b)(2), submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement more than 3 months before the end of the initial review cycle would not have extended the cycle. Proposed § 314.60(b)(2) further stated that we might, at our discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(Comment 39) One comment stated that the deferral provision in § 314.60(b)(2) would have the unintended effect of widening differences among review divisions regarding when review of these major amendments is deferred and would seem to discourage the possibility of dialogue on the merits of submission of a major amendment. Two comments stated that, because the user fee goals do not address major amendments submitted more than 3 months before the end of the review period, the implication is that review can be accommodated during the initial cycle. One comment stated that we should not defer the review of major amendments submitted well in advance of the goal date, so this option should be deleted from the rule. One comment recommended that § 314.60(b)(2) state that we will ordinarily make every effort to complete our review of an application or efficacy supplement, including any amendments submitted more than 3 months before the end of the initial cycle, by the user fee goal date.

Several comments stated that the regulation should specify the criteria under which we could defer review of these major amendments. Two comments recommended that § 314.60(b)(2) state that we may defer review of a major amendment submitted more than 3 months before the end of the initial cycle when we have already identified at least one major deficiency (such as a failed pivotal trial) that is not addressed by the amendment and is unlikely to be addressed during the current cycle due to a need for significant additional research or development.

(Response) We do not agree with any of the proposed revisions to § 314.60(b)(2). For the reasons stated in our response to comment 33, we do not believe that we can codify all of the circumstances under which it might be appropriate to defer review of these major amendments. Consequently, we have retained the provision in § 314.60(b)(2) giving us the discretion to defer review of these amendments to the next review cycle.

4. Nonmajor Amendment (Proposed § 314.60(b)(3))

Under proposed § 314.60(b)(3), the submission of an amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement that is not a major amendment would not have extended the initial review cycle. Proposed § 314.60(b)(3) further stated that we might, at our discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(Comment 40) One comment stated that § 314.60(b)(3) would have the unintended effect of widening differences in interpretation among review divisions regarding these nonmajor amendments. The comment added that § 314.60(b)(3) seemed contrary to § 314.102(b), which encourages reviewers to communicate promptly to applicants easily correctable deficiencies so that the deficiencies can be corrected through amendments before the review period ends. One comment stated that by their very nature, these amendments are less complex and require less time to review, which provides even more reason to expect that they be reviewed in the initial cycle. Therefore, the comment maintained that § 314.60(b)(3) should state that we will ordinarily review all nonmajor amendments by the user fee goal date.

Several comments stated that § 314.60(b)(3) should set forth the criteria for deferral of review. One comment recommended that § 314.60(b)(3) state that we could defer review of a nonmajor amendment that is submitted close to the end of the cycle and which could not contribute to an approval decision because other major deficiencies cannot be satisfactorily addressed. One comment suggested that the regulation state that we could defer review if a nonmajor amendment is submitted late in the review cycle (such as 1 to 2 months before the end) or if the amendment does not provide information that addresses easily correctable deficiencies, provided other major deficiencies prevent approval at the end of the initial cycle. Similarly, two comments recommended that § 314.60(b)(3) state that we may defer review of a nonmajor amendment that is received within 1 month of the end of the initial cycle or that does not contain information adequate to put the application in condition for approval during the current cycle. One comment recommended stating that we could defer review of a nonmajor amendment that is received late in the review cycle (e.g., within weeks of the goal date) when review of the amendment is not expected to impact the outcome of the application review.

(Response) We do not agree with any of the proposed revisions to § 314.60(b)(3). For the reasons stated in our response to comment 33, we do not believe that we can codify all of the circumstances under which it might be appropriate to defer review of these nonmajor amendments. Consequently, we have retained the provision in § 314.60(b)(3) giving us the discretion to defer review of these amendments to the next review cycle.

5. Amendment to Supplement Other Than Efficacy Supplement (Proposed § 314.60(b)(4))

Under proposed § 314.60(b)(4), submission of an amendment to a supplement other than an efficacy

supplement would not have extended the initial review cycle. Proposed § 314.60(b)(4) further stated that we might, at our discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

On our own initiative, we have revised § 314.60(b)(4) to ensure that the regulation is consistent with the user fee performance goal regarding major amendments to manufacturing supplements. In PDUFA III, industry and the agency agreed that submission of a major amendment to a manufacturing supplement submitted within 2 months of the goal date would extend the goal date for acting on the supplement by 2 months, and that there can be only one such extension per review cycle. Although industry and the agency have been acting in accordance with this user fee goal since the enactment of PDUFA III in 2002, we inadvertently failed to incorporate this practice into the proposed rule issued in 2004. Consequently, we have revised § 314.60(b)(4) to state that submission of a major amendment to a manufacturing supplement within 2 months of the end of the initial review cycle constitutes an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 2 months. Consistent with the approach to major amendments in § 314.60(b)(2), revised § 314.60(b)(4) further states: FDA may instead defer review of a major amendment to a manufacturing supplement until the subsequent review cycle; if we extend the initial review cycle, the division responsible for reviewing the supplement will notify the applicant of the extension; the initial review cycle for a manufacturing supplement may be extended only once due to submission of a major amendment; and we may, at our discretion, review any subsequent major amendment during the initial review cycle (as extended) or defer review until the subsequent review cycle.

In accordance with the change to § 314.60(b)(4), revised § 314.60(b)(5) states that submission of an amendment to a supplement other than an efficacy or manufacturing supplement will not extend the initial review cycle, and we have discretion to review or defer review of such an amendment. Proposed § 314.60(b)(5) has been renumbered as § 314.60(b)(6).

(Comment 41) One comment recommended that we revise proposed § 314.60(b)(4) to state that we might consider deferring review of other-than-efficacy supplements that are received late in the review cycle (e.g., within weeks of the goal date) when their review is not expected to impact the outcome of the application review. Two comments stated that the regulation should permit us to defer review of any other-than-efficacy supplement that either is received within 1 month of the end of the initial cycle or contains information that is inadequate to put the application in condition for approval during the current cycle.

(Response) We do not agree with either of the suggested revisions to proposed § 314.60(b)(4) (now § 314.60(b)(5)). For the reasons stated in our response to comment 33, we do not believe that we can codify all of the circumstances under which it might be appropriate to defer review of amendments to supplements other than efficacy or manufacturing supplements. Consequently, we have retained the provision in § 314.60(b)(5) giving us the discretion to defer review of these amendments to the next review cycle.

6. Contents of Major Amendment (Proposed § 314.60(b)(5))

Under proposed § 314.60(b)(5) (now § 314.60(b)(6)), a major amendment could not include data to support an indication for a use that was not included in the original application, supplement, or resubmission.

(Comment 42) One comment stated that it would be unfair in most cases to expect us to meet the goal date for review of an application if a major amendment was submitted for a completely new indication in the middle of the initial review cycle. However, the comment stated that sometimes we request additional data or safety updates, which can lead to the expansion or modification of an indication (e.g., submission of long-term safety data supporting chronic use). The comment added that there might be a significant public health reason to allow the submission of a major amendment to support a new indication. Therefore, the comment recommended that § 314.60(b)(6) be modified to allow exceptions when data to support a new or expanded indication are either requested by us or submitted with our prior concurrence.

(Response) We agree with the comment that it is appropriate to allow a major amendment to include data to support a slightly modified indication (e.g., increasing or decreasing the age range, increasing the severity of the disease) but not a completely new indication, regardless of whether the data supporting the new indication were submitted at the applicant's initiative or at our request. Therefore, we have revised § 314.60(b)(6) to state as follows: ''A major amendment may not include data to support an indication or claim that was not included in the original application, supplement, or resubmission, but it may include data to support a minor modification of an indication or claim that was included in the original application, supplement, or resubmission.'' In addition, for the reasons stated in section III.B.3 of this document regarding § 314.3, we are substituting the phrase ''indication or claim'' for ''indication for a use.''

H. Amendments to ANDAs (Proposed § 314.96)

Proposed § 314.96(a)(2) stated that submission of an amendment containing significant data or information before the end of the initial review cycle constitutes an agreement between FDA and the applicant to extend the initial review cycle only for the time necessary to review the significant data or information and for no more than 180 days.

(Comment 43) One comment objected to proposed § 314.96(a)(2) and recommended several changes. First, the comment stated that it appeared that the only proposed change to § 314.96 was the removal of the condition that the cycle will be extended only for the time necessary to review the data. The comment maintained that this was not consistent with the intent to reduce ANDA approval times as stated in the ANDA amendments guidance. Second, the comment stated that § 314.96(a)(2) does not provide a definition of ''significant.'' The comment recommended that the term ''major amendment'' be substituted for ''amendment containing significant data or information'' in § 314.96(a)(2). Third, the comment stated that § 314.96 lacks a provision regarding the submission of an amendment that contains data or information not considered significant. Finally, the comment stated that, in contrast to the provisions on major and nonmajor amendments to NDAs in § 314.60, it appeared that any amendment of an ANDA submitted at any time during the initial cycle constitutes an agreement to extend the review cycle by 6 months. The comment maintained that the provisions on NDA amendments that take into consideration the timing and content of amendments were fair and appropriate and recommended that a similar approach be taken with ANDA amendments. To address all of these concerns, the comment recommended that § 314.96 be revised to state as follows: ''The submission of a major amendment to an original ANDA at any time within the initial review cycle constitutes an agreement between the

FDA and the applicant to extend the cycle only by the time necessary to review the data, and for no more than 180 days. A major amendment is defined as any new or revised information or data that, if it were to be submitted post-approval, would be categorized as a Prior Approval Supplement as defined in 314.70(b). The submission of a minor amendment to an original ANDA within 3 months of the end of the initial review cycle constitutes an agreement between the FDA and the applicant to extend the cycle by 30 to 60 days. The submission of a minor amendment more than 3 months before the close of the initial review cycle would not extend the review cycle. A minor amendment is defined as any new or revised information that, if it were to be submitted post-approval, would be categorized as a Changes Being Effected or Changes Being Effected in 30 Days supplement as defined in 314.70(c).''

(Response) Contrary to the comment, revised § 314.96(a)(2) retains the provision in previous § 314.96(a)(2) that the submission of an amendment to an ANDA containing significant data or information before the end of the review cycle constitutes an agreement to extend the review cycle ''only for the time necessary to review the significant data or information and for no more than 180 days.''

We do not agree with the comment's recommended changes to § 314.96. We do not believe that it is necessary to add a definition of major amendment in § 314.96. The ANDA amendments guidance does not provide a definition of major amendment but provides a listing of types of amendments that we regard as major amendments. These include, but are not limited to, amendments relating to the manufacture of a new batch of drug product, a new bioequivalence study that is unrelated to the manufacture of a new batch of the drug product, and new analytical methods and validation data. We believe that the guidance provides adequate information to applicants about the types of amendments that we regard as ''containing significant data or information'' under § 314.96(a)(2). We do not agree with the comment's suggested definition of major amendment because the matters that are the subject of supplements submitted under § 314.70 do not necessarily correlate with matters that are the subject of amendments submitted under § 314.96, and the regulatory environment in which we review supplements differs from that in which we review amendments (e.g., we have much more information about a drug product after approval than we do before approval). For these reasons, we conclude that it is appropriate to retain the flexibility provided in § 314.96(a)(2) concerning what constitutes an amendment containing significant data or other information.

We also do not believe that it is necessary to include provisions on ''minor'' amendments to ANDAs in § 314.96. The ANDA amendments guidance states that, except for those amendments that are classified as ''major'' or ''telephone,'' amendments will be designated as ''minor,'' and the guidance provides examples of minor amendments (e.g., deficiencies in a drug master file, problems regarding good manufacturing practices). (According to the guidance, an amendment can be classified as a ''telephone'' amendment at the agency's discretion if the amendment would otherwise be classified as ''minor'' but the deficiencies are of a limited number or complexity (e.g., a need for clarification of data already submitted, a request for a postapproval commitment).) The guidance states that we attempt to review minor amendments within 30 to 60 days but notes that we cannot review all of these amendments within 60 days. We believe that the comment's proposed definition of minor amendment is not appropriate for the reasons we stated for not adopting the proposed definition of major amendment. In addition, we decline to adopt the specific provisions on minor amendments suggested by the comment. The regulations in previous § 314.94 on amendments to pending ANDAs did not address minor amendments and did not parallel the provisions in § 314.60 on NDA amendments. Because ANDA amendments often differ in subject matter from NDA amendments, we do not believe it is necessary that the provisions on the content and timing of ANDA amendments match those for NDA amendments. We believe that the ANDA amendments guidance provides adequate information to ANDA applicants on minor amendments, and we do not find it necessary to codify our policy in the regulations at this time.

IV. Analysis of Impacts

FDA has examined the impacts of the final 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 final rule is not a significant regulatory action under 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. Because our economic analysis and comments submitted in response to the proposed rule show that the provisions of this final rule either codify existing practice or bring about changes that impose no significant burdens, 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 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.

A. Impact of the Final Rule

As described in sections II and III of this document, the final rule makes the following changes: (1) For NDAs and ANDAs, replaces the two types of action letters currently used (approvable and not approvable letters) with complete response letters; (2) for BLAs, incorporates into the regulations an existing policy on complete response letters; (3) incorporates into the regulations the terminology and procedures used in the user fee performance goals regarding NDA resubmissions; and (4) revises regulations governing extension of the initial review cycle in response to major amendments to unapproved applications, supplements, and resubmissions. For NDAs (with respect to resubmissions and amendments) and BLAs, the final rule codifies current agency practices. For ANDAs, the final rule revises regulations to be consistent with current practice or, where appropriate, with the provisions governing NDAs. The most significant impact of the final rule is on efficacy supplements to approved NDAs and on

resubmissions of applications and efficacy supplements. The impact of specific provisions of the final rule on NDAs, ANDAs, efficacy supplements, manufacturing supplements, and resubmissions is described in greater detail in the following paragraphs.

1. Complete Response Letter

We are amending our regulations to replace approvable and not approvable letters with complete response letters. Both approvable and not approvable letters indicated that an NDA or ANDA was not approvable in its current form, and that changes were necessary or that we required additional information. A complete response letter describes the deficiencies in an NDA or ANDA and, when possible, recommends actions that the applicant might take to place the application in condition for approval. In the past, some drug manufacturers expressed concern that a not approvable letter sent an unintended message that a marketing application would never be approved, which could adversely affect a company's ability to raise capital. Thus, in addition to allowing us to meet our commitments under the user fee performance goals, this regulatory change addresses industry comments by adopting a more neutral mechanism to convey that an NDA or ANDA cannot be approved in its current form. (We had already adopted a policy of issuing complete response letters for BLAs, and the final rule simply codifies this policy.) Because this regulatory change is primarily administrative in nature and is being made in response to the user fee performance goals, it is expected to have little or no economic impact.

2. Resubmissions

We also are making regulatory changes to implement the user fee performance goals and to codify new terminology associated with the resubmission of drug marketing applications. A Class 2 resubmission—incorporating major changes or a significant amount of additional data—would start a new 6-month review cycle, whereas a Class 1 resubmission—incorporating minor changes or a limited amount of additional data—would begin a new 2-month review cycle. These changes will codify agency practices regarding NDA resubmissions in place since 1998.

We are applying the Class 1 and Class 2 provisions to resubmissions of efficacy supplements as well. We agreed to make this policy change in PDUFA III because efficacy supplements, like original NDAs, contain varying amounts of data requiring different review times. We began to implement this change in October 2002. The application of the Class 1 and Class 2 provisions to resubmissions of efficacy supplements represents a regulatory change because under PDUFA II, all resubmissions of efficacy supplements would start a new 6-month review cycle. Under the final rule, a Class 1 resubmission of an efficacy supplement will extend the review cycle by only 2 months, rather than 6 months as occurred under PDUFA II. Review times for Class 2 efficacy supplement resubmissions will be largely unaffected by this change. Based on data from 1996 to 2000 (the most recent 5-year period for which complete data were available), an average of 16 efficacy supplements (approximately 40 percent) resubmitted annually would be reviewed in 2 months rather than the current 6 months. The final rule generally maintains current agency practice with respect to the review of other types of NDA supplements, i.e., for chemistry, manufacturing, or labeling changes. For ANDA resubmissions, the rule codifies the current practice of 6-month review.

3. Amendments to Unapproved Drug Marketing Applications

We also are revising our regulations on extending the initial review cycle following the submission of an amendment to an unapproved drug marketing application. The previous regulations stated that, for unapproved NDAs and efficacy supplements, submission of a major amendment extended the review cycle for the amount of time necessary to review the new information but not by more than 180 days. The final rule generally extends the review cycle by 3 months if a major amendment to an application, efficacy supplement, or resubmission of an application or efficacy supplement is submitted within 3 months of the end of the initial review cycle. (The final rule states that we may defer review until a subsequent review cycle.) If a major amendment is submitted more than 3 months before the end of the initial review cycle, the review cycle will not be extended (but FDA, in its discretion, may review the amendment during the initial review cycle or defer it until the subsequent review cycle). These changes codify the practice for NDAs that has been in place since 1998. However, we have only recently begun to apply this policy to efficacy supplements. Before October 2002, under the user fee performance goals, we did not extend the review cycle for a major amendment to an efficacy supplement. Therefore, as with the change regarding resubmissions of efficacy supplements, we believe that it is appropriate to treat the change regarding amendments to unapproved efficacy supplements as a regulatory change for purposes of this analysis.

These provisions of the final rule might slightly increase review times for efficacy supplements for which at least one major amendment was received within 3 months of the end of the initial review cycle. Based on data from 1996 to 2000, these regulatory changes could affect as many as 11 percent of all efficacy supplements filed, or an average of 15 per year. The effect of this change is dependent on the timing of future filings and the number of instances in which we exercise our review discretion.

The final rule also codifies our practice of extending the initial review cycle for a manufacturing supplement by 2 months when a major amendment is submitted within 2 months of the end of the initial review cycle. As with major amendments to efficacy supplements, before October 2002, we did not extend the review cycle for a major amendment for a manufacturing supplement, so we are treating this codification as a regulatory change.

This change regarding manufacturing supplements might slightly increase review times for these supplements for which at least one major amendment was received within 2 months of the end of the initial review cycle. Based on data from 1996 to 2000, this regulatory change could affect as many as 6 percent of all manufacturing supplements filed, or an average of 76 per year. The effect of this change is dependent on the timing of future filings and the number of instances in which we exercise our review discretion.

With respect to amendments to ANDAs, the changes to the regulations codify our current approach.

B. Summary of Impacts

Based on the preceding analysis, the changes to provisions governing resubmissions could result in reduced review times for up to 40 percent of efficacy supplements resubmitted annually. However, the provisions governing major amendments could slightly increase review times for up to 11 percent of efficacy supplements and 6 percent of manufacturing supplements (for which at least one major amendment was received during the initial review cycle) filed annually. The full impact of this rule would be affected by the number of future submissions and the extent to which we exercise our discretion to defer review until the next cycle. ANDAs will not be

significantly affected by the changes to regulations.

C. Comments

We received one comment on the analysis of economic impacts in the proposed rule. The comment noted that we did not perform a cost-benefit analysis because the proposed rule was not expected to cause expenditure of $100 million or more. The comment stated that this would be a concern only if the rule brought about negative implications, but the comment stated that, if anything, the rule will bring economic enhancement. The comment maintained that: (1) More meaningful and direct communications will allow companies to market drugs and vaccines better; (2) the time to marketing might be shortened; and (3) more efficient application procedures will help companies optimize their earnings goals.

We agree with the comment that the rule will not have a negative economic impact on applicants seeking approval of drug and biological products.

D. Conclusion

Because this final rule generally amends previous regulations governing applications for approval to market new drugs and generic drugs to reflect user fee terminology and performance goals that have already been incorporated into FDA policies (except with respect to complete response letters, as noted above), we certify that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is required under the Regulatory Flexibility Act.

V. Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a class of actions that do 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. Paperwork Reduction Act of 1995

This final rule does not contain new information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The final rule substitutes complete response letters for approvable and not approvable letters (in previous §§ 314.110 and 314.120, respectively) when we take action on marketing applications. The final rule retains the provisions requiring the recipient of the action letter (a complete response letter under the final rule) to amend the application (i.e., resubmit it), withdraw it, or ask us to provide an opportunity for a hearing on whether there are grounds for denying approval of the application. The final rule also revises the regulations (§§ 314.60, 314.96, 314.110, and 314.120) on extending the review cycle due to the submission of amendments before we issue an action letter and due to resubmissions, but does not change the information required in such amendments and resubmissions. OMB already has approved the information collection discussed earlier concerning responses to action letters under OMB control number 0910–0001, which expires on May 31, 2011.

The final rule also establishes regulations on the issuance of complete response letters to biologics license applicants and supplement applicants. The final rule codifies current agency practice on the issuance of complete response letters to these applicants and on applicant actions in response to these letters (resubmission or withdrawal of the application or supplement). OMB has already approved the information collection concerning responses to complete response letters for BLAs and BLA supplements under OMB control number 0910–0338, which expires on June 30, 2010.

We conclude that this final rule contains no new collection of information. Therefore, OMB clearance under the PRA is not required.

VII. Federalism

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, we have 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.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312, 314, 600, and 601 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 382, 383, 393; 42 U.S.C. 262.

■ 2. Section 312.84 is amended in paragraph (c) by revising the first sentence to read as follows:

§ 312.84 Risk-benefit analysis in review of marketing applications for drugs to treat life-threatening and severely-debilitating illnesses.

* * * * *

(c) If FDA concludes that the data presented are not sufficient for marketing approval, FDA will issue a complete response letter under § 314.110 of this chapter or the biological product licensing procedures. * * *

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 3. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 4. Section 314.3 is amended in paragraph (b) by removing the definitions for ''Approvable letter'' and ''Not approvable letter'' and by adding the following definitions in alphabetical order:

§ 314.3 Definitions

* * * * *

(b) * * *

Class 1 resubmission means the resubmission of an application or efficacy supplement, following receipt of a complete response letter, that

contains one or more of the following: Final printed labeling, draft labeling, certain safety updates, stability updates to support provisional or final dating periods, commitments to perform postmarketing studies (including proposals for such studies), assay validation data, final release testing on the last lots used to support approval, minor reanalyses of previously submitted data, and other comparatively minor information.

Class 2 resubmission means the resubmission of an application or efficacy supplement, following receipt of a complete response letter, that includes any item not specified in the definition of ''Class 1 resubmission,'' including any item that would require presentation to an advisory committee.

Complete response letter means a written communication to an applicant from FDA usually describing all of the deficiencies that the agency has identified in an application or abbreviated application that must be satisfactorily addressed before it can be approved.

* * * * *

Efficacy supplement means a supplement to an approved application proposing to make one or more related changes from among the following changes to product labeling:

(1) Add or modify an indication or claim;

(2) Revise the dose or dose regimen;

(3) Provide for a new route of administration;

(4) Make a comparative efficacy claim naming another drug product;

(5) Significantly alter the intended patient population;

(6) Change the marketing status from prescription to over-the-counter use;

(7) Provide for, or provide evidence of effectiveness necessary for, the traditional approval of a product originally approved under subpart H of part 314; or

(8) Incorporate other information based on at least one adequate and well-controlled clinical study.

* * * * *

Original application means a pending application for which FDA has never issued a complete response letter or approval letter, or an application that was submitted again after FDA had refused to file it or after it was withdrawn without being approved.

* * * * *

Resubmission means submission by the applicant of all materials needed to fully address all deficiencies identified in the complete response letter. An application or abbreviated application for which FDA issued a complete response letter, but which was withdrawn before approval and later submitted again, is not a resubmission.

* * * * *

§ 314.50 [Amended]

■ 5. Section 314.50 is amended in paragraph (d)(5)(vi)(*b*) in the fourth sentence by removing the phrase ''following receipt of an approvable letter'' and by adding in its place the phrase ''in a resubmission following receipt of a complete response letter''.

■ 6. Section 314.60 is amended as follows:

a. By revising the section heading;

b. By revising paragraph (a);

c. By redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

d. By adding new paragraph (b); and

e. By revising newly redesignated paragraphs (c)(1)(iii) and (c)(1)(iv), and the first sentence of paragraph (c)(2), to read as follows:

§ 314.60 Amendments to an unapproved application, supplement, or resubmission.

(a) FDA generally assumes that when an original application, supplement to an approved application, or resubmission of an application or supplement is submitted to the agency for review, the applicant believes that the agency can approve the application, supplement, or resubmission as submitted. However, the applicant may submit an amendment to an application that has been filed under § 314.101 but is not yet approved.

(b)(1) Submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement within 3 months of the end of the initial review cycle constitutes an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 3 months. (For references to a resubmission of an application or efficacy supplement in paragraph (b) of this section, the timeframe for reviewing the resubmission is the ''review cycle'' rather than the ''initial review cycle.'') FDA may instead defer review of the amendment until the subsequent review cycle. If the agency extends the initial review cycle for an original application, efficacy supplement, or resubmission under this paragraph, the division responsible for reviewing the application, supplement, or resubmission will notify the applicant of the extension. The initial review cycle for an original application, efficacy supplement, or resubmission of an application or efficacy supplement may be extended only once due to submission of a major amendment. FDA may, at its discretion, review any subsequent major amendment during the initial review cycle (as extended) or defer review until the subsequent review cycle.

(2) Submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement more than 3 months before the end of the initial review cycle will not extend the cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(3) Submission of an amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement that is not a major amendment will not extend the initial review cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(4) Submission of a major amendment to a manufacturing supplement within 2 months of the end of the initial review cycle constitutes an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 2 months. FDA may instead defer review of the amendment until the subsequent review cycle. If the agency extends the initial review cycle for a manufacturing supplement under this paragraph, the division responsible for reviewing the supplement will notify the applicant of the extension. The initial review cycle for a manufacturing supplement may be extended only once due to submission of a major amendment. FDA may, at its discretion, review any subsequent major amendment during the initial review cycle (as extended) or defer review until the subsequent review cycle.

(5) Submission of an amendment to a supplement other than an efficacy or manufacturing supplement will not extend the initial review cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(6) A major amendment may not include data to support an indication or claim that was not included in the original application, supplement, or resubmission, but it may include data to support a minor modification of an indication or claim that was included in the original application, supplement, or resubmission.

(7) When FDA defers review of an amendment until the subsequent review cycle, the agency will notify the applicant of the deferral in the complete response letter sent to the applicant under § 314.110 of this part.

(c)(1) * * *

(iii) The applicant has not obtained a right of reference to the investigation described in paragraph (c)(1)(ii) of this section; and

(iv) The report of the investigation described in paragraph (c)(1)(ii) of this section would be essential to the approval of the unapproved application.

(2) The submission of an amendment described in paragraph (c)(1) of this section will cause the unapproved application to be deemed to be withdrawn by the applicant under § 314.65 on the date of receipt by FDA of the amendment. * * *

* * * * *

■ 7. Section 314.65 is amended by revising the second sentence to read as follows:

§ 314.65 Withdrawal by the applicant of an unapproved application.

* * * If, by the time it receives such notice, the agency has identified any deficiencies in the application, we will list such deficiencies in the letter we send the applicant acknowledging the withdrawal. * * *

§ 314.71 [Amended]

■ 8. Section 314.71 is amended in paragraph (c) by adding the phrase ''except as specified otherwise in this part'' at the end of the sentence.

■ 9. Section 314.96 is amended by revising paragraph (a)(2) and by removing paragraph (a)(3) to read as follows:

§ 314.96 Amendments to an unapproved abbreviated application.

(a) * * *

(2) Submission of an amendment containing significant data or information before the end of the initial review cycle constitutes an agreement between FDA and the applicant to extend the initial review cycle only for the time necessary to review the significant data or information and for no more than 180 days.

* * * * *

■ 10. Section 314.100 is revised to read as follows:

§ 314.100 Timeframes for reviewing applications and abbreviated applications.

(a) Except as provided in paragraph (c) of this section, within 180 days of receipt of an application for a new drug under section 505(b) of the act or an abbreviated application for a new drug under section 505(j) of the act, FDA will review it and send the applicant either an approval letter under § 314.105 or a complete response letter under § 314.110. This 180-day period is called the ''initial review cycle.''

(b) At any time before approval, an applicant may withdraw an application under § 314.65 or an abbreviated application under § 314.99 and later submit it again for consideration.

(c) The initial review cycle may be adjusted by mutual agreement between FDA and an applicant or as provided in §§ 314.60 and 314.96, as the result of a major amendment.

■ 11. Section 314.101 is amended by revising paragraph (f)(1)(ii) and by revising the last sentence of paragraph (f)(2) to read as follows:

§ 314.101 Filing an application and receiving an abbreviated new drug application.

* * * * *

(f)(1) * * *

(ii) Issue a notice of opportunity for a hearing if the applicant asked FDA to provide it an opportunity for a hearing on an application in response to a complete response letter.

(2) * * * If FDA disapproves the abbreviated new drug application, FDA will issue a notice of opportunity for hearing if the applicant asked FDA to provide it an opportunity for a hearing on an abbreviated new drug application in response to a complete response letter.

* * * * *

■ 12. Section 314.102 is amended in the last sentence in paragraph (b) by removing the phrase ''an action'' and adding in its place the phrase ''a complete response'' and by revising paragraph (d) to read as follows:

§ 314.102 Communications between FDA and applicants.

* * * * *

(d) *End-of-review conference*. At the conclusion of FDA's review of an NDA as designated by the issuance of a complete response letter, FDA will provide the applicant with an opportunity to meet with agency reviewing officials. The purpose of the meeting will be to discuss what further steps need to be taken by the applicant before the application can be approved. Requests for such meetings must be directed to the director of the division responsible for reviewing the application.

* * * * *

§ 314.103 [Amended]

13. Section 314.103 is amended in paragraph (c)(1) in the first sentence by removing the phrase ''an approvable or not approvable'' and adding in its place the phrase ''a complete response'' and by removing the phrase ''or § 314.120, respectively''.

§ 314.105 [Amended]

■ 14. Section 314.105 is amended in paragraph (b) in the first sentence by removing the phrase ''(rather than an approvable letter under § 314.110)''.

■ 15. Section 314.107 is amended by adding a new sentence at the beginning of paragraph (b)(3)(v) to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

* * * * *

(b) * * *

(3) * * *

(v) FDA will issue a tentative approval letter when tentative approval is appropriate in accordance with paragraph (b)(3) of this section. * * *

* * * * *

■ 16. Section 314.110 is revised to read as follows:

§ 314.110 Complete response letter to the applicant.

(a) *Complete response letter*. FDA will send the applicant a complete response letter if the agency determines that we will not approve the application or abbreviated application in its present form for one or more of the reasons given in § 314.125 or § 314.127, respectively.

(1) *Description of specific deficiencies*. A complete response letter will describe all of the specific deficiencies that the agency has identified in an application or abbreviated application, except as stated in paragraph (a)(3) of this section.

(2) *Complete review of data*. A complete response letter reflects FDA's complete review of the data submitted in an original application or abbreviated application (or, where appropriate, a resubmission) and any amendments that the agency has reviewed. The complete response letter will identify any amendments that the agency has not yet reviewed.

(3) *Inadequate data*. If FDA determines, after an application is filed or an abbreviated application is received, that the data submitted are inadequate to support approval, the agency might issue a complete response letter without first conducting required inspections and/or reviewing proposed product labeling.

(4) *Recommendation of actions for approval*. When possible, a complete response letter will recommend actions that the applicant might take to place the application or abbreviated application in condition for approval.

(b) *Applicant actions*. After receiving a complete response letter, the applicant must take one of following actions:

(1) *Resubmission*. Resubmit the application or abbreviated application, addressing all deficiencies identified in the complete response letter.

(i) A resubmission of an application or efficacy supplement that FDA classifies as a Class 1 resubmission constitutes an agreement by the applicant to start a new 2-month review cycle beginning on the date FDA receives the resubmission.

(ii) A resubmission of an application or efficacy supplement that FDA classifies as a Class 2 resubmission constitutes an agreement by the applicant to start a new 6-month review cycle beginning on the date FDA receives the resubmission.

(iii) A resubmission of an NDA supplement other than an efficacy supplement constitutes an agreement by the applicant to start a new review cycle the same length as the initial review cycle for the supplement (excluding any extension due to a major amendment of the initial supplement), beginning on the date FDA receives the resubmission.

(iv) A major resubmission of an abbreviated application constitutes an agreement by the applicant to start a new 6-month review cycle beginning on the date FDA receives the resubmission.

(v) A minor resubmission of an abbreviated application constitutes an agreement by the applicant to start a new review cycle beginning on the date FDA receives the resubmission.

(2) *Withdrawal*. Withdraw the application or abbreviated application. A decision to withdraw an application or abbreviated application is without prejudice to a subsequent submission.

(3) *Request opportunity for hearing*. Ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the application or abbreviated application under section 505(d) or (j)(4) of the act, respectively. The applicant must submit the request to the Associate Director for Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993. Within 60 days of the date of the request for an opportunity for a hearing, or within a different time period to which FDA and the applicant agree, the agency will either approve the application or abbreviated application under § 314.105, or refuse to approve the application under § 314.125 or abbreviated application under § 314.127 and give the applicant written notice of an opportunity for a hearing under § 314.200 and section 505(c)(1)(B) or (j)(5)(c) of the act on the question of whether there are grounds for denying approval of the application or abbreviated application under section 505(d) or (j)(4) of the act, respectively.

(c) *Failure to take action*. (1) An applicant agrees to extend the review period under section 505(c)(1) or (j)(5)(A) of the act until it takes any of the actions listed in paragraph (b) of this section. For an application or abbreviated application, FDA may consider an applicant's failure to take any of such actions within 1 year after issuance of a complete response letter to be a request by the applicant to withdraw the application, unless the applicant has requested an extension of time in which to resubmit the application. FDA will grant any reasonable request for such an extension. FDA may consider an applicant's failure to resubmit the application within the extended time period or to request an additional extension to be a request by the applicant to withdraw the application.

(2) If FDA considers an applicant's failure to take action in accordance with paragraph (c)(1) of this section to be a request to withdraw the application, the agency will notify the applicant in writing. The applicant will have 30 days from the date of the notification to explain why the application should not be withdrawn and to request an extension of time in which to resubmit the application. FDA will grant any reasonable request for an extension. If the applicant does not respond to the notification within 30 days, the application will be deemed to be withdrawn.

§ 314.120 [Removed and Reserved]

■ 17. Section 314.120 is removed and reserved.

§ 314.125 [Amended]

18. Section 314.125 is amended in paragraph (a)(1) by removing the phrase ''an approvable or a not approvable'' and adding in its place the phrase ''a complete response'', and by removing the phrase ''or § 314.120''.

§ 314.430 [Amended]

19. Section 314.430 is amended in paragraph (b) in the first sentence by removing the phrase ''approvable letter is sent to the applicant under § 314.110'' and adding in its place the phrase ''approval letter is sent to the applicant under § 314.105 or tentative approval letter is sent to the applicant under § 314.107''; and by removing the last sentence.

■ 20. Section 314.440 is amended as follows:

a. In paragraph (a)(1) by removing the phrase ''Document and Records Section'' and by adding in its place the phrase ''Central Document Room'';

b. In paragraph (a)(3) by removing the phrase ''or § 314.120'';

c. In the introductory text of paragraph (b) by removing the phrase ''or § 314.120''; and

d. By revising paragraph (a)(2) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, an abbreviated application under § 314.94, and amendments, supplements, and resubmissions should be directed to the Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metro Park North II, 7500 Standish Place, rm. 150, Rockville, MD 20855. This includes items sent by parcel post or overnight courier service. Correspondence not associated with an abbreviated application should be addressed specifically to the intended office or division and to the person as follows: Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, Attn: [insert name of person], Metro Park North II, HFD–[insert mail code of office or division], 7500 Standish Place, rm. 150, Rockville, MD 20855. The mail code for the Office of Generic Drugs is HFD–600, the mail codes for the Divisions of Chemistry I, II, and III are HFD–620, HFD–640, and HFD–630, respectively, and the mail code for the Division of Bioequivalence is HFD–650.

* * * * *

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 21. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

■ 22. Section 600.3 is amended by adding new paragraphs (ll) and (mm) to read as follows:

§ 600.3 Definitions.

* * * * *

(ll) *Complete response letter* means a written communication to an applicant from FDA usually describing all of the deficiencies that the agency has identified in a biologics license application or supplement that must be satisfactorily addressed before it can be approved.

(mm) *Resubmission* means a submission by the biologics license applicant or supplement applicant of all

materials needed to fully address all deficiencies identified in the complete response letter. A biologics license application or supplement for which FDA issued a complete response letter, but which was withdrawn before approval and later submitted again, is not a resubmission.

PART 601—LICENSING

■ 23. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.3 [Added]

■ 24. Section 601.3 is added to subpart A to read as follows:

§ 601.3 Complete response letter to the applicant.

(a) *Complete response letter.* The Food and Drug Administration will send the biologics license applicant or supplement applicant a complete response letter if the agency determines that it will not approve the biologics license application or supplement in its present form.

(1) *Description of specific deficiencies.* A complete response letter will describe all of the deficiencies that the agency has identified in a biologics license application or supplement, except as stated in paragraph (a)(2) of this section.

(2) *Inadequate data.* If FDA determines, after a biologics license application or supplement is filed, that the data submitted are inadequate to support approval, the agency might issue a complete response letter without first conducting required inspections, testing submitted product lots, and/or reviewing proposed product labeling.

(3) *Recommendation of actions for approval.* When possible, a complete response letter will recommend actions that the applicant might take to place its biologics license application or supplement in condition for approval.

(b) *Applicant actions.* After receiving a complete response letter, the biologics license applicant or supplement applicant must take either of the following actions:

(1) *Resubmission.* Resubmit the application or supplement, addressing all deficiencies identified in the complete response letter.

(2) *Withdrawal.* Withdraw the application or supplement. A decision to withdraw the application or supplement is without prejudice to a subsequent submission.

(c) *Failure to take action.* (1) FDA may consider a biologics license applicant or supplement applicant's failure to either resubmit or withdraw the application or supplement within 1 year after issuance of a complete response letter to be a request by the applicant to withdraw the application or supplement, unless the applicant has requested an extension of time in which to resubmit the application or supplement. FDA will grant any reasonable request for such an extension. FDA may consider an applicant's failure to resubmit the application or supplement within the extended time period or request an additional extension to be a request by the applicant to withdraw the application.

(2) If FDA considers an applicant's failure to take action in accordance with paragraph (c)(1) of this section to be a request to withdraw the application, the agency will notify the applicant in writing. The applicant will have 30 days from the date of the notification to explain why the application or supplement should not be withdrawn and to request an extension of time in which to resubmit the application or supplement. FDA will grant any reasonable request for an extension. If the applicant does not respond to the notification within 30 days, the application or supplement will be deemed to be withdrawn.

Dated: June 26, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15608 Filed 7–9–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–284F]

RIN 1117–AB11

Elimination of Exemptions for Chemical Mixtures Containing the List I Chemicals Ephedrine and/or Pseudoephedrine

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is finalizing, without change, the Interim Rule with Request for Comment published in the **Federal Register** on July 25, 2007 (72 FR 40738). The Interim Rule removed the Controlled Substances Act (CSA) exemptions for chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent. Upon the effective date of the Interim Rule, all ephedrine and pseudoephedrine chemical mixtures, regardless of concentration and form, became subject to the regulatory provisions of the CSA. DEA regulated the importation, exportation, manufacture, and distribution of these chemical mixtures by requiring persons who handle these chemical mixtures to register with DEA, maintain certain records common to business practice, and file certain reports, regarding these chemical mixtures. No comments to the Interim Rule were received. This Final Rule finalizes the Interim Rule without change.

EFFECTIVE DATE: August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183, fax (202) 353–1263, or e-mail *ode@dea.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2007 (72 FR 40738), the Drug Enforcement Administration (DEA) published an Interim Rule with Request for Comment removing the Controlled Substances Act (CSA) exemptions for chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent. Those chemical mixtures included dietary supplements containing the List I chemicals ephedrine or pseudoephedrine, which are regulated as chemical mixtures under the CSA. DEA had previously exempted these products from CSA regulatory control if the total concentration of the ephedrine and/or pseudoephedrine was at or below five percent, in an effort to reduce the regulatory burden on the dietary and nutritional supplement industry (68 FR 23195, May 1, 2003). However, on February 11, 2004, the Food and Drug Administration (FDA) issued a Final Rule (69 FR 6787) declaring dietary supplements containing ephedrine alkaloids adulterated under the Federal Food, Drug, and Cosmetic Act (the FFD&C Act) because these dietary supplements present an unreasonable risk of illness or injury. Effective April 12, 2004, the FDA rule prohibited the sale of dietary supplements containing ephedrine alkaloids such as ephedra (also known as Ma Huang, sida

cordifolia and pinellia). The effect of the FDA rule was to ban the lawful marketing of these products.

DEA notes that the FDA ban addresses only the marketing of dietary supplements containing ephedrine alkaloids. The raw materials used to manufacture these dietary supplements are not restricted by the FDA ban. Accordingly, to control those materials, DEA needed to address the importation, exportation, manufacture, or distribution of chemical mixtures with concentration limits of ephedrine and/or pseudoephedrine at or below five percent. As there yet may be legitimate uses for chemical mixtures with concentration limits at or below five percent, the importation, exportation, manufacture, and distribution of these chemical mixtures (for purposes other than use in dietary supplements containing ephedrine alkaloids) are not prohibited by either FDA's ban regarding the marketing of such dietary supplements or by DEA law and regulations. Accordingly, as discussed in the Interim Rule (72 FR 40738, July 25, 2007), DEA removed the exempt status of chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent.

DEA recognizes that ephedra materials containing ephedrine and/or pseudoephedrine are used legitimately by practitioners of Traditional Chinese Medicine. This rulemaking does not restrict the utilization of such material for such legitimate purposes. This rulemaking will simply require importers and suppliers of such material to comply with DEA recordkeeping, registration, quota and import/export requirements.

Elimination of Exemption for Plant Material

The Interim Rule also removed the exemption for DEA chemical mixture regulations for certain plant materials. Specifically, the ephedrine alkaloids, including, among others, ephedrine, pseudoephedrine, norephedrine, N-methylephedrine, norpseudoephedrine, N-methylpseudoephedrine, are chemical stimulants that occur naturally in some botanicals, but can be synthetically derived. The ingredient sources of the ephedrine alkaloids include raw botanicals (i.e., plants) and extracts from botanicals. Ma Huang, Ephedra, Chinese Ephedra, and epitonin are several names used for botanical ingredients, primarily from Ephedra sinica Stapf, Ephedra equisetina Bunge, Ephedra intermedia var. tibetica Stapf and Ephedra distachya Linne (the Ephedras), that are sources of ephedrine alkaloids (including ephedrine and pseudoephedrine.) Other plant sources that contain such ephedrine alkaloids include Sida cordifolia L. and Pinellia ternata (Thunb.) Makino. Common names that have been used for the various plants that contain ephedrine alkaloids include sea grape, yellow horse, joint fir, popotillo, and country mallow. As DEA discussed in its Interim Rule, although the proportions of the various ephedrine alkaloids in botanical species vary from one species to another, in most species used commercially, ephedrine is typically the predominant alkaloid in the raw material. In addition to chemical mixtures from synthetic sources, the Interim Rule removed the exemption for those plant sources that contain the ephedrine alkaloids, ephedrine and/or pseudoephedrine.

The names desert herb, Squaw tea, Brigham tea, and Mormon tea refer to North American species of ephedra that do not contain ephedrine alkaloids but have been misused to identify ephedrine alkaloid containing ingredients. The Interim Rule did not pertain to species of ephedra that do not contain ephedrine and/or pseudoephedrine.

Combat Methamphetamine Epidemic Act of 2005

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005. The CMEA mandates that DEA limit the domestic production and importation of materials containing ephedrine and pseudoephedrine (including ephedra) to quantities necessary for medical, scientific and other legitimate purposes (21 U.S.C. 826 and 952(a)(1) as amended). As DEA discussed extensively in the Interim Rule, DEA is concerned about the illicit use of ephedra type material in the clandestine production of methamphetamine. While the legitimate market for dietary supplements containing such material has been cut by FDA's recent action, DEA observed an increasing number of requests for importation of below-five percent ephedrine and/or pseudoephedrine material. While there may be legitimate uses for these chemical mixtures, in light of FDA's action, DEA had become increasingly concerned about the intended purpose of such material, especially given that such material has been seized in clandestine drug laboratories.

Action Taken by the Interim Rule

The Interim Rule published by DEA July 25, 2007 (72 FR 40738) removed the exemption for chemical mixtures having a total concentration of ephedrine and/or pseudoephedrine of five percent (or less). By removing these exemptions, all chemical mixtures containing ephedrine and/or pseudoephedrine became regulated chemical mixtures subject to control under the CSA, including registration, recordkeeping, reporting, and security controls. The rule also removed the exemption for the category of products consisting of harvested plant material meeting the definition of chemical mixture, even when the plant material is unaltered from its natural state, (i.e., ephedra) that contains ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine.

The Interim Rule did not prohibit the importation, exportation, manufacture, or distribution of chemical mixtures containing ephedrine or pseudoephedrine in concentrations less than or equal to five percent. Rather, DEA regulated the importation, exportation, manufacture, and distribution of these chemical mixtures by requiring persons who handle these chemical mixtures to register with DEA, maintain certain records common to business practice, and file certain reports, regarding these chemical mixtures. Chemical mixtures containing the List I chemicals ephedrine and pseudoephedrine are still available for use.

Comments Received

DEA did not receive any comments to its Interim Rule with Request for Comment (72 FR 40738, July 25, 2007) eliminating the exemption for chemical mixtures with concentration limits of the List I chemicals ephedrine and/or pseudoephedrine of less than or equal to five percent. Therefore, DEA is hereby finalizing that Interim Rule without change.

Provisions Specifically Applying to Regulated Chemical Mixtures Containing These List I Chemicals

Effective August 24, 2007, any chemical mixture that contains ephedrine or pseudoephedrine is treated as a List I chemical. Transactions that meet or exceed the cumulative monthly threshold for the listed chemical, set forth at 21 CFR 1310.04, became regulated transactions. Persons interested in handling a regulated

mixture must comply with the following:

Registration. Any person who manufactures, distributes, imports or exports a regulated mixture, or proposes to engage in such activities, with respect to a regulated mixture containing a List I chemical, shall obtain a registration pursuant to the CSA (21 U.S.C. 822). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

Separate registration is required for manufacture, distribution, importing, and exporting. A separate registration is required for each principal place of business at one general physical location where List I chemicals are manufactured, distributed, imported, or exported by a person (21 CFR 1309.23). Effective August 24, 2007, any person manufacturing, distributing, importing, or exporting any amount of a regulated mixture became subject to the registration requirement under the CSA. Recognizing that it is not possible for DEA to immediately issue registrations to all applicants, DEA established in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to engage in activities with regulated mixtures, provided that DEA received a properly completed application for registration on or before August 24, 2007. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, were effective on August 24, 2007. Additionally, the temporary exemption does not suspend applicable federal criminal laws relating to the regulated mixture, nor does it supersede state or local laws or regulations. All handlers of a regulated mixture must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a List I chemical. Only a distribution, receipt, sale, importation, exportation, brokerage, or trade of a regulated mixture above the established threshold is a regulated transaction (21 CFR 1300.02(b)(28)).

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory, and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, *e.g.* formulating a nonregulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Further, 21 CFR 1310.05(a) requires that each regulated person shall report to DEA: (1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA; (2) any proposed regulated transaction with a person whose description or other identifying characteristics the Administration has previously furnished to the regulated person; (3) any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person, and any in-transit loss in which the regulated person is the supplier; and (4) any domestic regulated transaction in a tableting or encapsulating machine. 21 CFR 1310.03(c) requires that regulated persons who engage in a transaction with a nonregulated person or who engage in an export transaction that involves ephedrine or pseudoephedrine, including drug products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier must file monthly reports of each such transaction.

Imports/Exports. All imports/exports and brokered transactions of regulated mixtures containing ephedrine and/or pseudoephedrine shall comply with the CSA (21 U.S.C. 952, 957 and 971). Regulations for importation and exportation of List I chemicals are described in 21 CFR part 1313. Separate registration is necessary for each activity (21 CFR 1309.22).

Security. Regulated persons must provide effective controls and procedures to guard against theft and diversion of regulated mixtures through physical means or human or electronic monitoring. Regulated persons must store the regulated mixtures in containers sealed so that tampering will be evident; if the mixture cannot be stored in a sealed container, access to the chemicals must be controlled (21 CFR 1309.71).

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated mixture or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316 subpart A.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule finalizes, without change, an Interim Rule with Request for Comment eliminating the exemption for chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent. DEA did not receive any comments to that Interim Rule.

Executive Order 12866

The Deputy Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866. It has been determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget (OMB). This rule finalizes, without change, an Interim Rule eliminating the exemption for chemical mixtures containing ephedrine or pseudoephedrine with concentration limits at or below five percent. DEA did not receive any comments to its Interim Rule.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal

governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

With publication of the Interim Rule (72 FR 40738, July 25, 2007), DEA eliminated the current exemption for chemical mixtures with concentration limits of the List I chemicals ephedrine and/or pseudoephedrine of less than or equal to five percent. This means that all chemical mixtures containing the List I chemicals ephedrine and/or pseudoephedrine are regulated chemical mixtures, regardless of concentration limits.

Due to this change in the regulations, all persons who import, export, manufacture, or distribute chemical mixtures containing these two List I chemicals were required to register with DEA. They were also required to file reports regarding certain transactions, should certain criteria be met.

As the impact of this regulation was minimal, DEA made minor revisions to the OMB information collections entitled ''Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993'' (OMB control number 1117–0031, DEA Form 510), ''Report of Mail Order Transactions'' (OMB control number 1117–0033), and ''Import/Export Declaration for List I and List II Chemicals'' (OMB control number 1117–0023). DEA did not receive any comments regarding the number of persons who may be affected by this regulation. With publication of the Interim Rule, DEA received approval from the OMB to revise these information collections as discussed above.

Congressional Review Act

This Rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This Rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects In 21 CFR Part 1310

Drug traffic control, Exports, Imports, List I and List II chemicals, Reporting and recordkeeping requirements.

Adoption as Final Rule

The Interim Rule amending part 1310 of Title 21 of the Code of Federal Regulations, which published in the **Federal Register** on July 25, 2007, at 72 FR 40738, is hereby adopted as a Final Rule without change.

Dated: June 27, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–15704 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9413]

RIN 1545–BD19

Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 468B of the Internal Revenue Code (Code). The regulations provide rules regarding the taxation of income earned on escrow accounts, trusts, and other funds used during deferred like-kind exchanges of property, and final regulations under section 7872 regarding below-market loans to facilitators of these exchanges. The regulations affect taxpayers that engage in deferred like-kind exchanges and escrow holders, trustees, qualified intermediaries, and others that hold funds during deferred like-kind exchanges.

DATES: *Effective Date:* These regulations are effective *July 10, 2008.*

Applicability Dates: For dates of applicability, see §§ 1.468B–6(f), 1.7872–5(d), and 1.7872–16(g).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations under section 468B, Jeffrey T. Rodrick, (202) 622–4930; concerning the final regulations under section 7872, David B. Silber, (202) 622–3930 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) regarding the taxation of qualified escrow accounts, qualified trusts, and other escrow accounts, trusts, or funds used during section 1031 deferred exchanges of like-kind property, and of below-market loans to facilitators of these exchanges, under sections 468B(g) and 7872.

On February 7, 2006, a partial withdrawal of notice of proposed rulemaking, a notice of proposed rulemaking, and notice of public hearing were published in the **Federal Register** (REG–209619–93 and REG–113365–04, 71 FR 6231). A public hearing was held on June 6, 2006. A revised Initial Regulatory Flexibility Analysis (IRFA) for REG–113365–04 was published in the **Federal Register** on March 20, 2007 (72 FR 13055). Written and electronic comments responding to the notice of proposed rulemaking and the revised IRFA were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and amendments are discussed below.

Explanation of Provisions and Summary of Comments

1. Definitions

The proposed regulations define *exchange funds* as relinquished property, cash, or cash equivalent that secures an obligation of the transferee to transfer replacement property, or proceeds from a transfer of relinquished property. A commentator suggested that the definition of exchange funds as relinquished property, cash, or cash equivalent that secures an obligation of the transferee to transfer replacement property should be deleted as confusing and unnecessary, because it is irrelevant whether amounts held in a qualified account or fund secure or are intended to secure the obligations of the transferee. The final regulations do not adopt this comment. This definition of exchange funds is necessary because it encompasses transactions contemplated in § 1.1031(k)–1(g)(3) in which, for example, a transferee of the relinquished property pays a deposit before the property is transferred, or a transferee of the relinquished property agrees to transfer replacement property and deposits funds to secure the obligations of the transferee (see § 1.468B–6(e), *Example 1*). The definition is an alternative to the definition of exchange funds as proceeds from a transfer of relinquished property, and does not create a

requirement that exchange funds must secure the obligations of a transferee.

The proposed regulations define *transactional expenses* as the usual and customary expenses paid or incurred in connection with a deferred exchange, including the cost of land surveys, appraisals, title examinations, termite inspections, transfer taxes and recording fees. A commentator suggested that transactional expenses should be defined by reference to § 1.1031(k)–1(g)(7), which provides that ''transactional items'' are those items that relate to the disposition of the relinquished property or to the acquisition of replacement property and appear under local standards in the typical closing statements as the responsibility of a buyer or seller, such as commissions, prorated taxes, recording or transfer taxes, and title company fees. Therefore, for consistency, the final regulations provide that *transactional expenses* means transactional items described in § 1.1031(k)–1(g)(7)(ii). The final regulations retain special rules to determine whether fees paid to an exchange facilitator are transactional expenses.

2. Taxable Year of Receipt of Income

The proposed regulations omit an example in proposed regulations issued in 1999 that concluded that interest on a taxpayer's exchange funds is taxable in the year earned or credited rather than in a later year when the interest is paid. A commentator requested that the final regulations include a similar example. An example in the final regulations has been revised to illustrate this result.

Commentators suggested that the example in § 1.7872–16 of the proposed regulations conflicts with the constructive receipt rules of § 1.1031(k)–1(g)(6) because it posits that amounts are paid as compensation to the exchange facilitator, and are retransferred as imputed interest to the taxpayer, before the end of the exchange period. The final regulations do not adopt this comment. The example illustrates the mechanics of section 7872 in imputing interest and treating a corresponding amount as deemed compensation in the case of a compensation-related loan. This treatment is not inconsistent with § 1.1031(k)–1(g), which merely provides rules of administrative convenience under which, if certain requirements are satisfied, a taxpayer is deemed not to actually or constructively receive exchange funds or to have an agency relationship with an exchange facilitator solely for purposes of obtaining nonrecognition treatment under section 1031. For other taxation purposes, such as determining the timing for including earnings or imputed amounts in income, general tax principles apply, including timing principles under sections 7872 and 451. See § 1.1031(k)–1(n).

3. Earnings Attributable to Exchange Funds

The proposed regulations provide that exchange funds are treated, generally, as loaned by a taxpayer to an exchange facilitator, and the exchange facilitator takes into account all items of income, deduction, and credit. If, however, the escrow agreement, trust agreement, or exchange agreement specifies that all the earnings attributable to exchange funds are payable to the taxpayer, the exchange funds are not treated as loaned from the taxpayer to the exchange facilitator, and the taxpayer takes into account all items of income, deduction, and credit attributable to the exchange funds. If an exchange facilitator commingles taxpayers' exchange funds (whether or not a taxpayer's funds are held in a separate account) all earnings attributable to a taxpayer's exchange funds are treated as paid to the taxpayer if all of the earnings of the commingled funds, allocable on a pro rata basis to a taxpayer, are paid to the taxpayer.

a. Separately Identified Accounts

Commentators noted that many exchange facilitators have a corporate relationship with the institution in which the exchange facilitator deposits exchange funds on behalf of taxpayers and questioned whether, in addition to the stated earnings of the account in which the exchange funds are deposited, a portion of the earnings the depository institution receives in the ordinary course of investing customer deposits as part of its trade or business operations should be treated as earnings attributable to exchange funds if the depository institution is part of the same corporate group as the exchange facilitator. One group of commentators noted that it is common business practice for a depository institution in the same corporate group as an exchange facilitator to credit a portion of its revenues to the exchange facilitator based on the amount of exchange funds deposited by the exchange facilitator with the depository institution, and suggested that these types of internal credits should be treated as earnings attributable to exchange funds. However, other commentators argued that these internal credits are similar to payments a depository institution may make to an unrelated exchange facilitator for depositing funds with the depository institution and therefore, should not be treated as earnings attributable to exchange funds solely because the exchange facilitator is related to the depository institution. Some commentators noted that an exchange facilitator that maintains a master account that includes individual sub-accounts in taxpayers' names and taxpayer identification numbers (TIN) may earn additional interest in excess of the interest paid on the sub-accounts, based on the amounts the exchange facilitator deposits. To clarify what constitutes earnings attributable to the exchange funds, one commentator recommended that the final regulations provide that if exchange funds are held in a segregated account for the benefit of the taxpayer, only the earnings on the segregated account will be considered earnings attributable to the exchange funds. The commentator suggested that this rule would provide a simple, clear definition.

In response to these comments, the final regulations provide that, if exchange funds are held with a depository institution in an account (including a sub-account) that is separately identified with a taxpayer's name and TIN, only the earnings on the account are treated as earnings attributable to the exchange funds. The final regulations provide examples to illustrate the application of this rule to exchange facilitators related to depository institutions and to master/sub-account arrangements.

b. Commingled Accounts

A commentator opined that the proposed rules for allocating earnings in a commingled account are confusing because the rules apply ''whether or not the taxpayer's funds are in a segregated account.'' The commentator stated that, as a result, it is unclear whether all funds an exchange facilitator deposits in a specific depository institution constitute one commingled account, even if the funds are maintained in separate accounts and derive from financial transactions unrelated to exchange funds. The final regulations clarify that separate accounts maintained in the names and TINs of unrelated taxpayers do not constitute a commingled account.

c. Administrative Fees

Commentators suggested that fees paid by a bank to a related exchange facilitator should be treated as earnings attributable to exchange funds. Other commentators stated that these fees are compensation for administrative services provided and are not earnings

attributable to the funds. The final regulations do not treat these fees as earnings attributable to exchange funds. Fees for administrative services provided by exchange facilitators to depository institutions represent compensation for services provided by the exchange facilitator as opposed to earnings on the exchange funds.

4. Loan Treatment

a. Characterization as Loan

Commentators opined that exchange funds should not be treated as loaned from the taxpayer to the exchange facilitator because an exchange facilitator's relationship with the taxpayer is primarily that of a fiduciary. A commentator suggested that exchange facilitators are similar to mortgage or payroll processing servicers that maintain interest-bearing escrow accounts. The commentator also argued that the receipt of exchange funds by an exchange facilitator is not a compensation-related loan because the amount of interest required to be imputed would be higher for a greater amount of funds or longer exchange period, although the exchange facilitator would provide no additional services. Another commentator noted that other transactions in which payment is made before services are provided, such as pre-payments to contractors, are not treated as loans. The commentator asserted that the transaction between an exchange facilitator and its customer is an installment sale rather than a loan. Other commentators argued that treating exchange funds as loaned is inconsistent with the regulations under section 1031, which generally require that a taxpayer must not have any benefit of the exchange funds during the exchange period to avoid actual or constructive receipt. Other commentators agreed that an exchange facilitator's use of exchange funds properly may be characterized as a compensation-related loan.

The final regulations retain the general rule that money held by an exchange facilitator in a deferred exchange is treated as loaned by the taxpayer to the exchange facilitator. When an exchange facilitator benefits from the use of the taxpayer's exchange funds, characterizing the exchange funds as having been loaned from the taxpayer to the exchange facilitator is consistent with the substance of the transaction and with the definition of loan in the legislative history of section 7872. See H.R. Rep. 98–861 at 1018 (1984).

b. Application of Section 7872

Under the proposed regulations, an exchange facilitator loan must be tested under section 7872 to determine whether it is a below-market loan for purposes of that section. The proposed regulations further provide that a taxpayer must use a special 182-day applicable Federal rate (AFR) to test whether an exchange facilitator loan is a below-market loan. If an exchange facilitator loan is a below-market loan, the loan is treated as a compensation-related loan that is not exempt from section 7872 as a loan without significant tax effect.

Commentators opined that these transactions should not be subject to section 7872 for reasons including the lack of a significant tax effect, exceptions provided under sections 483 and 1274 for short-term loans, the general exemption from section 7872 for certain accounts or withdrawable shares with a bank, the costs of complying with section 7872, and the lack of a tax avoidance purpose.

One suggestion submitted by commentators to mitigate the impact of section 7872 on smaller transactions was the adoption of a rule that would exempt certain exchange facilitator loans from section 7872. The final regulations include an exemption from section 7872 for exchange facilitator loans of $2 million or less while preserving the application of section 7872 for larger transactions. This exemption amount may be increased in future published guidance. The exemption is limited to loans that are 6 months or less in duration.

c. Special AFR

One group of commentators believed that the special AFR in the proposed regulations is unreasonably high and suggested a more appropriate test rate would be a demand deposit rate. Other commentators suggested that the special AFR rate in the proposed regulations was appropriate.

For purposes of section 7872, the test rate allowed under section 1274(d)(1)(D) must be calculated by reference to United States Treasury obligations, not demand deposit rates. See footnote 5 of H.R. Conf. Rep. No. 99–250 at 15 (1985). However, in response to these comments, the final regulations use a 91-day rate, which is the investment rate on a 13-week (generally, 91-day) Treasury bill determined on the issue date that is the same as the date the exchange facilitator loan is made or, if the two dates are not the same, the issue date that most closely precedes the date that the exchange facilitator loan is made. This rate is based on semi-annual compounding and may be found at *http://www.treasurydirect.gov/RI/OFBills.* Also, in recognition that the short-term AFR may be lower than the 91-day rate, the final regulations provide that taxpayers must apply the lower of the 91-day rate or the short-term AFR when testing or imputing payments on an exchange facilitator loan under section 7872.

5. Effective/Applicability Date

Commentators requested that the final regulations apply to exchange agreements entered into, rather than transfers of property made, after the publication of final regulations. Alternatively, commentators requested that the applicability of the final regulations be deferred to allow exchange facilitators sufficient time to make changes to accounting, control, and reporting systems and to revise exchange agreements to comply with the final regulations.

In response to these comments, the final regulations apply to transfers of relinquished property made, and to exchange facilitator loans issued, on or after October 8, 2008. For transfers of relinquished property made by taxpayers after August 16, 1986, but before October 8, 2008, the IRS will not challenge a reasonable, consistently applied method of taxation for earnings attributable to exchange funds.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. A final regulatory flexibility analysis has been prepared for this final regulation under 5 U.S.C. 604. The analysis is set forth below under the heading ''Final Regulatory Flexibility Analysis.'' Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

Succinct Statement of the Need for, and Objectives of, the Final Regulations

These final regulations are issued under the authority of sections 7805, 468B(g), and 7872. Section 468B(g) provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax and that the Secretary shall

prescribe regulations providing for the taxation of such accounts or funds whether as a grantor trust or otherwise.

The final regulations provide that exchange funds are treated, generally, as loaned by a taxpayer to an exchange facilitator, and the exchange facilitator takes into account all items of income, deduction, and credit. If, however, the escrow agreement, trust agreement, or exchange agreement specifies that all the earnings attributable to exchange funds are payable to the taxpayer, the exchange funds are not treated as loaned from the taxpayer to the exchange facilitator, and the taxpayer takes into account all items of income, deduction, and credit attributable to the exchange funds. The final regulations are intended to provide greater certainty, enhance administrability, and ensure consistent treatment of taxpayers. The final regulations contain amendments to ease the economic impact of the final regulations on small businesses.

Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Assessment of Issues, and Statement of Changes Made to the Proposed Regulations as a Result of Comments

a. Administrative Burden Resulting From Loan Characterization

Under the final regulations, if exchange funds are treated as loaned by the taxpayer to an exchange facilitator, interest generally is imputed to the taxpayer under section 7872 unless the exchange facilitator pays sufficient interest. If a loan between the taxpayer and the exchange facilitator does not provide for sufficient interest and the loan is not otherwise exempt from section 7872, interest income is imputed to the taxpayer. Therefore, exchange facilitators must keep records of the amount of income paid to a taxpayer and may be required to report the income on Forms 1099. The revised IRFA estimated that most small businesses subject to the proposed regulations currently maintain records of the amount of income paid to the taxpayer and report the payments on Forms 1099. The revised IRFA concluded that the proposed regulations should not increase significantly the compliance burden associated with keeping records and reporting income paid to the taxpayer, based on the expectation that the proposed regulations may have the effect of increasing the amount exchange facilitators report, but not result in a significant increase in the number of forms generated. The revised IRFA requested additional comments to assist in quantifying any additional recordkeeping burdens and accounting costs that may result.

A commentator responded that the proposed regulations impose new and different reporting requirements than those that currently apply to qualified intermediaries (QI) because QIs must determine if the regulations apply to a particular transaction and may be required to report imputed interest. The commentator provided a study (updated in a follow-up submission) that concludes that the incremental workload to comply with the proposed regulations is substantial and the software needed to comply with the recordkeeping requirements is not available at a cost affordable to many small businesses. The study offers suggestions to mitigate these effects that include providing an exception to section 7872 for certain transactions, revising the special AFR, and including a transition period. The final regulations incorporate all of these suggestions.

The study also suggested that the average daily balance calculations required under the proposed regulations create substantial administrative burdens and should be deleted. The final regulations do not adopt this comment. The final regulations do not require average daily balance calculations, but provide an example utilizing an average daily balance calculation as only one acceptable method to determine the earnings of a commingled account that are attributable to a taxpayer's exchange funds. No other comments were received quantifying a compliance burden resulting from the proposed regulations. A commentator advised that the amount of additional time or expense that would result from the application of the proposed regulations could not be quantified yet. However, commentators requested that the applicability of the final regulations be delayed to allow exchange facilitators sufficient time to make required changes to accounting, control, and reporting systems and to revise exchange agreements. In response to these comments, the final regulations apply to transfers of relinquished property made, and to exchange facilitator loans issued, on or after October 8, 2008.

b. Economic Impact of Loan Characterization

Commentators on the proposed regulations asserted that the loan characterization rules will cause a large number of small businesses to suffer a substantial revenue loss and to fail or reduce their workforces. They claimed that small business QIs would be disproportionately affected because these QIs predominantly apply a business model that would place them at a disadvantage under the proposed regulations. Commentators stated that if businesses are required to impute interest on exchange funds, taxpayers will demand that this interest be paid to them. To compensate for this loss of revenue, these commentators claim that small businesses will be required to change their business practices to pay all income to the taxpayer and to charge higher fees, while large, bank-affiliated QIs generally will be unaffected. The revised IRFA requested specific comments to assist in quantifying the number of businesses that would change their business model as a result of the proposed regulations and the effect a change in business model would have on revenues or profits. No comments quantifying this effect were received.

The revised IRFA also requested specific comments on the appropriateness and nature of a rule that would reduce the economic impact of the regulations on small businesses by exempting certain exchange transactions most likely to be engaged in by small businesses from loan treatment. For this purpose, the revised IRFA requested information on the average duration of exchange transactions and the average dollar amount of exchange funds.

A commentator responded that in its QI business 76 percent of exchange transactions closed within 60 days and 80 percent of exchange transactions involved less than $250,000 of exchange funds. This commentator advocated rules that would exempt from section 7872 transactions that either involved exchange funds of less than $250,000 or remained open for less than 60 days.

Another commentator cited the minimal revenue impact of allowing interest retained by a QI to escape income inclusion to the taxpayer as a reason supporting exempting certain deferred like-kind exchange transactions. Because compensation paid to a QI must be capitalized as an acquisition cost of the replacement property, the commentator asserted that there is only a timing mismatch for the taxpayer if current exclusion is not allowed, and that given the relatively short time period during which interest accrues in typical section 1031 transactions, any revenue impact of the proposed regulations would be outweighed by the increased compliance burden on taxpayers. This commentator suggested that two separate rules, one which exempts transactions of a certain amount ($1 million) and another which exempts transactions of short duration (less than

90 days), are necessary because the available data suggests that there is no correlation between the size of the deposited exchange funds and the length of time the funds stay on deposit. This commentator also requested that any exemption amounts be adjusted for inflation.

In response to these comments, the final regulations provide an exemption from section 7872 for exchange transactions in which the amount of exchange funds treated as loaned does not exceed $2 million and the funds are held for 6 months or less. This exemption amount may be increased in future published guidance. Based upon comments received the $2 million amount is expected to exempt from the application of section 7872 most deferred exchange transactions handled by small business exchange facilitators.

c. Special AFR

The proposed regulations provide a special AFR, equal to the investment rate on a 182-day Treasury bill, to test whether an exchange facilitator loan pays sufficient interest as required by section 7872. The special AFR was expected to result in fewer transactions requiring the imputation of interest to taxpayers than the short-term AFR, thus reducing the economic impact on small businesses. However, comments on the proposed regulations claimed that the special AFR is unrealistically high and inappropriate for these transactions. In order to determine an appropriate rate for testing exchange facilitator loans for sufficient interest, the revised IRFA requested specific comments identifying the rate of return typically earned by small business QIs on exchange funds and the interest rate QIs typically pay to taxpayers, and solicited suggestions for an appropriate rate.

A commentator responded that the rate of return earned by a QI will vary depending on the total amount of funds the QI aggregates, the market in which the QI operates, the QI's reputation and relationship with a depository institution, and the QI's choice of investment vehicle. Thus, the commentator advised that it is difficult to ascertain the rate of return earned by a small business QI on exchange funds. The commentator stated that quantifying the interest rate that QIs typically pay to taxpayers likewise is difficult because many factors influence it.

Another commentator responding to the revised IRFA argued that the 182-day rate is inappropriate to test whether exchange facilitator loans bear sufficient interest under section 7872 because exchange funds held by a depository institution are demand deposits and rarely are held for 180 days. This commentator identified three potential alternative rates to the 182-day rate for a special AFR: (1) A rate based on national demand deposit rates; (2) a rate that is 10 percent of an established rate such as the Federal Funds rate; and (3) an average of the minimum demand deposit savings rates offered by several banks in a QI's home office region. Although this commentator recognized the administrative burdens of publishing one of these alternative rates, the commentator believed these alternatives more readily reflected the economic reality of exchange fund transactions than the 182-day rate.

In response to these comments and comments on the proposed regulations, in lieu of the 182-day rate, the final regulations provide a special AFR that is the investment rate on a 13-week (generally, 91-day) Treasury bill. In addition, because the short-term AFR may be lower than the 91-day rate, the final regulations provide that taxpayers must apply the lower of the 91-day rate or the short-term AFR when testing for sufficient interest under section 7872.

d. Earnings Attributable to Exchange Funds

The proposed regulations provide that a taxpayer's exchange funds are not treated as loaned if all the earnings attributable to the exchange funds are paid to the taxpayer but do not define the term ''earnings attributable to the exchange funds.'' Commentators have asserted that the lack of specificity results in disparate treatment of bank-affiliated QIs and independent QIs because of their different business models and places the independent QIs, many of which are small businesses, at an economic disadvantage.

Commentators advised that a portion of the earnings of a depository institution may be credited to an exchange facilitator based on the total amount of exchange funds the exchange facilitator deposits when the exchange facilitator and the depository institution (generally large businesses) are part of the same corporate group. The commentators opined that the proposed regulations do not, but should, treat this credit as earnings attributable to the exchange funds on which it is calculated.

Another commentator noted that depository institutions also may pay fees to unrelated exchange facilitators, including small businesses, for depositing exchange funds. Furthermore, other commentators described a business model used by some independent QIs, including some small businesses, in which a QI deposits the exchange funds of multiple taxpayers in sub-accounts under a master account that earns interest in addition to the interest credited to the sub-accounts. The amount of the additional interest credited to the QI is based on the total amount of exchange funds the QI deposits. Commentators have expressed concern that the proposed regulations treat this additional interest as earnings attributable to the individual taxpayers' exchange funds, but do not similarly treat earnings credited to a related QI based on total amount deposited.

The commentators claim that as a result of this treatment independent QIs will be forced to pay the additional interest that is attributable to exchange funds to taxpayers to avoid loan treatment, and thus will be required to correspondingly raise fees to compensate for lost profits. They assert that because bank-affiliated QIs earn profits by means of credits that are not attributed to exchange funds, bank-affiliated QIs will not be required to raise fees, creating an economic disparity between similarly situated bank-affiliated QIs and independent QIs.

In response to these comments, the final regulations provide a definitive test for determining earnings attributable to a taxpayer's exchange funds when an exchange facilitator holds all of the taxpayer's exchange funds in a separately identified account (or sub-account) under that taxpayer's name and TIN. Under this rule, the earnings attributable to the taxpayer's exchange funds include only the earnings on the separately identified account. This rule equalizes the treatment of independent, small business exchange facilitators and large exchange facilitators by providing that neither earnings of a depository institution that are credited to a related exchange facilitator nor the additional interest paid in connection with a master account are treated as earnings attributable to exchange funds when a taxpayer's exchange funds are held in a separately identified account (or sub-account).

Description and Estimate of the Number of Small Businesses to Which the Final Regulations Will Apply

The final regulations affect exchange facilitators that hold exchange funds for taxpayers engaging in deferred exchanges of like-kind property. The revised IRFA concludes that the applicable size standard for determining what constitutes a small business for purposes of the proposed regulations is

$2 million in annual gross receipts, the SBA's definition of a small business for North American Industry Classification System (NAICS) code 531390, and estimates that there are approximately 325 businesses (mostly QIs) that are full-time exchange facilitators.

The revised IRFA requested additional information on the number of small businesses engaged in the QI industry, and requested specific comments from QIs engaged exclusively in that business indicating whether their annual gross receipts are $2 million or less, or more than $2 million. A commentator advised that the number of QIs is very large, but many QIs do not identify themselves as such or engage in that business full-time. The commentator reported that the annual gross receipts of its QI business are well below $2 million. Another commentator opined that the information requested could not be quantified. No other comments were received on the number of small businesses in the industry or the general appropriateness of the size standard. Therefore, the estimate of approximately 325 businesses that are full-time exchange facilitators, the applicable size standard for determining what constitutes a small business with respect to these regulations of $2 million in annual gross receipts, and the conclusion that a significant portion of the QI industry consists of small businesses under this standard, are unchanged.

Description of Compliance Requirements and Estimate of the Classes of Small Businesses That Will Be Subject to the Compliance Requirements

As discussed, under current law exchange facilitators must keep records of the amount of income paid to taxpayers and may be required to report the income on Forms 1099. The final regulations provide that if the exchange funds are treated as loaned from the taxpayer to the QI and the loan is a below-market loan that does not qualify for an exemption from section 7872, income is deemed transferred to the exchange facilitator as compensation and retransferred to the taxpayer as interest. The exchange facilitator has income from the imputed compensation and an offsetting deduction for the interest deemed paid to the taxpayer.

The final regulations provide an exemption from section 7872 for exchange facilitator loans that do not exceed $2 million and provide that this exemption amount may be increased in future published guidance. Based on available data, this exemption from section 7872 is expected to apply to the majority of exchange transactions engaged in by small business exchange facilitators. Additionally, the final regulations revise the special AFR that determines whether a loan pays sufficient interest, which should reduce the number of transactions in which interest is imputed. Therefore, for most small businesses the final regulations are not expected to increase significantly the compliance burden associated with keeping records and reporting income paid to the taxpayer.

Actions To Minimize the Significant Economic Impact on Small Businesses and Reasons for Selecting Alternatives Reflected in the Final Regulations and for Rejecting Other Significant Alternatives

The final regulations provide a reasonable balance between the statutory requirements of sections 468B and 7872, the economic impact of a strict application of those provisions, and the need to provide clear and administrable rules. The inclusion of a $2 million exemption from section 7872, the adjustment of the special AFR, and the delayed applicability date reflect a judgment that the revenue effects are small and are outweighed by the compliance burden and other economic impacts of the regulations on small businesses.

Drafting Information

The principal authors of these regulations are Jeffrey T. Rodrick of the Office of Associate Chief Counsel (Income Tax & Accounting) and David B. Silber of the Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.468B–6 also issued under 26 U.S.C. 468B(g). * * * Section 1.7872–5 also issued under 26 U.S.C. 7872. * * * Section 1.7872–16 also issued under 26 U.S.C. 7872. * * *

■ **Par. 2.** Section 1.468B–0 is amended by adding entries for § 1.468B–6 to read as follows:

§ 1.468B–0 Table of contents.

* * * * *

§ 1.468B–6 Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property under section 1031(a)(3).

(a) Scope.
(b) Definitions.
(1) In general.
(2) Exchange funds.
(3) Exchange facilitator.
(4) Transactional expenses.
(i) In general.
(ii) Special rule for certain fees for exchange facilitator services.
(c) Taxation of exchange funds.
(1) Exchange funds generally treated as loaned to an exchange facilitator.
(2) Exchange funds not treated as loaned to an exchange facilitator.
(i) Scope.
(ii) Earnings attributable to the taxpayer's exchange funds.
(A) Separately identified account.
(B) Allocation of earnings in commingled accounts.
(C) Transactional expenses.
(iii) Treatment of the taxpayer.
(d) Information reporting requirements.
(e) Examples.
(f) Effective/applicability dates.
(1) In general.
(2) Transition rule.

* * * * *

■ **Par. 3.** Section 1.468B–6 is added to read as follows:

§ 1.468B–6 Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property under section 1031(a)(3).

(a) *Scope*. This section provides rules under section 468B(g) relating to the current taxation of escrow accounts, trusts, and other funds used during deferred exchanges.

(b) *Definitions*. The definitions in this paragraph (b) apply for purposes of this section.

(1) *In general. Deferred exchange, escrow agreement, escrow holder, exchange agreement, qualified escrow account, qualified intermediary, qualified trust, relinquished property, replacement property, taxpayer, trust agreement*, and *trustee* have the same meanings as in § 1.1031(k)–1; deferred exchange also includes any exchange intended to qualify as a deferred exchange, and qualified intermediary also includes any person or entity intended by a taxpayer to be a qualified intermediary within the meaning of § 1.1031(k)–1(g)(4).

(2) *Exchange funds. Exchange funds* means relinquished property, cash, or cash equivalent that secures an

obligation of a transferee to transfer replacement property, or proceeds from a transfer of relinquished property, held in a qualified escrow account, qualified trust, or other escrow account, trust, or fund in a deferred exchange.

(3) *Exchange facilitator. Exchange facilitator* means a qualified intermediary, transferee, escrow holder, trustee, or other party that holds exchange funds for a taxpayer in a deferred exchange pursuant to an escrow agreement, trust agreement, or exchange agreement.

(4) *Transactional expenses*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, *transactional expenses* means transactional items within the meaning of § 1.1031(k)–1(g)(7)(ii).

(ii) *Special rule for certain fees for exchange facilitator services.* The fee for the services of an exchange facilitator is not a transactional expense unless the escrow agreement, trust agreement, or exchange agreement, as applicable, provides that—

(A) The amount of the fee payable to the exchange facilitator is fixed on or before the date of the transfer of the relinquished property by the taxpayer (either by stating the fee as a fixed dollar amount in the agreement or determining the fee by a formula, the result of which is known on or before the transfer of the relinquished property by the taxpayer); and

(B) The amount of the fee is payable by the taxpayer regardless of whether the earnings attributable to the exchange funds are sufficient to pay the fee.

(c) *Taxation of exchange funds*—(1) *Exchange funds generally treated as loaned to an exchange facilitator.* Except as provided in paragraph (c)(2) of this section, exchange funds are treated as loaned from a taxpayer to an exchange facilitator (exchange facilitator loan). If a transaction is treated as an exchange facilitator loan under this paragraph (c)(1), the exchange facilitator must take into account all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds. See § 1.7872–16 to determine if an exchange facilitator loan is a below-market loan for purposes of section 7872 and § 1.7872–5(b)(16) to determine if an exchange facilitator loan is exempt from section 7872.

(2) *Exchange funds not treated as loaned to an exchange facilitator*—(i) *Scope.* This paragraph (c)(2) applies if, in accordance with an escrow agreement, trust agreement, or exchange agreement, as applicable, all the earnings attributable to a taxpayer's exchange funds are paid to the taxpayer.

(ii) *Earnings attributable to the taxpayer's exchange funds*—(A) *Separately identified account.* If an exchange facilitator holds all of the taxpayer's exchange funds in a separately identified account, the earnings credited to that account are deemed to be all the earnings attributable to the taxpayer's exchange funds for purposes of paragraph (c)(2)(i) of this section. In general, a separately identified account is an account established under the taxpayer's name and taxpayer identification number with a depository institution. For purposes of paragraph (c)(2)(i) of this section, a sub-account will be treated as a separately identified account if the master account under which the sub-account is created is established with a depository institution, the depository institution identifies the sub-account by the taxpayer's name and taxpayer identification number, and the depository institution specifically credits earnings to the sub-account.

(B) *Allocation of earnings in commingled accounts.* If an exchange facilitator commingles (for investment or otherwise) the taxpayer's exchange funds with other funds or assets, all the earnings attributable to the taxpayer's exchange funds are paid to the taxpayer if all of the earnings attributable to the commingled funds or assets that are allocable on a pro-rata basis (using a reasonable method that takes into account the time that the exchange funds are in the commingled account, actual rate or rates of return, and the respective account balances) to the taxpayer's exchange funds either are paid to the taxpayer or are treated as paid to the taxpayer under paragraph (c)(2)(ii)(C) of this section.

(C) *Transactional expenses.* Any payment from the taxpayer's exchange funds, or from the earnings attributable to the taxpayer's exchange funds, for a transactional expense of the taxpayer (as defined in paragraph (b)(4) of this section) is treated as first paid to the taxpayer and then paid by the taxpayer to the recipient.

(iii) *Treatment of the taxpayer.* If this paragraph (c)(2) applies, exchange funds are not treated as loaned from a taxpayer to an exchange facilitator. The taxpayer must take into account all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds.

(d) *Information reporting requirements.* A payor (as defined in § 1.6041–1) must report the income attributable to exchange funds to the extent required by the information reporting provisions of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code, and the regulations under those provisions. See § 1.6041–1(f) for rules relating to the amount to be reported when fees, expenses or commissions owed by a payee to a third party are deducted from a payment.

(e) *Examples.* The provisions of this section are illustrated by the following examples in which T is a taxpayer that uses a calendar taxable year and the cash receipts and disbursements method of accounting. The examples are as follows:

Example 1. All earnings attributable to exchange funds paid to taxpayer. (i) T enters into a deferred exchange with R. The sales agreement provides that T will transfer property (the relinquished property) to R and R will transfer replacement property to T. R's obligation to transfer replacement property to T is secured by cash equal to the fair market value of the relinquished property, which R will deposit into a qualified escrow account that T establishes with B, a depository institution. T enters into an escrow agreement with B that provides that all the earnings attributable to the exchange funds will be paid to T.

(ii) On November 1, 2008, T transfers property to R and R deposits $2,100,000 in T's qualified escrow account with B. Between November 1 and December 31, 2008, B credits T's account with $14,000 of interest. During January 2009, B credits T's account with $7000 of interest. On February 1, 2009, R transfers replacement property worth $2,100,000 to T and B pays $2,100,000 from the qualified escrow account to R. Additionally, on February 1, 2009, B pays the $21,000 of interest to T.

(iii) Under paragraph (b) of this section, the $2,100,000 deposited with B constitutes exchange funds and B is an exchange facilitator. Because all the earnings attributable to the exchange funds are paid to T in accordance with the escrow agreement, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B. T must take into account in computing T's income tax liability for 2008 the $14,000 of earnings credited to the qualified escrow account in 2008 and for 2009 the $7,000 of earnings credited to the qualified escrow account in 2009.

Example 2. Payment of transactional expenses from earnings. (i) The facts are the same as in *Example 1*, except that the escrow agreement provides that, prior to paying the earnings to T, B may deduct any amounts B has paid to third parties for T's transactional expenses. B pays a third party $350 on behalf of T for a survey of the replacement property. After deducting $350 from the earnings attributable to T's qualified escrow account, B pays T the remainder ($20,650) of the earnings.

(ii) Under paragraph (b)(4) of this section, the cost of the survey is a transactional expense. Under paragraph (c)(2)(ii)(C) of this section, the $350 that B pays for the survey is treated as first paid to T and then from T to the third party. Therefore, all the earnings attributable to T's exchange funds are paid or

treated as paid to T in accordance with the escrow agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B, and T must take into account in computing T's income tax liability the $21,000 of earnings credited to the qualified escrow account.

Example 3. Earnings retained by exchange facilitator as compensation for services. (i) The facts are the same as in *Example 1*, except that the escrow agreement provides that B also may deduct any outstanding fees owed by T for B's services in facilitating the deferred exchange. In accordance with paragraph (b)(4)(ii) of this section, the escrow agreement provides for a fixed fee of $1,200 for B's services, which is payable by T regardless of the amount of earnings attributable to the exchange funds. Because the earnings on the exchange funds in this case exceed $1,200, B retains $1,200 as the unpaid portion of its fee and pays T the remainder ($19,800) of the earnings.

(ii) Under paragraph (b)(4) of this section, B's fee is treated as a transactional expense. Under paragraph (c)(2)(ii)(C) of this section, the $1200 that B retains for its fee is treated as first paid to T and then from T to B. Therefore, all the earnings attributable to T's exchange funds are paid or treated as paid to T in accordance with the escrow agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B, and T must take into account in computing T's income tax liability the $21,000 of earnings credited to the qualified escrow account.

Example 4. Exchange funds deposited by exchange facilitator with related depository institution in account in taxpayer's name. (i) The facts are the same as in *Example 1* except that, instead of entering into an escrow agreement, T enters into an exchange agreement with QI, a qualified intermediary. The exchange agreement provides that R will pay $2,100,000 to QI, QI will deposit $2,100,000 into an account with a depository institution under T's name and taxpayer identification number (TIN), and all the earnings attributable to the account will be paid to T.

(ii) On May 1, 2008, T transfers property to QI, QI transfers the property to R, R delivers $2,100,000 to QI, and QI deposits $2,100,000 into a money market account with depository institution B under T's name and TIN. B and QI are members of the same consolidated group of corporations within the meaning of section 1501. Between May 1 and September 1, 2008, the account earns $28,000 of interest at the stated rate established by B. During the period May 1 to September 1, 2008, B invests T's exchange funds and earns $40,000. On September 1, 2008, QI uses $2,100,000 of the funds in the account to purchase replacement property identified by T and transfers the replacement property to T. B pays to T the $28,000 of interest earned on the money market account at the stated rate.

(iii) Under paragraph (b) of this section, the $2,100,000 QI receives from R for the relinquished property is exchange funds and QI is an exchange facilitator. B is not an exchange facilitator. T has not entered into an escrow agreement, trust agreement, or exchange agreement with B, and QI, not B, holds the exchange funds on behalf of T. Under paragraph (c)(2)(ii)(A) of this section, the $40,000 B earns from investing T's exchange funds are not treated as earnings attributable to T's exchange funds. Because all the earnings attributable to T's exchange funds are paid to T in accordance with the exchange agreement, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the $28,000 of interest earned on the money market account.

Example 5. Earnings of related depository institution credited to exchange facilitator. (i) The facts are the same as in *Example 4*, except that at the end of each taxable year, B credits a portion of its earnings on deposits to QI. The amount credited is based on the total amount of exchange funds QI has deposited with B during the year. At the end of the 2008 taxable year, B credits $152,500 of B's earnings to QI.

(ii) Under paragraph (c)(2)(ii)(A) of this section, no part of the $152,500 credited by B to QI is earnings attributable to T's exchange funds. Therefore, all of the earnings attributable to the exchange funds are paid to T in accordance with the exchange agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the $28,000 of interest earned on T's account.

Example 6. Exchange funds deposited by exchange facilitator with unrelated depository institution in sub-account in taxpayer's name. (i) The facts are the same as in *Example 4*, except that QI and B are unrelated and the money market account in which QI deposits the $2,100,000 received from T is a sub-account within a master account QI maintains with B in QI's name and TIN. The master account includes other sub-accounts, each in the name and TIN of a taxpayer that has entered into an exchange agreement with QI, into which QI deposits each taxpayer's exchange funds. Each month, B transfers to QI's master account an additional amount of interest based upon the average daily balance of all exchange funds within the master account during the month. At the end of the 2008 taxable year, B has credited $152,500 of additional interest to QI.

(ii) Under paragraph (c)(2)(ii)(A) of this section, no part of the $152,500 credited by B to QI is earnings attributable to T's exchange funds. Therefore, all of the earnings attributable to the exchange funds are paid to T in accordance with the exchange agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the $28,000 of interest earned on T's account.

Example 7. Marketing fee paid to exchange facilitator. (i) The facts are the same as in *Example 4*, except that at the end of each taxable year, B pays a marketing fee to QI for using B as its depository institution for exchange funds. The amount of the fee is based on the total amount of exchange funds QI has deposited with B during the year.

(ii) Under paragraph (c)(2)(ii)(A) of this section, no part of the marketing fee that B pays to QI is earnings attributable to T's exchange funds. Therefore, all of the earnings attributable to the exchange funds are paid to T in accordance with the exchange agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the $28,000 of interest earned on T's account.

Example 8. Stated rate of interest on account less than earnings attributable to exchange funds. (i) The facts are the same as in *Example 4*, except that the exchange agreement provides only that QI will pay T a stated rate of interest. QI invests the exchange funds and earns $40,000. The exchange funds earn $28,000 at the stated rate of interest, and QI pays the $28,000 to T.

(ii) Paragraph (c)(1) of this section applies and the exchange funds are treated as loaned from T to QI. QI must take into account in computing QI's income tax liability all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds. Paragraph (c)(2) of this section does not apply because QI does not pay all the earnings attributable to the exchange funds to T. See §§ 1.7872–5 and 1.7872–16 for rules relating to exchange facilitator loans.

Example 9. All earnings attributable to commingled exchange funds paid to taxpayer. (i) The facts are the same as in *Example 4*, except that the exchange agreement does not specify how the $2,100,000 QI receives from R must be invested.

(ii) On May 1, 2008, QI deposits the $2,100,000 with B in a pre-existing interest-bearing account under QI's name and TIN. The account has a total balance of $5,275,000 immediately thereafter. On the last day of each month between May and September, 2008, the account earns interest as follows: $17,583 in May, $17,642 in June, $18,756 in July, and $17,472 in August. On July 11, 2008, QI deposits $500,000 in the account. On August 15, 2008, QI withdraws $1,175,000 from the account.

(iii) QI calculates T's pro-rata share of the earnings allocable to the $2,100,000 based on the actual return, the average daily principal balances, and a 30-day month convention, as follows:

Month	Account's avg. daily bal.	T's avg. daily bal.	T's share* (percent)	Monthly interest	T's end. bal.**
May	$5,275,000	$2,100,000	39.8	$17,583	$2,106,998

Month	Account's avg. daily bal.	T's avg. daily bal.	T's share* (percent)	Monthly interest	T's end. bal.**
June	5,292,583	2,106,998	39.8	17,642	2,114,020
July	5,643,558	2,114,020	37.5	18,756	2,121,054
August	5,035,647	2,121,054	42.1	17,472	2,128,410

* T's Average Daily Balance ÷ Account's Average Daily Balance.
** T's beginning balance + [(T's share) (Monthly Interest)].

(iv) On September 1, 2008, QI uses $2,100,000 of the funds to purchase replacement property identified by T and transfers the property to T. QI pays $28,410, the earnings of the account allocated to T's exchange funds, to T.

(v) Because QI uses a reasonable method to calculate the pro-rata share of account earnings allocable to T's exchange funds in accordance with paragraph (c)(2)(ii)(B) of this section, and pays all those earnings to T, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI. T must take into account in computing T's income tax liability for 2008 the $28,410 of earnings attributable to T's exchange funds.

(f) *Effective/applicability dates*—(1) *In general*. This section applies to transfers of relinquished property made by taxpayers on or after October 8, 2008.

(2) *Transition rule*. With respect to transfers of relinquished property made by taxpayers after August 16, 1986, but before October 8, 2008, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income attributable to exchange funds.

■ **Par. 4.** Section 1.1031(k)–1 is amended by adding a sentence at the end of paragraph (h)(2) to read as follows:

§ 1.1031(k)–1 Treatment of deferred exchanges.

* * * * *

(h) * * *

(2) * * * For rules under section 468B(g) relating to the current taxation of qualified escrow accounts, qualified trusts, and other escrow accounts, trusts, and funds used during deferred exchanges of like-kind property, see § 1.468B–6.

* * * * *

■ **Par. 5.** Section 1.7872–5 is added to read as follows:

§ 1.7872–5 Exempted loans.

(a) *In general*—(1) *General rule*. Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations under that section, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans*. If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D).

(b) *List of exemptions*. Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) through (15) [Reserved]. For further guidance, see § 1.7872–5T(b)(1) through (15).

(16) An exchange facilitator loan (within the meaning of § 1.468B–6(c)(1)) if the amount of the exchange funds (as defined in § 1.468B–6(b)(2)) treated as loaned does not exceed $2,000,000 and the duration of the loan is 6 months or less. The Commissioner may increase this $2,000,000 loan exemption amount in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(c) [Reserved]. For further guidance, see § 1.7872–5T(c).

(d) *Effective/applicability date*. This section applies to exchange facilitator loans issued on or after October 8, 2008.

■ **Par. 6.** Section 1.7872–16 is added to read as follows:

§ 1.7872–16 Loans to an exchange facilitator under § 1.468B–6.

(a) *Exchange facilitator loans*. This section provides rules in applying section 7872 to an exchange facilitator loan (within the meaning of § 1.468B–6(c)(1)). For purposes of this section, the terms *deferred exchange, exchange agreement, exchange facilitator, exchange funds, qualified intermediary, replacement property*, and *taxpayer* have the same meanings as in § 1.468B–6(b).

(b) *Treatment as demand loans*. For purposes of section 7872, except as provided in paragraph (d) of this section, an exchange facilitator loan is a demand loan.

(c) *Treatment as compensation-related loans*. If an exchange facilitator loan is a below-market loan, the loan is a compensation-related loan under section 7872(c)(1)(B).

(d) *Applicable Federal rate (AFR) for exchange facilitator loans*. For purposes of section 7872, in the case of an exchange facilitator loan, the applicable Federal rate is the lower of the short-term AFR in effect under section 1274(d)(1) (as of the day on which the loan is made), compounded semiannually, or the 91-day rate. For purposes of the preceding sentence, the 91-day rate is equal to the investment rate on a 13-week (generally 91-day) Treasury bill with an issue date that is the same as the date that the exchange facilitator loan is made or, if the two dates are not the same, with an issue date that most closely precedes the date that the exchange facilitator loan is made.

(e) *Use of approximate method permitted*. The taxpayer and exchange facilitator may use the approximate method to determine the amount of forgone interest on any exchange facilitator loan.

(f) *Exemption for certain below-market exchange facilitator loans*. If an exchange facilitator loan is a below-market loan, the loan is not eligible for the exemptions from section 7872 listed under § 1.7872–5T. However, the loan may be eligible for the exemption from section 7872 under § 1.7872–5(b)(16) (relating to exchange facilitator loans in which the amount treated as loaned does not exceed $2,000,000).

(g) *Effective/applicability date*. This section applies to exchange facilitator loans issued on or after October 8, 2008.

(h) *Example*. The provisions of this section are illustrated by the following example:

Example. (i) T enters into a deferred exchange with QI, a qualified intermediary. The exchange is governed by an exchange agreement. The exchange funds held by QI pursuant to the exchange agreement are treated as loaned to QI under § 1.468B–6(c)(1). The loan between T and QI is an exchange facilitator loan. The exchange agreement between T and QI provides that no earnings will be paid to T. On December 1, 2008, T transfers property to QI, QI transfers the property to a purchaser for $2,100,000, and QI deposits $2,100,000 in a money market account. On March 1, 2009, QI uses $2,100,000 of the funds in the account to purchase replacement property identified by T, and transfers the replacement property to T. The amount loaned for purposes of section 7872 is $2,100,000 and the loan is

outstanding for three months. For purposes of section 7872, under paragraph (d) of this section, T uses the 91-day rate, which is 4 percent, compounded semi-annually. T uses the approximate method for purposes of section 7872.

(ii) Under paragraphs (b) and (c) of this section, the loan from T to QI is a compensation-related demand loan. Because there is no interest payable on the loan from T to QI, the loan is a below-market loan under section 7872. The loan is not exempt under § 1.7872–5(b)(16) because the amount treated as loaned exceeds $2,000,000. Under section 7872(e)(2), the amount of forgone interest on the loan for 2008 is $7000 ($2,100,000*.04/2*1/6). Under section 7872(e)(2), the amount of forgone interest for 2009 is $14,000 ($2,100,000*.04/2*2/6). The $7000 for 2008 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on December 31, 2008. The $14,000 for 2009 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on March 1, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 2, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15739 Filed 7–9–08; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–91; FCC 08–141]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission provides clarification in connection with two issues addressed in the Report and Order. The Commission will address other issues raised in Petitions for Reconsideration in a future order. The Commission adopted a Report and Order in the Third DTV Periodic Review of the progress of the DTV transition. MSTV and NAB filed a joint petition for reconsideration requesting clarification of two issues in connection with the Order.

DATES: Effective July 10, 2008.

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

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Kim Matthews, *Kim.Matthews@fcc.gov,* 202–418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MB Docket No. 07–91, FCC 08–141, adopted May 29, 2008 and released May 29, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Order

1. In this Order, the Commission provides clarification in connection with two issues addressed in the Report and Order in the Third DTV Periodic Review proceeding. The Commission will address other issues raised in Petitions for Reconsideration in a future order. On December 22, 2007, the Commission adopted a Report and Order in the Third DTV Periodic Review, 73 FR 5634, January 30, 2008, of the progress of the DTV transition. MSTV and NAB filed a joint petition for reconsideration requesting clarification of two issues in connection with the Order. *See* Petition for Reconsideration and Clarification of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, filed February 29, 2008 (MSTV/NAB Petition).

2. First, MSTV/NAB sought clarification that where more than one of the Commission's viewer notification obligations adopted in the Order is triggered, a station may comply with the Commission's requirements through use of a consolidated notification that includes all of the elements required in each of the viewer notification obligations. There was nothing in the Third DTV Periodic to indicate that separate notifications are required by a station that is obligated to inform its viewers of changes in its analog or digital service during the same time frame. Stations must notify viewers in the following circumstances: (1) When the station is seeking an extension of time to construct post-transition facilities and will not be serving on February 18, 2009 at least the same population that receives the station's current analog TV and DTV service (*see Third DTV Periodic Report and Order,* 23 FCC Rcd at 3033, ¶ 80); (2) when the station will not be serving on February 18, 2009 at least the same population that receives its current analog TV and DTV service and is seeking STA approval to use one of the provisions for a phased transition (*see id.* at 3037–38, ¶ 91); (3) when the station will permanently reduce or terminate analog service thirty days or less prior to the transition deadline (*see id.* at 3044, ¶ 106); (4) when the station is seeking approval for longer term (significantly more than 30 days) reduction or termination of analog service before the transition date (*see id.* at 3050, ¶ 117); and (5) where a station on channels 52–58 seeks to flash cut and to terminate analog or digital service on its out-of-core channel (*see id.* at 3057–58, ¶ 132). In addition, stations seeking to permanently reduce or terminate analog service within 90 days of the transition date have a more streamlined viewer notification procedure (*see id.* at 3058, ¶ 134). No one filed an opposition to this MSTV/NAB request for clarification. We hereby clarify that we will permit use of such a consolidated notification in circumstances in which the Commission approves service adjustments that overlap in time. Indeed, we believe it could be confusing for viewers to hear multiple notifications that seem to conflict. Stations that prefer to have separate notifications for separate service adjustments may take that approach, as well, provided they offer clear information to viewers. We remind stations that Viewer Notification requirements are in addition to and not instead of the consumer education requirements that apply to all full power broadcasters. *See In the Matter of DTV Consumer Education Initiative,* Report and Order, 23 FCC Rcd 4134 (2008) (''*DTV Consumer Education Order*''), recon. order adopted April 23, 2008 (FCC 08–119). *See also Third DTV Periodic Report and Order,* 23 FCC Rcd at 3033, ¶ 80, 3037–38, ¶ 91, 3044, ¶ 106, 3057–58, ¶ 132, and 3058, ¶ 134.

3. Second, MSTV/NAB ask that the Commission acknowledge that real-time updates to the Event Information Table (EIT) are permissive and not required under the new PSIP standard adopted in the Order. No party opposed this request for clarification. John Willkie,

doing business as EtherGuide Systems, filed a partial Opposition to the MSTV/NAB Petition. *See* Opposition to Petitions for Reconsideration filed by Harris Corporation (Harris), Association for Maximum Service Television (MSTV) and National Association of Broadcasters (NAB), and Cohen, Dippell and Everist, P.C. (CDE) and Clarification of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, filed March 10, 2008. Mr. Willkie disputed MSTV's and Harris Corporation's contention that PSIP automation equipment is not currently available and other issues raised in the Petitions for Reconsideration filed by MSTV/NAB, Harris and CDE. Willkie acknowledged that the Third DTV Periodic did not require automation systems to comply with the PSIP requirements but opined that use of automation systems would, as a practical matter, facilitate compliance. *Id.* at 1–3. He also advocated Commission waivers for stations that were unable to obtain automation equipment. *Id.* at 6. While we encourage stations to update the EIT as rapidly as possible when overages or other circumstances result in changes to scheduled programs, our rules and policies do not require that updates be accomplished in real-time. The rule adopted in the Third DTV Periodic incorporates by reference the ATSC PSIP Standard A/65C which does not require real-time updates. *See Third DTV Periodic Report and Order,* 23 FCC Rcd at 3079, ¶ 185; 47 CFR 73.682(d). Because real-time updates are not required, there is no need to address the alternative request in MSTV/NAB's petition for reconsideration for an extension of the effective date for compliance with the rule. See MSTV/NAB Petition at 2–3. *See also* Harris Corporation, Petition for Reconsideration, filed February 29, 2008 (requesting one year extension of time). The adoption of the revised PSIP standard will become effective 120 days following **Federal Register** publication of the *Third DTV Periodic Report and Order,* subject to OMB approval by that date. *See Third DTV Periodic Report and Order,* 23 FCC Rcd at 3088–3089, ¶ 210. The *Third DTV Periodic Report and Order* was published in the **Federal Register** on January 30, 2008. *See* 75 FR 5634, January 30, 2008. OMB approved the PSIP information collection on March 4, 2008 (OMB control number 3060–1104). Thus, the new PSIP rule will become effective May 29, 2008. If and when the ATSC PSIP Standard A/65C mandates real-time updates to the EIT, we may revisit this issue.

4. Accordingly, *It is ordered* that, pursuant to sections 1, 4(i), 4(j), 7, 301, 303 and 405 of the Communications Act, 47 U.S.C. 151, 154(i) and (j), 157, 301, 303, and 305, and §§ 1.2 and 1.106 of the Commission's rules, 47 CFR 1.2 and 1.106, this Order on Clarification is adopted.

5. The Commission will not send a copy of this Report & Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Report and Order is simply clarifying rules that were previously adopted in the Third Periodic Review of the Commission's rules and Policies Affection the Conversion to Digital Television, FCC 07–228.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–15763 Filed 7–9–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071004577–8124–02]

RIN 0648–XI94

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment to the Total Allowable Catch of Georges Bank Yellowtail Flounder from the United States/Canada Management Area for Fishing Year 2008

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

ACTION: Inseason action; temporary rule adjusting specifications.

SUMMARY: NMFS announces that the Total Allowable Catch (TAC) in the U.S./Canada Management Area for Georges Bank (GB) yellowtail flounder was exceeded for fishing year (FY) 2007, requiring an adjustment of the GB yellowtail flounder TAC for FY 2008. This action complies with the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) and is intended to continue the rebuilding program for yellowtail flounder in the FMP by taking into account previous overages of the yellowtail flounder quota.

DATES: Effective August 11, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION: A temporary rule specifying the TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area was published in the **Federal Register** on March 28, 2008 (73 FR 16571). That action established the FY 2008 TACs of GB cod, haddock, and yellowtail flounder at 667 mt, 8,050 mt, and 1,950 mt, respectively, and specified that, should an analysis of the catch by U.S. vessels indicate that an overage occurred during FY 2007, the pertinent TAC would be adjusted downward in order to be consistent with the FMP and the U.S./Canada Management Understanding. The regulations state, at § 648.85(a)(2)(ii), that: ''Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.'' The March 28, 2008, temporary rule also specified that the public would be notified of such an adjustment through publication in the **Federal Register** and through a letter to permit holders.

Based upon vessel reports, dealer reports, and other information available as of June 6, 2008, the total estimated catch of GB yellowtail flounder in the U.S./Canada Management Area during FY 2007 was 981.3 mt. This exceeds the FY 2007 GB yellowtail flounder TAC of 900 mt by 81.3 mt. Therefore, an overage of 81.3 mt of GB yellowtail flounder is being deducted from the FY 2008 U.S./Canada GB yellowtail flounder TAC through this action. This results in an adjusted TAC of 1,868.7 mt for FY 2008.

The Eastern GB cod and haddock TACs were not exceeded in FY 2007. Therefore, these TACs are not adjusted. The TACs for Eastern GB cod and Eastern GB haddock remain 667 mt and 8,050 mt, respectively.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as notice and comment would be unnecessary. The regulations under § 648.85(a)(2)(ii), which were subject to prior public comment, require any overage of the TAC for GB yellowtail

flounder be deducted from the TAC in the following fishing year. Accordingly, the action being taken by this temporary rule is non-discretionary. Since this is a non-discretionary action, based on numerous records solely in the possession of NMFS, public comment would not serve to inform the agency calculation of the overage and its deduction from the appropriate TAC.

The rate of harvest of GB yellowtail flounder by groundfish vessels and scallop vessels fishing in the Scallop Access Areas in the U.S./Canada Management Area as reported from Vessel Monitoring Systems is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action as a result of a GB yellowtail flounder TAC being exceeded during FY 2007. Further, the potential that one or more of the FY 2007 TACs for the U.S./Canada stocks could be exceeded was considered and open to public comment during the proposed rule stage of the temporary rule setting the U.S./Canada TACs for FY 2008. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

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

Dated: July 3, 2008.

Emily H. Menashes,

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

[FR Doc. E8–15717 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–XI87

[Docket No. 080408542–8615–01]

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Suspension of the Primary Pacific Whiting Season for the Shore-based Sector South of 42° North Latitude

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the suspension of the primary season forPacific whiting (whiting) fishery for the shore-based sector south of 42° N. lat. at noon local time (l.t.) May 21, 2008. ''Per trip'' limits for whiting were reinstated until 0001 hours June 15, 2008, at which time the primary season for the shore-based sector opened coastwide. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at the 2008 allocation levels.

DATES: Effective from noon l.t. May 21, 2008, until 0001 hours June 15, 2008. Comments will be accepted through August 8, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–XI87 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2008 commercial Optimum Yield (OY) for Pacific whiting is 232,545 mt. This is calculated by deducting the 35,000–mt tribal allocation and 2,000–mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (79,065 mt), motherships getting 24 percent (55,810 mt), and the shore-based sector getting 42 percent (97,669 mt). The regulations further divide the shore-based allocation so that no more than 5 percent (4,883 mt) of the shore-based allocation may be taken in waters off the State of California before the primary season begins north of 42° N. lat.

The primary season for the shore-based sector is the period or periods when the large-scale target fishery is conducted, and when ''per trip'' limits are not in effect. Because whiting migrate from south to north during the fishing year, the shore-based primary whiting season begins earlier south of 42° N. lat. than north. For 2008: the primary season for the shore-based sector between 42°-40°30′ N. lat. began on April 1; south of 40°30′ N. lat., the primary season began on April 15; and the fishery north of 42° N. lat. is scheduled to begin June 15.

Because the 4,883 mt allocation for the early season fishery off California was estimated to be reached, NMFS is announcing the suspension of the primary whiting season south of 42° N. lat. Regulations at 50 CFR 660.323 (b)(4) allow this action to be taken. The 20,000–lb (9,072 kg) trip limit that was in place before the start of the southern primary season was reinstated remained in effect until the primary June 15. A trip limit of 10,000 lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited) for vessels that fish in the Eureka area shoreward of the 100–fm(183–m) contour at any time during a fishing trip. This smaller limit is intended to minimize incidental catch of Chinook salmon, which are more likely to be caught shallower than 100 fm (183 m) in the Eureka area.

To prevent an allocation from being exceeded, regulations at 50 CFR 660.323 (e) allow closure of the commercial whiting fisheries by actual notice to the fishery participants. Actual notice includes e-mail, internet, phone, fax, letter or press release. NMFS provided actual notice by e-mail, internet, and fax on May 20, 2008.

NMFS Action

This action announces achievement of the shore-based sector allocation specified at 50 CFR 660.323(a) for the fishery south of 42° N. lat. The best available information on May 20, 2008, indicated that 4,521 metric tons (mt) of whiting was taken through May 19, 2008 and that the 4,883 mt shore-based allocation for the early season fishery south of 42° N. lat would be reached by noon May 21, 2008. For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(b)(4), NMFS herein announces: Effective noon l.t. May 21, 2008 until 0001 l.t., June 15, 2008, the primary whiting season south of 42° N. lat is suspended. No more than 20,000–lb (9,072 kg) of whiting may be taken and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43°–40° 30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536 kg) trip limit applies.

Classification

This action is authorized by the regulations implementing the groundfish FMP. The determination to take these actions is based on the most

recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this restriction were delayedin order to provide notice and comment, it would allow the allocation for the shore-based fishery south of 42° N. lat. to be exceeded. Similarly, the AA finds good cause to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3), as such a delay would cause the fishery south of 42° N. lat. to exceed its allocation. Allowing the early season fishery to continue would result in a disproportionate shift in effort, which could result in greater impacts on Endangered Species Act listed Chinook salmon and overfished groundfish species that had been considered when the 2008 Pacific Coast groundfish harvest specifications were established.

This action is taken under the authority of 50 CFR 660.323(b)(4), and is exempt from review under Executive Order 12866.

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

Dated: July 7, 2008.

Emily H. Menashes,

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

[FR Doc. E8–15716 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XI93

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA is 2,141 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,121 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 2, 2008.

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

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

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

Dated: July 3, 2008.

Emily H. Menashes

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

[FR Doc. 08–1425 Filed 7–3–08; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 133
Thursday, July 10, 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–2008–0759; Directorate Identifier 2008–NE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for PW models JT9D–7, –7A, –7AH, –7H, –7F, and –7J turbofan engines. This proposed AD would require initial and repetitive borescope inspections of the 2nd stage high-pressure turbine (HPT) rotor and stator assembly. This proposed AD results from an uncontained failure of a 2nd stage HPT rotor disk that caused the engine to separate from the airplane. We are proposing this AD to prevent failure of the 2nd stage HPT rotor disk, which could result in uncontained engine failure, damage to the airplane, and the engine separating from the airplane.

DATES: We must receive any comments on this proposed AD by September 8, 2008.

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

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

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov*; telephone (781) 238–7758, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0759; Directorate Identifier 2008–NE–02–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On October 20, 2004, a PW JT9D–7A engine experienced an uncontained failure of the 2nd stage HPT rotor disk. The resulting imbalance caused the engine to separate from the airplane. Root cause investigation revealed that improper assembly caused the 2nd stage HPT vane assemblies to lean back into the 2nd stage HPT rotor disk. The investigation found indications of three improper assembly steps within the engine that contributed to this vane lean back, disk fracture, uncontained event.

- First, the investigation found an improper silver-based antigallant.
- Second, the lock wire on the 2nd stage HPT vane retaining bolts was not applied correctly.
- Finally, the 2nd stage HPT vane retaining bolts were reused.
- Pratt & Whitney determined that the assembly procedures in the engine manual (EM) might be misinterpreted and issued new procedures to ensure the repair facilities follow proper assembly procedures. Because PW was unable to determine the time frame over which the repair facility used the old assembly procedures, they developed a borescope inspection to identify vane lean back of the 2nd stage HPT vanes of all JT9D–7 series engines. This condition, if not corrected, could result in uncontained engine failure, damage to the airplane, and the engine separating from the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) JT9D A6488, Revision 1, dated April 18, 2008, that describes the procedures and inspection requirements for borescope inspection of the 2nd stage HPT vanes.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require an initial and repetitive borescope inspection of the

2nd stage HPT vane assembly. The proposed AD would require you to use the service information described previously to perform these actions.

Interim Action

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

Costs of Compliance

We estimate that this proposed AD would affect 240 engines installed on airplanes of U.S. registry. We also estimate that it would take about 5 work-hours per engine to perform the proposed actions, that each engine might require two inspections, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $192,000.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would 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. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 airworthiness directive:

Pratt & Whitney: Docket No. FAA–2008–0759; Directorate Identifier 2008–NE–02–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–7, –7A, –7AH, –7H, –7F, and –7J turbofan engines. These engines are installed on, but not limited to, Boeing 747 series airplanes.

Unsafe Condition

(d) This AD results from an uncontained failure of a 2nd stage high-pressure turbine (HPT) rotor disk that caused the engine to separate from the airplane. We are issuing this AD to prevent failure of the 2nd stage HPT rotor disk, which could result in uncontained engine failure, damage to the airplane, and the engine separating from the airplane.

Compliance

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

Initial Borescope Inspection

(f) Within 100 cycles-in-service (CIS) after the effective date of this AD, or within 1,000 CIS after the last HPT module overhaul, whichever occurs later, do the following:

(1) Use the Accomplishment Instructions of PW Alert Service Bulletin (ASB) JT9D A6488, Revision 1, dated April 18, 2008, to borescope-inspect the 2nd stage HPT rotor and stator assembly either on-wing or in the shop.

(2) If you see any damage or contact between the 2nd stage HPT vanes and the 2nd stage HPT rotor, remove the engine from service.

Repetitive Borescope Inspection

(g) Thereafter, within 1,000 cycles-since-last inspection, do the following:

(1) Use the Accomplishment Instructions of PW ASB JT9D A6488 Revision 1, dated April 18, 2008, to borescope-inspect the 2nd stage HPT rotor and stator assembly either on-wing or in the shop.

(2) If you see any damage or contact between the 2nd stage HPT vanes and the 2nd stage HPT rotor, remove the engine from service.

Optional Terminating Action

(h) Installing the 2nd stage HPT vanes as specified in the JT9D–7 Engine Manual Revision 122, dated February 15, 2008, terminates the repetitive inspection requirement specified in paragraph (g) of this AD.

Alternative Methods of Compliance

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

Related Information

(j) PW ASB JT9D A6488, Revision 1, dated April 18, 2008, pertains to the subject of this AD.

(k) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: mark.riley@faa.gov*; telephone (781) 238–7758; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on July 3, 2008.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–15682 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0732; Directorate Identifier 2008–NM–053–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> * * * [S]ome aircraft could have experienced wing overpressure consecutive to the latent failure of both [pressure relief] valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. * * *

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 August 11, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0732; Directorate Identifier 2008–NM–053–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0021, dated January 31, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Analysed in-service events revealed that corrosion of pressure relief valves in wing fuel tanks was likely to occur well before reaching their Time Between Overhaul (TBO) and could make the valves stick in the closed position.
>
> Therefore some aircraft could have experienced wing overpressure consecutive to the latent failure of both valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. Consequently this Airworthiness Directive (AD) mandates introduction of a new repetitive inspection of the wing structure.

The repetitive ultrasonic inspection is intended to detect incipient cracking on the stiffeners of the right-hand and left-hand wing lower panels between ribs 13 and 17 (the inspection area extends to just beyond rib 16). The corrective actions if any cracking is found include contacting Dassault for repair instructions, and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Temporary Revision 74, dated November 2007, to the Dassault Falcon 50 Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners between Ribs 13 and 16 (ATA 57–00–21).'' The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 247 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $118,560, or $480 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:

Dassault Aviation: Docket No. FAA–2008–0732; Directorate Identifier 2008–NM–053–AD.

Comments Due Date

(a) We must receive comments by August 11, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dassault Model Mystere-Falcon 50 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Analysed in-service events revealed that corrosion of pressure relief valves in wing fuel tanks was likely to occur well before reaching their Time Between Overhaul (TBO) and could make the valves stick in the closed position.

Therefore some aircraft could have experienced wing overpressure consecutive to the latent failure of both valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. Consequently this Airworthiness Directive (AD) mandates introduction of a new repetitive inspection of the wing structure.

The repetitive ultrasonic inspection is intended to detect incipient cracking on the stiffeners of the right-hand and left-hand wing lower panels between ribs 13 and 17 (the inspection area extends to just beyond rib 16). The corrective actions if any cracking is found include contacting Dassault for repair instructions, and doing the repair.

Actions and Compliance

(f) Unless already accomplished, do the following actions: Prior to the accumulation of 14,200 total flight cycles, or within 160 flight cycles after the effective date of this AD, whichever occurs later, do the ultrasonic inspection described in Temporary Revision 74, dated November 2007, to the Dassault Falcon 50 Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners between Ribs 13 and 16 (ATA 57–00–21).'' Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 5,350 flight cycles.

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, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0021, dated January 31, 2008, and Temporary Revision 74, dated November 2007, to the Dassault Falcon 50 Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners between Ribs 13 and 16 (ATA 57–00–21),'' for related information.

Issued in Renton, Washington, on June 27, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15714 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142040–07]

RIN 1545–BH53

Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute. These proposed regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of governmental plans.

DATES: Written or electronic comments and requests for a public hearing must be received by October 8, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142040–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–142040–07),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142040–07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy V. Pastor or Michael P. Brewer at (202) 622–6090 (not a toll-free number); concerning submission of comments or to request a public hearing, *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to regulations under sections 401(a)(9) and 403(b) of the Code. Section 401(a)(9) provides required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires (''the required beginning date''). If the entire interest of the participant is not distributed by the required beginning date, then section 401(a)(9)(A) provides that the entire interest of the participant must be distributed beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) provides the required minimum distribution rules after the death of the participant.

IRAs described in section 408, section 403(b) plans, and eligible deferred compensation plans under section 457(b), also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections.

In 2002, the IRS and the Treasury Department published final regulations under sections 401(a)(9), 403(b), and 408 in the **Federal Register** (67 FR 18987). Section 1.401(a)(9)–1, A–2(a), provides that the final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. The rules for defined benefit plans and annuities were included in a temporary regulation, § 1.401(a)(9)–6T, as well as in a proposed regulation (67 FR 18834) in order to allow taxpayers to comment on the rules.

In 2004, the IRS and the Treasury Department replaced the temporary regulations with final regulations under § 1.401(a)(9)–6 (69 FR 33288). The final regulations contain a ''grandfather rule'' in Q&A–16, which provides that annuity distribution options provided under the terms of a governmental plan (within the meaning section 414(d)) as in effect on April 17, 2002, are treated as satisfying the requirements of section 401(a)(9) if they satisfy a reasonable and good faith interpretation of the provisions of section 401(a)(9). In addition, Q&A–17 provides that, for distributions from any defined benefit plan or annuity contract during 2003, 2004, and 2005, the payments could satisfy a reasonable and good faith interpretation of section 401(a)(9) in lieu of § 1.401(a)(9)–6. For governmental plans, § 1.401(a)(9)–6, Q&A–17, extended this reasonable good faith standard to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

In 2003, the IRS and the Treasury Department published final regulations under section 457(b) in the **Federal Register** (68 FR 41230). These regulations included § 1.457–6(d), which provides that a section 457(b) eligible plan must meet the requirements of section 401(a)(9) and the regulations under that section.

In 2007, the IRS and the Treasury Department published final regulations under section 403(b) in the **Federal Register** (72 FR 41128). These regulations, which become effective for tax years beginning after December 31, 2008, included § 1.403(b)–6(e)(1), which provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)–6(e)(2) provides, with certain exceptions, that section 403(b) contracts apply the section 401(a)(9) required minimum distribution rules in accordance with § 1.408–8.

Section 1.408–8, Q&A–1, provides, with certain exceptions, that in order to satisfy section 401(a)(9) for purposes of determining required minimum distributions, the rules of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9 must be applied.

Section 823 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), instructs the Secretary of the Treasury to issue regulations under which, for all years to which section 401(a)(9) applies, a governmental plan, within the meaning of section 414(d), shall be treated as having complied with section 401(a)(9) if such plan complies with a reasonable good faith interpretation of section 401(a)(9).

Explanation of Provisions

The proposed regulations would amend the regulations under section 401(a)(9) to treat a governmental plan, within the meaning of section 414(d), as having complied with the rules of section 401(a)(9) if the governmental plan applies a reasonable and good faith interpretation of section 401(a)(9). The same rule would apply to an eligible 457(b) plan maintained by a government. In addition, this rule would apply to a section 403(b) contract that is part of a governmental plan, and the regulations under section 403(b) would be amended accordingly. The proposed regulations would also make conforming amendments to the regulations under section 401(a)(9) that eliminate other special rules for governmental plans which would be rendered superfluous with this change.

Proposed Effective/Applicability Date

These regulations are proposed to be applied to all years for which section 401(a)(9) applies.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because §§ 1.401(a)(9)–1 and 1.403(b)–6 would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (one signed and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if a request to speak is submitted in writing by any person who timely submits written comments. If a public hearing is

scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Michael P. Brewer and Cathy V. Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(a)(9)–1 is amended by adding a new paragraph (d) to A–2 as follows:

§ 1.401(a)(9)–1 Minimum distribution requirement in general.

* * * * *

A–2. * * * (d) *Special rule for governmental plans.* Notwithstanding anything to the contrary in this A–2, a governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in § 1.457–2(f), is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

* * * * *

§ 1.401(a)(9)–6 [Amended]

Par. 3. Section 1.401(a)(9)–6 is amended by:

1. Removing Q&A–16.
2. Redesignating Q&A–17 as Q&A–16.
3. Removing the word ''A–16'' and adding ''A–15'' in the newly-designated A–16.
4. Removing the last sentence of the newly-designated A–16.

Par. 4. Section 1.403(b)–6 is amended by:

1. Revising the last sentence of paragraph (e)(2).
2. Adding a new paragraph (e)(8).

The revisions and addition are as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) Minimum required distributions for eligible plans.

* * * * *

(2) * * * Consequently, except as otherwise provided in this paragraph (e), the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 for purposes of determining required minimum distributions.

* * * * *

(8) *Special rule for governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the contract complies with a reasonable and good faith interpretation of section 401(a)(9).

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–15740 Filed 7–9–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

[Docket No. OJP (BJA) 1478]

RIN 1121–AA75

Public Safety Officers' Benefits Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Office of Justice Programs of the U.S. Department of Justice proposes this rule to amend the regulation that implements the Public Safety Officers' Benefits Act and associated or related statutes. Generally speaking, these laws provide financial support to certain public safety officers, or their survivors and families, when such officers die, or become permanently and totally disabled, as a result of line-of-duty injuries, or when they die of heart attacks or strokes sustained within statutorily-specified timeframes of engaging or participating in certain line-of-duty activity. The proposed rule would amend the implementing regulation to reflect internal agency policy and practice, recent statutory enactments and court decisions, and to make certain technical changes, in order to keep the regulations comprehensive and current.

DATES: Comments must be received by no later than 5 p.m., E.S.T., on September 8, 2008.

ADDRESSES: Please address all comments regarding this proposed rule, by U.S. mail, to: Hope Janke, Counsel to the Director, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531; by telefacsimile transmission, to: Hope Janke, Counsel to the Director, at (202) 305–1367. To ensure proper handling, please reference OJP Docket No. 1478 on your correspondence. You may view an electronic version of this proposed rule at *http://www.regulations.gov*, and you may also comment by using the *http://www.regulations.gov* form for this regulation. When submitting comments electronically, you must include OJP Docket No. 1478 in the subject box.

FOR FURTHER INFORMATION CONTACT: Hope Janke, Counsel to the Director, Bureau of Justice Assistance, at (202) 514–6278, or toll-free at 1 (888) 744–6513.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase ''Personal Identifying Information'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase ''Confidential Business Information'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that

comment may not be posted on *http://www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

The Public Safety Officers' Benefits (PSOB) Program (established pursuant not only the Public Safety Officers' Benefits Act of 1976 proper, but also to certain associated or related statutes, enacted in 2001) is administered by the Bureau of Justice Assistance (BJA) of the Office of Justice Programs, U.S. Department of Justice. The PSOB Program provides a one-time financial payment to the statutorily-eligible survivors of public safety officers who die as the direct and proximate result of (actual or presumed) traumatic injuries sustained in the line of duty, as well as educational assistance for certain of those survivors. Alternatively, the PSOB Program provides a one-time financial payment to public safety officers themselves who are permanently and totally disabled as the direct result of catastrophic injuries sustained in the line of duty, as well as educational assistance for their spouses and certain of their children. BJA is prepared to pay, as expeditiously as possible, every eligible claim relating to an officer, according to the requirements of the law.

Pursuant to 42 U.S.C. 3796c(a), 3796(a) & (b), 3796d–3(a) & (b), and 3782(a) (each of which expressly authorizes the issuance of regulations), on August 10, 2006, BJA promulgated a final rule that comprehensively revised the implementing regulatory structure for the program, a revision largely precipitated by the Hometown Heroes Survivors Benefits Act (HHSBA) of 2003, Public Law 108–182, discussed at greater length below. Since that final rule went into effect on September 11, 2006, one statutory provision (section 6 (div. B, tit. II, Public Safety Officers Benefits heading proviso), Public Law 110–161, 121 Stat 1912) directly affecting the program has been signed into law (December 26, 2007); additionally, the U.S. Court of Appeals for the Federal Circuit has issued four opinions to date applying the PSOB program statute (*Hawkins* v. *United States*, 469 F.3d 993 (2006); *Cassella* v. *United States*, 469 F.3d 1376 (2006); *Amber-Messick* v. *United States*, 483 F.3d 1316 (2007), *cert.* denied, __ U.S. __, 128 S.Ct. 648 (2007); *Groff* v. *United States*, 493 F.3d 1343 (2007), *cert.* denied, __ U.S. __, 128 S.Ct. 1219 (2008)), and four opinions relating to the program have been issued by the Court of Federal Claims (*Hillensbeck* v. *United States*, 74 Fed. Cl. 477 (2006); *White* ex rel. *Roberts* v. *United States*, 74 Fed. Cl. 769 (2006) (appeal pending in the Federal Circuit); *Dawson* v. *United States*, 75 Fed. Cl. 53 (2007); *Winuk* v. *United States*, 77 Fed. Cl. 207 (2007)).

As an overarching matter, the main impetus for the present proposed rule is the desire to keep the PSOB regulation as useful and reflective of program practice as possible. The PSOB rule (prior to the 2006 overhaul) had largely become disconnected from the reality of how the program was actually being implemented, resulting in a regulation which was, generously, not very useful. The 2006 comprehensive revision of the PSOB rule sought to address this. However, the sheer scope of any comprehensive revision to a program's implementing regulation make it all-but inevitable that at least some changes (occasioned by the discovery—in the back-and-forth of actually working under the new regulation—of previously unnoticed flaws, gaps, or ambiguities) will be called for, after sufficient time for reflection and discernment. In the case of the 2006 revisions to the PSOB program regulation, this general rule applies with even more force, as a result of the novel incorporation therein of the conceptually- and factually-different bases for coverage established by the HHSBA.

The implementation of the presumption created by the HHSBA–BJA has now processed nearly 200 cases since September 11, 2006, when the implementing regulations went into effect—has revealed several substantive and procedural shortcomings in the current rule that will be fixed in this proposed rule. (For example, the current definition of heart attack, while commonly accepted, is too narrow to capture some types of sudden cardiac-related deaths suffered by public safety officers. In addition, the PSOB Office's approach to the term ''routine'' has changed and it would be helpful to have the regulation reflect this.) Over the last year and a half, from the experience gleaned from processing, reviewing, and determining these cases, and from the myriad public and private comments it has received (both in the context of specific claims, and more broadly), BJA's understanding of the contours of the HHSBA (and thus its interpretations of provisions of that statute, and the practical rules it has developed for working under it) has matured.

Concrete (but by no means exhaustive) indicators of this maturation are the two policy memoranda issued by the Director of the BJA on October 2, 2007, relating to ''Nonroutine stressful or strenuous physical activity,'' and to ''Competent Medical Evidence to the Contrary,'' respectively, which established certain practical internal guidelines for the processing and determination of particular issues arising in claims under the HHSBA. This proposed rule would incorporate in the body of the regulation those current agency practices and rules, as appropriate for incorporation into a regulation of this kind (*see, e.g.*, the proposed new definition of ''*Routine*'' (from paragraphs 1 & 2 of the ''Nonroutine'' policy memorandum); proposed new § 32.5(i) (from paragraph 2 of the ''Nonroutine policy memorandum); proposed new § 32.14(c) (from paragraphs 1 & 2 of the ''Competent Medical Evidence'' policy memorandum); and the proposed use of the term ''Extrinsic circumstances'' (to underscore the notion—which informs paragraph 2 of the ''Competent Medical Evidence'' policy memorandum—that the mere presence of cardio-vascular disease/risk factors is not dispositive in analysis of what may be ''competent medical evidence to the contrary'' under the HHSBA)). In the case of the two October 2, 2007 policy memoranda—which remain in full force under this rule—the intention is to codify agency practice under the memoranda. Changes in terminology or phrasing should not be construed to carry any practical significance. And the fact that not all provisions of these two policy memoranda are incorporated in the rule's text (primarily because such provisions are not appropriate as regulations (*e.g.*, those involving purely internal administrative guidance)) should not be understood to reflect any policy change.

For example, one of the guidance letters notes that a response to an emergency call ''shall presumptively be treated as non-routine.'' This proposed rule would treat such a response as ''prima facie evidence'' that the action was non-routine. The sole purpose for the change from a ''presumption'' to ''prima facie evidence'' is to conform with terminology used in the regulations; there will be no change in practice from the standard reflected in the guidance. As another example, the guidance provides that the determination of an activity's ''routineness'' should be informed less

by the frequency with which it may be performed than by its stressful or strenuous character. This concept is reflected in the proposed regulation, with language indicating that the frequency with which an activity is performed shall not be the deciding factor in determining whether an activity is ''routine.'' What is not reflected in the proposed regulation is the guidance's follow-up observation that although ''domestic disturbance'' calls may occur with some frequency in the law-enforcement context, typically they occasion considerable stress, given the many and serious unknowns associated with encountering often highly-emotionally charged (and often violent) individuals, on their own territory, and under circumstances where the mere presence of law-enforcement officers well may be perceived as intrusive and insulting. Omission of this example from the regulation should not be construed to reflect a change in the Department's application of the term ''non-routine''; the sole reason for not including this example in the regulation is that it seemed more suitable for a guidance document than for a formal regulation.

The Department invites comment on whether the proposed rule successfully codifies the policies enunciated in the guidance memoranda issued on October 2, 2007.

In sum, this rule now is being proposed—(1) to conform the regulation to the statutory change (which, among other things, confers exclusive jurisdiction over judicial appeals (and ''related matters'') on the Court of Appeals for the Federal Circuit, removing it from the Court of Federal Claims); (2) to incorporate (so as to increase programmatic transparency) into the body of the regulation certain statutory and regulatory interpretations (many relating to the HHSBA; *e.g.*, relating to official training programs) that currently inform BJA's claim determinations under the program, in keeping with the holdings of the Federal Circuit in *Amber-Messick* and *Groff* that such interpretations already have ''the force of law''; and (3) to make certain refining, clarifying, conforming, or technical changes to the regulation so as to—(a) correct language that would or might have had the unintended effect of making the regulation more restrictive than the statute, (b) make the regulation more clearly consonant with the four Federal Circuit holdings listed above and the Federal Claims holding in *Dawson*, (c) remove ambiguities in the regulation, (d) conform the rules applicable to death-benefit claims where the HHSBA presumption does not apply, and the rules applicable to those where it does, more closely together (and thus counter any suggestion that claims under the HHSBA really are not ''regular'' PSOB death-benefit claims), (e) eliminate language in the regulation that merely is repetitive of statutory provisions, (f) counter unsatisfactory Court of Federal Claims constructions of the program statutes and implementing regulations, and (g) enhance programmatic and administrative efficiency.

Although many of the changes proposed in the rule are important (mainly for reasons of programmatic transparency and efficiency of claims processing), very few actually are substantive in character; *e.g.*, very few of the proposed provisions would alter the determination of a claim. The proposed substantive changes to the regulation—whose general tendency would be to make it somewhat easier for affected claimants to establish their claims—are the following:

- Definition of *Authorized commuting* in § 32.3: The proposed rule would add two circumstances (not currently encompassed) to the bases for line-of-duty coverage: Specifically, travel in response to a specific request by the employer to perform public safety activity would be treated the same as travel in response to a fire-, rescue-, or police emergency currently is; and travel between work sites would be treated the same as travel between home and work currently is.
- Definition of *Biological* in § 32.3: The proposed rule would provide a simplified evidentiary mechanism for determination of beneficiary status under certain circumstances relating to filial or parental status.
- Definition of *Heart attack* in § 32.3: The proposed rule would expand this definition to cover other cardiac events—beyond myocardial infarctions and sudden cardiac arrests (the only two circumstances currently covered)—caused by pathological conditions of the heart or coronary arteries.
- Definition of *Injury date* in § 32.3: The proposed rule would make this definition applicable (for purposes of determining beneficiaries) to claims covered by the HHSBA, where the injuries are statutorily presumed; under the proposed rule, beneficiaries under these claims would be able—for the first time—to receive the advantages of this definition.
- Definition of *Line of duty activity or action* in § 32.3: The proposed rule would expand this definition to cover situations where ''secondary-function'' law-enforcement officers, -firefighters, and -members of rescue squads or ambulance crews, take part as trainers in official training programs; currently, only participants who are trainees are covered.
- Definition of *Voluntary intoxication at the time of death or catastrophic injury* in § 32.3: The proposed rule would provide additional evidentiary mechanisms for evaluating potentially-disqualifying facts relating to whether or not a public safety officer was intoxicated at the time of death or catastrophic injury.
- *§ 32.5(c) & (h)*: The proposed rule would provide for simplified authentication of certain evidence during the administrative claims process and would (by establishing a kind of regulatory presumption relating to endorsement of representations made in connection with their claims) eliminate the need for claimants to provide certain paperwork otherwise necessary to establish the legal sufficiency of their claims.
- *§ 32.6(a)*: The proposed rule would provide a simplified evidentiary mechanism for determination of beneficiary status under certain circumstances relating to spousal status.
- *§ 32.15(d)*: The proposed rule would eliminate the current prerequisite certification requirement (requiring that the public agency certify as to the factual circumstances of the death and that all benefits available from the agency for similarly situated officers were paid) under certain circumstances where the presumption established by the HHSBA is applicable.
- *§ 32.42(c)*: The proposed rule would eliminate a potential trap for unwary disability claimants by removing a redundant filing requirement.

As is evident, the majority of the changes tend to make it easier for claimants to establish their claims (see the definitions of *Authorized commuting* and *Heart attack* for example). The rest of the changes are generally proposed in order more accurately to give notice to claimants, through the regulations, as to BJA's current practice in determining claims (see the definitions of *Designation on file, Official training program*, and *Routine*, for example). Many of the changes are simply grammatical and syntactical changes, but are still important for the sake of clarity and usefulness of the document.

II. Regulatory Certifications

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by

approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule addresses Federal agency procedures; furthermore, this proposed rule makes amendments to clarify existing regulations and agency practice concerning death, disability, and education payments and assistance to eligible public safety officers and their survivors and does nothing to increase the financial burden on any small entities.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order No. 12866 (Regulatory Planning and Review), § 1(b), Principles of Regulation. The costs of implementing this proposed rule are minimal. The only costs to OJP consist of appropriated funds, and the benefits of the proposed rule far exceed the costs. As discussed in more detail in the ''Background'' section above, all of the substantive regulatory changes in this proposed rule tend to relieve unnecessary burdens and restrictions placed on claimants by the current rule. The non-substantive changes largely incorporate existing law and clarify the regulation so that it reflects current agency practice. The rest of the changes are grammatical and syntactical

The Office of Justice Programs has determined that this proposed rule is a ''significant regulatory action'' under Executive Order No. 12866 (Regulatory Planning and Review), section 3(f), and accordingly this proposed rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. The PSOB Act provides benefits to individuals and does not impose any special or unique requirements on States or localities. Therefore, in accordance with Executive Order No. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in §§ 3(a) & (b)(2) of Executive Order No. 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The PSOB Act is a federal benefits program that provides benefits directly to qualifying individuals. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This proposed rule contains no new information collection or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Education, Emergency medical services, Firefighters, Law enforcement officers, Reporting and recordkeeping requirements, Rescue squad.

Accordingly, for the reasons set forth in the preamble, part 32 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS

1. Revise the authority citation for part 32 to read as follows:

Authority: 42 U.S.C. ch. 46, subch. XII; 42 U.S.C. 3782(a), 3787, 3788, 3791(a), 3793(a)(4) & (b), 3795a, 3796c-1, 3796c-2; sec. 1601, title XI, Pub. L. 90–351, 82 Stat. 239; secs. 4 through 6, Pub. L. 94–430, 90 Stat. 1348; secs. 1 and 2, Pub. L. 107–37, 115 Stat. 219.

2. Revise § 32.0 to read as follows:

§ 32.0 Scope of part.

This part implements the Act, which, as a general matter, authorizes the payment of three different legal gratuities:

(a) Death benefits;

(b) Disability benefits; and

(c) Educational assistance benefits.

3. Amend § 32.3 as follows:

a. Amend the definition of ''*Act*'' as follows:

i. Remove ''section 5 thereof (rule of construction and severability))'' and add in its place ''sections 4 through 6 thereof (payment in advance of appropriations, rule of construction and severability, and effective date and applicability))''.

ii. Remove ''sections 611 and 612'' and add its place ''section 611''.

iii. Remove ''all three'' and add in its place ''both''.

iv. Remove ''in connection with terrorist attacks)'' and add in its place ''in connection, respectively, with the terrorist attacks of Sept. 11, 2001, or with terrorist attacks, if any, occurring after Oct. 26, 2001)''.

v. Add '', as well as the proviso under the Public Safety Officers Benefits heading in title II of division B of section 6 of Public Law 110–161'' before the final period.

b. Amend the definition of ''*Authorized commuting*'' as follows:

i. In the introductory text, add ''(not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour)'' after ''travel''.

ii. In paragraph (1), remove ''responding to a fire, rescue'' and add in its place ''responding (as authorized) to a fire-, rescue-,'', and add '', or to a particular and extraordinary request (by the public agency he serves) for that specific officer to perform public safety activity, within his line of duty'' after ''emergency''.

iii. In paragraph (2), add '', or between any such authorized or required situs and another'' after ''serves)''.

c. Amend the definition of ''*Determination*'' by removing ''or'', the third place it occurs, and by adding '', or any recommendation under § 32.54(c)(3)'' before the final period.

d. Amend the introductory text in the definition of ''*Divorce*'' by removing ''a living individual'' and adding in its place ''an individual'', and by removing ''individual, the spouse'' and adding in its place ''individual (and while that individual is living), the spouse''.

e. Amend the definition of ''*Eligible payee*'' as follows:

i. In paragraph (1), remove ''A beneficiary'' and add in its place ''An individual (other than the officer)''.

ii. In paragraph (2), remove ''A beneficiary'' and add in its place ''An individual''.

f. Amend paragraph (2) of the definition of ''*Fire protection*'' and paragraph (1)(ii) of the definition of ''*Firefighter*'', respectively, by removing ''Hazardous-materials emergency'' and adding in its place ''Hazardous-material''.

g. Amend the definition of ''*Fire, rescue, or police emergency*'', by removing ''Fire, rescue,'' in the term defined, and adding in its place ''*Fire-, rescue-,*''.

h. Amend the definition of ''*Hazardous-materials emergency response*'', by removing ''*Hazardous-materials emergency*'' in the term defined, and adding in its place ''*Hazardous-material*''.

i. Revise the definition of ''*Heart attack*'' to read as set forth below.

j. Amend the definition of ''*Injury*'' by adding ''directly and proximately'' after ''body)''.

k. Amend the introductory text in the definition of ''*Injury date*'' by adding ''—Except with respect to claims under the Act, at 42 U.S.C. 3796(k) (where, for purposes of determining beneficiaries under the Act, at 42 U.S.C. 3796(a), it generally means the time of the heart attack or stroke referred to in the Act, at 42 U.S.C. 3796(k)(2)), injury date'' before ''means''.

l. Amend the introductory text in the definition of ''*Intentional misconduct*'' by removing ''Except with respect to voluntary intoxication at the time of death or catastrophic injury, a'' and adding in its place ''A''.

m. Revise paragraph (3) of the definition of ''*Law enforcement*'' to read as set forth below.

n. Amend the definition of ''*Line of duty activity or action*'' as follows:

i. In paragraph (1)(i) and the introductory text of paragraph (1)(ii), respectively, remove ''law enforcement, fire protection, rescue activity, or the provision of emergency medical services'' and add in its place ''public safety activity''.

ii. In paragraphs (1)(i) and (1)(ii)(A), respectively, remove ''to be so'' and add in its place ''to have been so'', add ''at the time performed'' before ''(or, at'' and remove ''to be such'' and add in its place ''to have been such''.

iii. In paragraph (1)(i), remove ''training programs'' and add in its place ''official training programs of his public agency''.

iv. In paragraphs (1)(ii)(B), (2), (3)(i), and (3)(ii), respectively, remove ''as such'' and add in its place ''to have been such at the time performed'', and remove ''to be such'' and add in its place ''to have been such''.

v. In paragraph (1)(ii)(B), remove ''law enforcement, providing fire protection, engaging in rescue activity, or providing emergency medical services, or training for one of the foregoing'' and add in its place ''public safety activity, or taking part (as a trainer or trainee) in an official training program of his public agency for such activity''.

vi. In paragraph (3)(ii), remove ''fire, rescue,'' and add in its place ''fire-, rescue-,''.

o. Amend the definition of ''*Occupational disease*'' by adding ''(including an ailment or condition of the body)'' after ''disease''.

p. Amend paragraph (2) of the definition of ''*Posthumous child*'' by removing ''Not alive at'' and adding in its place ''Deceased at or before''.

q. Amend paragraph (1) of the definition of ''*Qualified beneficiary*'', by adding ''final agency'' before ''determination''.

r. Add ''wound, condition, cardiac-event,'' after ''disability,'' the three places it occurs in the definition of ''*Substantial factor*''.

s. Amend the definition of ''*Voluntary intoxication at the time of death or catastrophic injury*'' as follows:

i. In the introductory text, add '', as shown by any commonly-accepted tissue, -fluid, or -breath test or by other competent evidence'' before the colon.

ii. In paragraph (2), remove ''a disturbance of mental or physical faculties resulting from their introduction into the body of a public safety officer, as evidenced by the presence therein, as of the injury date—'' and add in its place ''intoxication as defined in the Act, at 42 U.S.C. 3796b(5), as evidenced by the presence (as of the injury date) in the body of the public safety officer—''.

t. Add the following definitions in alphabetical order:

§ 32.3 Definitions.

* * * * *

Biological means genetic, but does not include circumstances where the genetic donation (under the laws of the jurisdiction where the offspring is conceived) does not (as of the time of such conception) legally confer parental rights and obligations.

* * * * *

Certification means a formal assertion of a fact (or facts), in a writing that is—

(1) Expressly intended to be relied upon by the PSOB determining official in connection with the determination of a claim specifically identified therein;

(2) Expressly directed to the PSOB determining official;

(3) Legally subject to the provisions of 18 U.S.C. 1001 (false statements) and 1621 (perjury), and 28 U.S.C. 1746 (declarations under penalty of perjury), and expressly declares the same to be so;

(4) Executed by a natural person with knowledge of the fact (or facts) asserted and with legal authority to execute the writing (such as to make the assertion legally that of the certifying party), and expressly declares the same (as to knowledge and authority) to be so;

(5) In such form as the Director may prescribe from time to time;

(6) True, complete, and accurate (or, at a minimum, not known or believed by the PSOB determining official to contain any material falsehood, incompleteness, or inaccuracy); and

(7) Unambiguous, precise, and unequivocal, in the judgment of the PSOB determining official, as to any fact asserted, any matter otherwise certified, acknowledged, indicated, or declared, and any provision of this definition.

Certification described in the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, means a certification, acknowledging all the matter specified in § 32.5(f)(1) and (2)—

(1) In which the fact (or facts) asserted is the matter specified in § 32.5(f)(3);

(2) That expressly indicates that all of the terms used in making the assertion described in paragraph (1) of this definition (or used in connection with such assertion) are within the meaning of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and of this part; and

(3) That otherwise satisfies the provisions of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and of this part.

* * * * *

Commonly accepted means generally agreed upon within the medical profession.

Consequences of an injury that permanently prevent an individual from performing any gainful work means an injury whose consequences permanently prevent an individual from performing any gainful work.

* * * * *

Direct and proximate cause—Except as may be provided in the Act, at 42 U.S.C. 3796(k), something directly and proximately causes a wound, condition, or cardiac-event, if it is a substantial factor in bringing the wound, condition, or cardiac-event about.

* * * * *

Emergency response activity means response to a fire-, rescue-, or police emergency.

* * * * *

Employment in a civilian capacity refers to status as a civilian, rather than to the performance of civilian functions.

* * * * *

Heart attack means—

(1) A myocardial infarction; or

(2) A cardiac-event (*i.e.*, cessation, interruption, arrest, or other similar disturbance of heart function), not included in paragraph (1) of this definition, that is—

(i) Acute; and

(ii) Directly and proximately caused by a pathology (or pathological condition) of the heart or the coronary arteries.

* * * * *

Law enforcement * * *

(3) Prison security activity; and

* * * * *

Official training program of a public agency means a program—

(1) That is officially sponsored, -conducted, or -authorized by the public agency; and

(2) Whose purpose is to train public safety officers in (or to improve their skills in), specific activity or actions encompassed within their respective lines of duty.

* * * * *

Prison security activity means correctional or detention activity (in a prison or other detention or confinement facility) of individuals who are alleged or found to have violated the criminal laws.

* * * * *

Public safety activity means any of the following:

(1) Law enforcement;

(2) Fire protection;

(3) Rescue activity; or

(4) The provision of emergency medical services.

* * * * *

4. Amend § 32.5 as follows:

a. Amend paragraph (c) as follows:

i. Add ''301 (presumptions),'' before ''401''.

ii. Remove ''1008'' and add in its place ''1007''.

iii. Add '', *mutatis mutandis,*'' after ''apply''.

iv. Add ''No extrinsic evidence of authenticity as a condition precedent to admissibility shall be required with respect to any document purporting to bear the signature of an expert engaged by the BJA.'' after the period.

b. Amend paragraph (d) as follows:

i. In paragraph (d)(1)(ii), remove ''or'' at the end.

ii. In paragraph (d)(2)(ii), remove the period at the end and add in its place ''; or''.

c. Amend paragraph (f) as follows:

i. In paragraph (f)(1)(ii), add ''and'' after ''agency;''.

ii. In paragraph (f)(1)(iii)(E), remove ''and'' after the semi-colon.

iii. Redesignate paragraph (f)(1)(iv) as paragraph (f)(3), remove ''Killed'' therein and add in its place ''That the public safety officer was killed'', and remove ''; and'' therein and add in its place '', and that such injury was sustained in connection with public safety activity (or otherwise with efforts described in the Act, at 42 U.S.C. 3796c–1 or Pub. L. 107–37) related to a terrorist attack (under the former statute) or to the terrorist attacks of September 11, 2001 (under the latter statute).''.

iv. In paragraph (f)(2), remove ''That'' and add in its place ''Of the public agency's acknowledgment that'', remove the final period, and add ''; and'' at the end.

d. add paragraphs (d)(3), (g), (h), and (i), to read as follows:

§ 32.5 Evidence.

* * * * *

(d) * * *

(3) A claimant under subpart B or C of this part fails or refuses to apply for the benefits, if any, described in § 32.15(a)(1)(i) or § 32.25(a)(1)(i), respectively.

* * * * *

(g) In determining a claim, the PSOB determining official shall have, in addition to the hearing-examiner powers specified at 42 U.S.C. 3787 (hold hearings, issue subpoenas, administer oaths, examine witnesses, and receive evidence), and to the authorities specified at 42 U.S.C. 3788(b)–(d) (use of experts, consultants, other government resources) and in this part, the authority otherwise and in any reasonable manner to conduct his own inquiries, as appropriate.

(h) Acceptance of payment (by a payee (or on his behalf)) shall constitute *prima facie* evidence that the payee (or the pay agent)—

(1) Endorses as his own (to the best of his knowledge and belief) the statements and representations made, and the evidence and information provided, pursuant to the claim; and

(2) Is aware (in connection with the claim) of no—

(i) Fraud;

(ii) Concealment or withholding of evidence or information;

(iii) False, incomplete, or inaccurate statements or representations;

(iv) Mistake, wrongdoing, or deception; or

(v) Violation of 18 U.S.C. 287 (false, fictitious, or fraudulent claims), 1001 (false statements), 1621 (perjury), or 42 U.S.C. 3795a (falsification or concealment of facts).

(i) A public safety officer's response to an emergency call from his public agency for him to perform public safety activity shall constitute *prima facie* evidence of such response's non-routine character.

§ 32.6 [Amended]

5. Amend § 32.6 as follows:

a. In paragraph (a), add the following at the end: ''If more than one should qualify, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that the individual (if any) who was a member of the officer's household (as of such date) shall be presumed rebuttably to be such one, unless legal proceedings (by the officer against such member, or vice versa) shall have been pending then in any court.''.

b. In paragraph (d)(1), remove ''or inaccurate statements'' and add in its place '', incomplete, or inaccurate statements or representations''.

§§ 32.12 and 32.22 [Amended]

6. Amend §§ 32.12(a)(2) and 32.22(a)(2), respectively, by removing ''the receipt or denial of any benefits'' and adding in its place ''a final determination of entitlement to receive, or of denial of, the benefits, if any,''.

§§ 32.12, 32.22, 32.32, 32.42, and 32.52 [Amended]

7. Amend §§ 32.12(b), 32.22(b), 32.32(c), 32.42(b), and 32.52(b), respectively, by adding ''documentary, electronic, video, or other non-physical'' after ''supporting''.

8. Amend § 32.13 as follows:

a. Amend the definitions of ''*Beneficiary of a life insurance policy of a public safety officer*'' and ''*Beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A)*'', respectively as follows:

i. In the introductory text, add ''or otherwise unterminated'' after ''law)''.

ii. In the introductory text of paragraph (1), remove ''—not having taken place as of such date of death—'' and ''when scheduled''.

iii. In paragraph (1)(i), remove ''The alteration in schedule was'' and add in its place ''It did not take place''.

b. In paragraph (2) of the definition of ''*Beneficiary of a life insurance policy of a public safety officer*'', remove ''individual)'' and add in its place ''spouse (or purported spouse))''.

c. Amend the definition of ''*Circumstances other than engagement or participation*'' as follows:

i. Remove the term defined, ''*Circumstances other than engagement or participation*'' and add in its place ''*Extrinsic circumstances*''.

ii. Redesignate the definition to the appropriate place, in alphabetical order, in this section, as set forth below.

d. Remove the definition of ''*Commonly accepted*''.

e. Amend the definition of ''*Competent medical evidence to the contrary*'' to remove ''circumstances other than any engagement or participation described in the Act, at 42 U.S.C. 3796(k)(1)'' and add in its place ''extrinsic circumstances''.

f. Amend the definition of ''*Engagement in a situation*'' as follows:

i. Remove ''*Engagement in a situation*—A public safety officer is engaged in a situation only'' in the introductory text and add in its place ''*Engagement in a situation involving law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity*—A public safety officer is so engaged only''.

ii. Remove ''hazardous-materials'' in paragraph (1)(iii) and add in its place ''hazardous-material''.

iii. Remove ''or'' at the end of paragraph (1)(v).

iv. Remove ''responding to a fire, rescue, or police emergency'' in paragraph (1)(vii) and add in its place ''engaging in emergency response activity''.

v. In paragraph (2), remove ''to be in'' and add in its place ''to have been in'', add ''at the time of such engagement'' before the first ''(or'', and remove ''so to be'' and add in its place ''so to have been''.

g. Amend paragraph (2) of the definition of ''*Most recently executed life insurance policy of a public safety officer*'' by removing ''in effect'' and adding in its place ''unrevoked (by such officer or by operation of law) or otherwise unterminated''.

h. Amend the definition of ''*Participation in a training exercise*'' by removing ''if it is a formal part of an official training program whose purpose is to train public safety officers in, prepare them for, or improve their skills in, particular activity or actions encompassed with their respective lines of duty.'' in the introductory text and adding in its place ''when actually taking formal part in a mandatory, structured activity within an official training program of his public agency.''

i. Amend the definition of ''*Public safety agency, organization, or unit*'' by removing ''*organization, or unit*'' in the term defined, and adding in its place ''*-organization, or -unit*''.

j. Add the following definitions in alphabetical order:

§ 32.13 Definitions.

* * * * *

Designation on file—A designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A), is on file with a public safety agency, -organization, or -unit, only if it is deposited with the same by the public safety officer making the designation, for it to maintain with its personnel or similar records pertaining to him.

* * * * *

Extrinsic circumstances means—

(1) An event or events; or

(2) An intentional risky behavior or intentional risky behaviors.

Life insurance policy on file—A life insurance policy is on file with a public safety agency, -organization, or -unit, only if—

(1) It is issued through (or on behalf of) the same; or

(2) The original (or a copy) of one of the following is deposited with the same by the public safety officer whose life is insured under the policy, for it to maintain with its personnel or similar records pertaining to him:

(i) The policy (itself);

(ii) The declarations page or -statement from the policy's issuer;

(iii) A certificate of insurance (for group policies);

(iv) Any instrument whose execution constitutes the execution of a life insurance policy; or

(v) The substantial equivalent of any of the foregoing.

* * * * *

Routine—Neither of the following shall be the decisive factor in determining whether an activity shall be understood to be performed as a matter of routine:

(1) Being described by a public agency as being routine or ordinary; or

(2) The frequency with which it may be performed.

* * * * *

9. Amend § 32.14 by adding a paragraph (c) to read as follows:

§ 32.14 PSOB Office determination.

* * * * *

(c) In connection with the determination of the existence of competent medical evidence to the contrary, pursuant to a filed claim—

(1) Where there is an affirmative suggestion under paragraph (c)(2) of this section, which indicates the existence of a potential ground for denial of the claim, the PSOB Office shall serve the claimant with notice thereof, to request that he file such documentary, electronic, video, or other non-physical evidence (such as medical-history records, as appropriate) and legal arguments in support of his claim as he may wish to provide;

(2) There is an affirmative suggestion within the meaning of paragraph (c)(1) of this section, where the evidence before the PSOB Office affirmatively suggests that—

(i) The public safety officer actually knew or should have known that he had cardio-vascular disease risk factors and appears to have worsened or aggravated the same through his own intentional and reckless behavior (as opposed to where the evidence affirmatively suggests merely that cardio-vascular disease risk factors were present); or

(ii) It is more likely than not that a public safety officer's heart attack or stroke was imminent; and

(3) The PSOB Office shall not request medical history records to supplement a filed claim, unless the criteria in paragraphs (c)(1) and (2) of this section are satisfied; and

(4) Any mitigating evidence provided under paragraph (c) of this section will be considered by the PSOB Office.

10. Amend § 32.15 as follows:

a. In paragraph (a)(1), remove ''paragraph (b)'' and add in its place ''paragraphs (b) and (d)''.

b. In paragraph (b), remove ''paragraph (a)(1)'' and add in its place ''paragraphs (a)(1) and (d)''.

c. In the introductory text of paragraph (c), add ''for purposes of this section'' after ''complete''.

d. Add a paragraph (d) to read as follows:

§ 32.15 Prerequisite certification.

* * * * *

(d) Subject to paragraphs (b) and (c) of this section, if the Director finds that the conditions specified in the Act, at 42 U.S.C. 3796(k), are satisfied with respect to a particular public safety officer's death, and that no circumstance specified in the Act, at 42 U.S.C. 3796a(1), (2), or (3), applies with respect thereto—

(1) The certification as to death, described in paragraph (a)(1) of this section, shall not be required; and

(2) The certification as to benefits, described in paragraph (a)(1)(ii) of this section, shall be deemed complete for purposes of this section if it—

(i) Describes the public agency's understanding of the circumstances (including such causes of which it may be aware) of the officer's death; and

(ii) States that, in connection with deaths occurring under the circumstances described in paragraph (d)(2)(i) of this section, the public agency is not legally authorized to pay any benefits described in paragraph (a)(1)(i) of this section.

11. Amend § 32.16 by adding a paragraph (c) to read as follows:

§ 32.16 Payment.

* * * * *

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(1), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(2), payment shall be made to each of them in equal shares.

§ 32.29 [Amended]

12. Amend § 32.29(a)(1)(ii) by removing ''The'' and adding in its place ''Consistent with § 32.42(c), the''.

§ 32.41 [Amended]

13. Amend § 32.41 by adding '', and of claims remanded (or matters referred) under § 32.54(c)'' before the final period.

14. Amend § 32.42 as follows:

a. In the introductory text of paragraph (a), remove ''Unless'' and add in its place ''Subject to paragraph (c) of this section, and unless''.

b. Add a paragraph (c) to read as follows:

§ 32.42 Time for filing request for determination.

* * * * *

(c) The timely filing of a motion for reconsideration under § 32.28(a) shall be deemed to constitute a timely filing, under paragraph (a) of this section, of a request for determination with respect to any grounds described in § 32.29(a)(1)(ii) that may be applicable.

§ 32.43 [Amended]

15. Amend § 32.43(b) by adding ''(or upon remand or referral)'' after ''determination''.

§ 32.45 [Amended]

16. Amend § 32.45(a) by removing ''At'' and adding in its place ''Except with respect to a remand or referral, at''.

17. Amend § 32.54 by adding paragraph (c) to read as follows:

§ 32.54 Director determination.

* * * * *

(c) With respect to any claim before him, the Director, as appropriate, may—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

§ 32.55 [Amended]

18. Amend § 32.55(a) by removing ''under 28 U.S.C. 1491(a) (claims against the United States)'' and adding in its place ''pursuant to the Act, at 42 U.S.C. 3796c–2''.

Dated: July 7, 2008.

Jeffrey L. Sedgwick,

Acting Assistant Attorney General.

[FR Doc. E8–15730 Filed 7–9–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0067; 1111–FY08–MO–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the Delta Smelt (Hypomesus transpacificus) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the delta smelt (*Hypomesus transpacificus*) from threatened to endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that reclassification of the delta smelt from threatened to endangered may be warranted. Therefore, we are initiating a status review to determine if reclassifying this species as endangered under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

DATES: To allow us adequate time to conduct this review, we request that information be submitted to us on or before September 8, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0067, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information is presented to indicate that listing, delisting, or reclassifying a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the delta smelt. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the status of the delta smelt, including but not limited to information on:

(1) The effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) Present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(2) Population abundance, distribution, trends, and dynamics; habitat selection and trends; food habits; and effects of disease, competition, and predation on delta smelt.

(3) The effects of climate change, sea level change, and change in water temperatures on the distribution and abundance of delta smelt and their principal prey.

(4) The effects of other potential threat factors, including water diversions in the Sacramento-San Joaquin River Delta (Delta), contaminants, invasive species, and changes of the distribution and abundance of delta smelt and their principal prey.

(5) Management programs for delta smelt conservation, including mitigation

measures related to water diversions and development, habitat conservation programs, invasive species control programs, and any other private, tribal, or governmental conservation programs which benefit delta smelt.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

We were originally petitioned to list the delta smelt as endangered on June 26, 1990. We proposed the species as threatened and proposed the designation of critical habitat on October 3, 1991 (56 FR 50075). We listed the species as threatened on March 5, 1993 (58 FR 12854), and we designated critical habitat on December 19, 1994 (59 FR 65256). The delta smelt was one of eight fish species addressed in the November 26, 1996, *Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes* (Service 1996, pp. 1–195). We completed a 5-year status review of the delta smelt on March 31, 2004 (Service 2004, pp. 1–50).

On March 9, 2006, we received a petition, dated March 8, 2006, from the Center for Biological Diversity, the Bay Institute, and Natural Resources Defense Council (CBD *et al.* 2006, pp. 1–33) to reclassify the listing status of the delta smelt, a threatened species, to endangered status on an emergency basis. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). The Service has the authority to promulgate an emergency listing rule for a species when an emergency exists that poses a significant risk to the well-being of that species (50 CFR 424.20). The petition contained information on changes in the status and distribution of the species, and on increased threats to the species.

In response to the petition, we sent a letter to the petitioners dated June 20, 2006, stating that we would not be able to address their petition at that time because further action on the petition was precluded by court orders and settlement agreements for other listing actions that required us to use nearly all of our listing funds for fiscal year 2006. We also stated in our June 20, 2006, letter that we had evaluated the immediacy of possible threats to the delta smelt, and had determined that an emergency reclassification was not warranted at that time.

This notice constitutes our 90-day finding on the March 8, 2006, petition to reclassify the delta smelt from threatened to endangered.

Species Information

The petitioners presented a summary of the known information on the description, taxonomy, distribution, habitat requirements, life history, and natural mortality of the delta smelt. They also described recent changes in the fish's distribution and abundance, and summarized recent delta smelt population trend and extinction risk analyses.

Description and Taxonomy

Delta smelt are slender-bodied fish, generally about 60 to 70 millimeters (mm) (2 to 3 inches (in)) long, although they may reach lengths of up to 120 mm (4.7 in) (Moyle 2002, p. 227). Delta smelt are in the Osmeridae family (smelts) (Stanley *et al.* 1995, p. 390). Live fish are nearly translucent and have a steely blue sheen to their sides (Moyle 2002, p. 227). Delta smelt feed primarily on small planktonic (free floating) crustaceans, and occasionally on insect larva (Moyle 2002, p. 228). Delta smelt usually aggregate but do not appear to be strongly shoaling, and their swimming behavior likely makes schooling difficult (Moyle 2002, p. 228).

The delta smelt is one of six species currently recognized in the Hypomesus genus (Bennett 2005, p. 8), and genetic analyses have confirmed that it is a well-defined species with a single intermixing population (Stanley *et al.* 1995, p. 391; Trenham *et al.* 1998, p. 418). Within the genus, delta smelt is most closely related to surf smelt (*H. pretiosis*), a species common along the western coast of North America. In contrast, delta smelt is a comparatively distant relation to the wakasagi (*H. nipponensis*), which was introduced into Central Valley reservoirs in 1959 and is now sympatric with delta smelt in the estuary (Trenham *et al.* 1998, p. 417).

Distribution and Abundance

Delta smelt are endemic to (native and restricted to) the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Delta) in California, found only from the San Pablo Bay upstream through the Delta in Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties (Moyle 2002, p. 227). Their historical range is thought to have extended from San Pablo Bay upstream to at least the city of Sacramento on the Sacramento River and Mossdale on the San Joaquin River. They were once one of the most common pelagic (living in open water away from the bottom) fish in the upper

Sacramento-San Joaquin Estuary (Moyle 2002, p. 230).

Although exact population estimates are not possible to obtain for this species (Moyle 2002, p. 230), relative population levels have been monitored for several decades using various net surveys and counts of adults entrained by Federal and State water export facilities (Bennett 2005, p. 5). Based on those surveys, delta smelt population levels declined precipitously in 1982, leading to very low numbers from 1982 to 1991, and to their listing as a threatened species in 1993 (58 FR 12854; Moyle 2002, p. 230; CBD *et al.* 2006, p. 9). From 1992 to 2001, abundance levels stabilized, remaining generally low but within the bounds of pre-1980 levels. Recent surveys have shown another substantial drop, however, with record low abundance figures from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). Bennett (2005, pp. 53, 54) conducted a population viability analysis based on known population trends, and found a 55 percent chance that the smelt population would reach a ''point of no return'' (quasi-extinction, estimated at 8,000 fish) within 20 years.

Habitat and Life History

The species requires specific environmental conditions (freshwater flow, water temperature, salinity) and habitat types (shallow open waters) within the estuary for migration, spawning, egg incubation, rearing, and larval and juvenile transport from spawning to rearing habitats (Moyle 2002, pp. 228–229). Delta smelt are a moderately euryhaline species (tolerant of a wide salinity range), and most individual fish live only one year (Moyle 2002, p. 228). Although they are restricted to a relatively small geographic range, delta smelt use different parts of the estuary at different life history stages. They hatch, typically around May, from eggs laid 9 to 13 days earlier in the slow-moving, freshwater spawning grounds of the upper Delta and lower Sacramento River, and in Montezuma Slough near Suisun Bay (Moyle 2002, pp. 228, 229). After several weeks of development, larvae are swept downstream until they reach a point (typically in Suisun Bay) where the salinity reaches about 2 to 7 parts per thousand (ppt). This is the beginning of the ''mixing zone'' where fresh and brackish water meet. Juvenile smelt tend to seek out that salinity level, and will rear and grow there for several months, preferring relatively shallow open water (Moyle 2002, p. 228). The mixing zone is typically located in Suisun Bay, but moves farther upstream when freshwater outflows are reduced (Moyle 2002, p. 230). Federal and State water pumps can affect outflows by exporting large amounts of fresh water from the southern portion of the Delta for agricultural and municipal uses. Thousands of smaller water diversions throughout the Delta also export water for local agriculture. Additionally, two power plants located in Antioch and Pittsburg, California, use Delta water for cooling (Bennett 2005, p. 34; Armor 2005, p. 2)

Around September or October, delta smelt reach adulthood and begin a gradual migration back upstream to the spawning areas. Spawning can occur any time between February and July, but most spawning takes place from early April to mid-May, in water temperatures ranging from 7 to 15 degrees Celsius (45 to 59 degrees Fahrenheit) (Moyle 2002, p. 229). Although spawning has not been observed in the wild, the eggs are thought to attach to substrates such as cattails, tules, tree roots, and submerged branches, and the spawning areas most likely contain gravel, sand, or other submerged material that is washed by gentle currents close to the main river channel (Wang 1991, p. 11; Moyle 2002, p. 229). Most delta smelt die after spawning, but a small contingent of adults survive and can spawn in their second year (Moyle 2002, p. 228).

The petitioners referred to the Service's December 19, 1994, critical habitat determination (59 FR 65256) for descriptions of the specific habitat conditions required for spawning, larval and juvenile transport, rearing, and adult migration.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information on threats to the delta smelt presented in the March 2006 petition, and other information available in our files at the time of the petition review, constitute substantial scientific or commercial information such that reclassification from threatened to endangered under the Act may be warranted. A brief evaluation of this information is presented below.

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

The petition notes that water diversions, particularly from the large Federal and State pumping stations in the southern portion of the Delta, can modify the smelt's habitat in three ways. First, they remove planktonic food organisms out of the water. Second, they diminish freshwater outflows, causing the mixing zone to move upstream and away from Suisun Bay where the best rearing habitat is located. Third, the large Federal and State pumps can actually halt and reverse flows in the southern Delta, potentially interfering with both the transport of plankton and smelt larvae downstream and with the spawning migration of adult smelt upstream (CBD *et al.* 2006, pp. 13, 14).

The petition also notes that the diversions entrain and kill smelt directly. This is not technically a habitat alteration, but we consider it here because the direct effects of freshwater diversions are intertwined with their impacts to habitat. The petition states that the State and Federal pumping stations have shown an increase in recent years in number of delta smelt entrained relative to their abundance (CBD *et al.* 2006, p. 16). The increase is concurrent with recent increases in water pumped from the facilities, particularly during the winter when migrating adult smelt are most likely to be in the vicinity (CBD *et al.* 2006, p. 15). Additionally, because the Federal and State pumps only monitor impacts to smelt longer than 20 mm (0.8 in.), direct impacts to smaller smelt remain unknown. The petition does note, however, that summer trawl net surveys showed a serious drop in juvenile smelt in the south Delta in the mid-1970s, during which time Federal and State exports from the Delta were increased (CBD *et al.* 2006, pp. 15, 16). Monitoring of direct impacts is absent at the 1,800 smaller agricultural diversions throughout the Delta, and at the two power plants that use Delta water for cooling (CBD *et al.* 2006, p. 14).

The combined habitat destruction or modification (Factor A) and direct impacts from water diversions are difficult to quantify, but potentially serious. The petition cites a 2005 analysis showing a significant inverse correlation between smelt population, winter water export rates, and numbers of adult and juvenile smelt sampled

later in the year (CBD *et al.* 2006, p. 17). Armor (*et al.* 2005, p. 39) supports this, noting that the data on wintertime entrainment ''reveal a consistent pattern across species that corresponds with the period of fish declines.''

In summary, habitat destruction and modification (Factor A), as well as direct impacts from water diversions, threaten the continued existence of delta smelt, as they did at the time of the original listing of the species. Record or near record low delta smelt abundance indices from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, pp. 1–2), indicate that these existing threats may now be more imminent than at the time of listing. The delta smelt abundance indices for 2002 and 2003 are at or slightly above the 1994 low, and indices for 2004 to 2007 are less than half to near a quarter of the 1994 low (CDFG 2008, p. 2). As a consequence, we conclude that substantial information is provided to indicate that reclassification of delta smelt from threatened to endangered due to destruction, modification, or curtailment of its habitat may be warranted.

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

The petition provides no information documenting current or future threats under this factor, and we do not have any information in our files to indicate that overutilization for commercial, recreational, scientific, or educational purposes threaten delta smelt. Therefore we conclude that there is no substantial scientific or commercial information to indicate that reclassifying delta smelt from threatened to endangered may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, all factors, including threats from commercial, recreational, scientific, or educational activities, will be evaluated when we conduct our status review.

C. Disease or Predation

The petition acknowledges a lack of evidence to indicate that delta smelt populations have declined due to disease or predation (CBD *et al.* 2006, p. 20). It does note, however, that striped bass (*Morone saxatilis,* a nonnative predatory species) may have been maintained at artificially high levels relative to potential prey species, such as the delta smelt, under a stocking program carried out until 2004 by the California Department of Fish and Game (Service 2004, p. 6; CBD *et al.* 2006, p. 20). The petition also notes that inland silverside (*Menidia beryllina,* a nonnative species feeding primarily on plankton) may prey on delta smelt eggs and larvae, as well as compete with delta smelt for planktonic food. Other introduced species that may be preying on eggs or larvae of delta smelt include the chameleon goby (*Tridentiger trigonocephalus*) and the yellowfin goby (*Acanthogobius fiavimanus*).

The petitioner cites a lack of evidence that disease and predation threaten delta smelt, and we do not have substantial information in our files to suggest that disease and predation threaten delta smelt. Therefore, we conclude that there is no substantial scientific or commercial information to indicate that threats from disease or predation may warrant reclassification of delta smelt from threatened to endangered. However, all factors, including threats from disease or predation, will be evaluated when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition presents information regarding existing and planned regulatory mechanisms and their perceived inadequacy, stating that the current export criteria in the water rights permits issued under the State Water Resources Control Board regulations allow export operations at levels that exceed those necessary to maintain healthy delta smelt populations. The petitioners state that dedications of water for the environment and of money for supplemental acquisitions of environmental water mandated in the 1992 Central Valley Project Improvement Act intended to reduce the negative impacts of the Federal water project on fish and wildlife have not been fully or aggressively implemented. The petition claims that the CALFED (joint California State and Federal government) Bay-Delta Program has been largely ineffective in addressing environmental problems in the Delta, and that its future status is uncertain. The petition states that the Service's most recent biological opinion for protection of the species relied heavily on the CALFED Environmental Water Account, which has failed to provide detectable benefits for delta smelt. The petition also states that the South Delta Improvements Program, in the process of being approved by Federal and State agencies at the time of the petition, would increase Delta water exports and install permanent tidal barriers that further modify Delta flow patterns and habitat.

In summary, the petition points out that numerous changes have occurred since the time of the species' listing, and suggests that the regulatory mechanisms governing such changes have not provided adequate conservation for delta smelt. Given that delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), we conclude that substantial information is presented in the petition to indicate that reclassification of delta smelt from threatened to endangered due to the inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition presents information asserting that threats from low population size, nonnative species, and lethal and sublethal effects of toxic chemicals may have changed since we listed the delta smelt as threatened. The petition presents information concerning the delta smelt's population size and extinction probability, stating this information indicates that the delta smelt is at risk of falling below an effective population size and losing genetic integrity, and is therefore in danger of becoming extinct. The petition also states that increased competition by nonnative species, such as the clam *Corbula amurensis,* has reduced the availability of the delta smelt's planktonic food supply. Additionally, the petition cites the threat of lethal and sublethal effects of toxic chemicals, such as pesticides discharged and transported from upstream into the Delta.

We have substantial information in our files to indicate that the delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). According to recent fish survey information collected by the California Department of Fish and Game (CDFG) (Fall Midwater Trawl (FMWT)), the average catch of delta smelt declined to the lowest level since the surveys began in 1967 (CDFG 2008, p. 1). We do not have substantial information in our files to indicate that competition from nonnative species has changed since the time we listed the delta smelt as threatened. We also do not have substantial information in our files to indicate that lethal and sublethal effects of toxic chemicals have changed since the time we listed the delta smelt as threatened. Toxic chemicals are present in the San Francisco Bay-Delta; however, it is uncertain what effect these chemicals have on delta smelt (Bennett 2005, p. 44). For example, in

2008, the Pelagic Organism Decline (POD) Working Group summarized and provided a progress report of the studies and information collected in 2007 by the Interagency Ecological Program (IEP) (Baxter *et al.* 2008, pp. 1–52). The summary report did identify contaminants as having possible effects during flow pulses in the winter, but there is no evidence currently available that these pulse events cause toxicity to delta smelt (Baxter *et al.* 2008, p. 29).

We conclude that the petition presents substantial information to indicate a significant reduction in the population size of delta smelt since the time of listing and that reclassification of delta smelt from threatened to endangered may be warranted.

Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available in our files. Based on this review, we find the petition presents substantial information that reclassification of the delta smelt from threatened to endangered may be warranted.

When we listed the delta smelt as threatened in 1993, the factors identified that threatened the species' continued existence included threats such as: water diversions, inadequacy of existing regulatory mechanisms, introduced species, and contaminants. For the most part, these factors continue to threaten the species, although the degree to which they each affect delta smelt populations likely has changed. Recent surveys have shown a substantial decline in delta smelt abundance from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), indicating that the threats may be of higher magnitude or imminence than was thought at the time of listing.

As discussed above, we believe the petition provides substantial information indicating that a reclassification from threatened to endangered may be warranted. Specifically, substantial information was provided under Factor A (habitat loss, and water diversions), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (low population size). Therefore, we are initiating a status review to determine if reclassifying the species from threatened to endangered is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

Significant Portion of the Species' Range

The petitioners seek to reclassify the delta smelt as endangered, indicating the species is in danger of extinction throughout all or a significant portion of its range. During our status review we will evaluate whether the best scientific and commercial information available supports reclassification and whether there may be a portion of the delta smelt's range that may be significant. As a result we will provide our analysis of significant portion of range in the 12-month finding.

References Cited

A complete list of all references cited in this document is available, upon request, from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff of the California and Nevada Regional Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 2, 2008.

Kenneth Stansell,

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

[FR Doc. E8–15747 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080627793–8795–01]

RIN 0648–AW81

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement a new management measure for the monkfish fishery recommended in Framework Adjustment 6 (Framework 6) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils). This action would eliminate the backstop provision adopted in Framework Adjustment 4 (Framework 4) to the FMP, which was implemented in October 2007. This provision would have adjusted, and possibly closed, the directed monkfish fishery in fishing year (FY) 2009 if the landings in FY 2007 exceeded the target total allowable catch (TTAC). Given the most recent information on the status of monkfish stocks, the backstop provision is no longer deemed necessary.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on August 11, 2008.

ADDRESSES: You may submit comments, identified by RIN number 0648–AW81, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*.
- Fax: (978) 281–9135, Attn: Emily Bryant.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Monkfish Framework 6.''

Instructions: All comments received are 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 via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only. Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 6 are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. The document is also available online at *www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, phone (978) 281–9244, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the Councils, with the New England Council having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

Framework 4 included a ''backstop'' provision that would adjust, and possibly close, the directed monkfish fishery in FY 2009 if the landings in FY 2007 exceeded the TTAC. This provision would adjust the days-at-sea (DAS) allocations for either or both management areas in FY 2009 if the TTACs are exceeded by between 10 and 30 percent during FY 2007, or close the directed fishery in FY 2009 if the TTACs are exceeded by more than 30 percent. Because of scientific uncertainty concerning the status of the monkfish resource, NMFS deferred implementing Framework 4 and conducted a new stock assessment. The Northeast Data Poor Stocks Working Group (DPWG) completed and accepted the new assessment in July 2007. The results of this assessment indicated that neither monkfish stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on the new modeling approach and the newly recommended biomass reference points. The July 2007 assessment report emphasized, however, that in addition to the fact that this assessment was the first to use the new analytical model, there was a high degree of uncertainty in the analyses due to the dependence on assumptions about natural mortality, growth rates, and other model inputs. In light of this counsel, NMFS approved and implemented Framework 4 measures, which became effective on October 22, 2007 (72 FR 53942, September 21, 2007).

Framework Adjustment 5 (Framework 5), implemented on May 1, 2008 (73 FR 22831, April 28, 2008), adopted the revised reference points recommended by the DPWG, and implemented other measures that will reduce the likelihood of TTAC overages in FY 2008 and beyond. Under the revised biomass reference points in Framework 5, both monkfish stocks are no longer considered overfished, and are considered to be rebuilt. Therefore, there is no longer a stock rebuilding program for the monkfish fishery.

In support of the recent adjustments to the FMP, consistent with the results of the DPWG assessment, Framework 6 would eliminate the backstop provision adopted in Framework 4. Available landings information for FY 2007 indicate that the TTAC was exceeded by more than 30 percent in the SFMA. Given the most recent information on the status of monkfish stocks, including the revised reference points established through Framework 5 and the expected minimal biological impact of a 30–percent TTAC overage on stock status, the backstop provision is no longer deemed necessary. In addition, as noted above, Framework 5 included measures aimed at keeping landings within the TTACs.

Technical Correction to Monkfish FMP Regulations

This rule proposes to correct the regulations implementing the FMP. The final rule implementing the Standardized Bycatch Recording Methodology (SBRM) Omnibus Amendment (73 FR 4736, January 28, 2008) inadvertently revised § 648.96(b)(5), thereby deleting the regulations pertaining to the backstop provision introduced by Framework 4. As a result, the text referencing the annual review process at § 648.96(a) is redundant with the existing text under § 648.96 (b)(5). Therefore, this action would remove the redundant text under § 648.96 (b)(5) referencing the annual review process and would simultaneously remove and reserve paragraph (b)(5) for the purpose of removing the reference to the TTAC overage backstop provision that was added through the final rule implementing Framework 4.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared for Framework 6, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the discussion in the preamble of the proposed rule and this section, and the analysis of impacts in Framework 6. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** of this proposed rule. A copy of this analysis is available from the NEFMC (see **ADDRESSES**). A summary of the analysis follows:

This action would remove an existing measure (TTAC overage backstop provision) that was implemented when there were concerns regarding potential overfishing of monkfish as the FMP neared the end of its rebuilding period. Changes in the biological reference points under Framework 5 showed that monkfish are no longer overfished, and overfishing is not occurring. In addition, current population modeling indicates that TTAC overage levels of 30 percent would not change the monkfish stock status. Consequently, retaining the existing effort reduction measures for FY 2009, under the no action alternative, would have a negative economic impact on the fishery, without materially aiding in the rebuilding of the stock. No other alternatives were considered because the purpose of the action is to remove a measure deemed unnecessary based upon best scientific information available.

The regulations implementing the FMP, found at 50 CFR part 648, authorize the Council to adjust management measures as needed to achieve FMP goals. The objective of this action is to achieve the goals of the FMP while minimizing adverse economic impacts. Thus, the proposed action is consistent with the goals of the FMP and its implementing regulations.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in gross sales). As of March 14, 2008, there were 765 limited access monkfish permit holders and 2,211 vessels holding an open access Category E permit. Based on vessel trip report records in FY 2006, 615 limited access permit holders participated in the monkfish fishery. During the same period, 567 incidental permit holders reported landing monkfish.

This action would affect limited access monkfish permit holders that fished, at some time, in the SFMA. Based on vessel activity reports from FY 2006 (the most recent fishing year for which complete information is available) this action could affect 462 limited access monkfish vessels, including 229 vessels that fishing only in the SFMA, and the 233 vessels that fished in both the NFMA and SFMA.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Economic Impacts of the Proposed Framework 6 Measure

The proposed action is a single measure that would only affect limited access monkfish vessels that fish in the SFMA. In the absence of this measure, it is assumed that the directed monkfish fishery would close in the SFMA in FY 2009, based upon preliminary landings in FY 2007 indicating that the TTAC was exceeded by more than 30 percent. Conversely, under the proposed action, restrictions on effort would not be required in FY 2009. Using a trip model, it was estimated that the proposed measure would result in positive or neutral changes in vessel net revenues, crew payments, and monkfish revenues in FY 2009, compared to the status quo.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 2, 2008.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.96, paragraph (b)(5) is removed and reserved, and paragraph (b)(6) is revised to read as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

(b) * * *

(6) *Management measures for FY 2010 and beyond.* If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, the management measures in effect during FY 2009 (i.e., trip limits and DAS allocations) shall remain in effect.

* * * * *

[FR Doc. E8–15613 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 133

Thursday, July 10, 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

Agricultural Marketing Service

[Docket # AMS–FV–07–0142]

United States Standards for Grades of Beet Greens

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to revise the voluntary United States Standards for Grades of Beet Greens. AMS is proposing to remove ''Unclassified'' category from the standards. The proposed revisions will update the beet greens grade standards.

DATES: *Effective Date:* Comments must be received by September 8, 2008.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185. The United States Standards for Grades of Beet Greens are available by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/freshinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is revising the United States Standards for Grades of Beet Greens using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised June 1, 1959.

Background

Prior to undertaking detailed work to develop a proposed revision to the standards, AMS published a notice on February 19, 2008, in the **Federal Register** (73 FR 9086) soliciting comments for possible revisions to the United States Standards for Grades of Beet Greens. The proposal would remove the ''Unclassified'' category from the standards. No comments were received regarding this change.

AMS would eliminate the unclassified category. This category is being removed from all standards when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

AMS is seeking comments regarding how this revision will affect the marketing of beet greens. Additionally, AMS is interested in learning the costs and/or benefits to the industry by revising the United States Standards for Grades of Beet Greens.

The official grades of beet greens covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables and Other Products (7 CFR 51.1 to 51.62).

This notice provides for a 60-day comment period for interested parties to comment on the proposed revisions to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: July 3, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15644 Filed 7–9–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada for the period October 1, 2006, to September 30, 2007 (the POR). We preliminarily determine that sales of subject merchandise by Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario (a division of Sivaco Wire Group 2004 L.P.) (collectively referred to as ''Ivaco'') have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** an

antidumping duty order on carbon and certain alloy steel wire rod (steel wire rod) from Canada. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 65944 (October 29, 2002) (Order). On October 1, 2007, the Department issued a notice of opportunity to request an administrative review of this order for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 55741 (October 1, 2007). On October 31, 2007, Mittal Canada Inc. (formerly Ispat Sidbec Inc.) of Canada (Mittal Canada) requested an administrative review of its entries that were subject to the antidumping duty order for this period. On October 31, 2007, the Department received a request from petitioners (ISG Georgetown Inc., Gerdau Ameristeel U.S. Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries, Inc., and Rocky Mountain Steel Mills) for a review of Ivaco, Inc. and Ivaco Rolling Mills L.P. (which petitioners referred to collectively as ''Ivaco''). On that same date, Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., also requested a review of their entries.[1] On November 26, 2007, the Department published the notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 65938 (November 26, 2007).[2] Mittal Canada subsequently withdrew its request for review, and the Department rescinded the administrative review with respect to Mittal Canada. *See Carbon and Certain Alloy Steel Wire Rod from Canada: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 73321 (December 27, 2007).

Ivaco submitted a response to Section A of the Department's questionnaire on December 28, 2007, and a response to Sections B, C, and D of the Department's questionnaire on January 16, 2008. In response to the Department's supplemental questionnaire dated February 15, 2008, Ivaco submitted a supplemental response for Section A on March 21, 2008. In response to the Department's supplemental questionnaire dated March 13, 2008, Ivaco submitted a supplemental response for Sections A, B, C, and D on April 22, 2008.

The Department is considering IRM and Sivaco Ontario as part of the same entity (referred to collectively in this notice as ''Ivaco'') because of common ownership, consistent with the Department's treatment of these companies in previous proceedings. *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review*, 73 FR 26958 (May 12, 2008), and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 72 FR 26591 (May 10, 2007).

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an

[1] Ivaco's October 31, 2007, request for review also contained a request that the Department revoke the order with respect to Ivaco. Ivaco later claimed that had the Department not ''zeroed'' in the previous three reviews, Ivaco would have had negative weighted-average margins for each of those segments. *See* Ivaco's March 14, 2008 Submission. The Department preliminarily rejects Ivaco's request for revocation because it has not demonstrated, pursuant to 19 CFR 351.222(b)(2)(i)(A), that it has sold the merchandise at not less than normal value for a period of at least three consecutive years. We note that the Department has previously rejected Ivaco's ''zeroing'' argument in the prior segment of this proceeding and that Ivaco had an antidumping duty rate of 2.98 percent *ad valorem*. *See Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review*, 73 FR 26958 (May 12, 2008), and accompanying Issues and Decision Memorandum at Comment 5.

[2] The Department's initiation notice referenced the following companies: Mittal Canada Inc. (formerly Ispat Sidbec Inc.); Ivaco Rolling Mills 2004 L.P. (formerly Ivaco Rolling Mills L.P.); and Sivaco Ontario, a division of Sivaco Wire Group 2004 (L.P.) (formerly Ivaco, Inc.).

inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope. The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, export price (EP) or constructed export price (CEP), as defined in sections 772(a) and 772(b) of the Tariff Act of 1930, as amended (the Act), respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act.

Ivaco made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Ivaco to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by Ivaco after importation to the United States (where the merchandise was located at an unaffiliated processor facility or unaffiliated distributor warehouse at the time of sale).

For EP sales, we made additions to the starting price (gross unit price), where appropriate, for freight revenue received by Ivaco (reimbursement by customers for freight charges paid by Ivaco) and for billing errors (debit-note price adjustments made by Ivaco), and deductions, where appropriate, for billing adjustments (including credit-note price adjustments made by Ivaco), early payment discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, and brokerage fees.

For CEP sales, we made adjustments to the starting price as for the EP transactions described above. However, consistent with our treatment of these expenses in recent administrative reviews, we re-categorized freight from one unaffiliated processor in the United States to another unaffiliated processor in the United States as a further manufacturing cost. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) and accompanying Issues and Decision Memorandum at Comment 1. In addition, in accordance with section 772(d)(1) and (2) of the Act, we deducted from the starting price those selling expenses incurred in selling the subject merchandise in the United States, including direct selling expenses (imputed credit expenses and warranty expenses), imputed inventory carrying costs, and further manufacturing. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See* Memorandum from Steve Bezirganian, Analyst, ''Analysis Memorandum for Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P.: Carbon and Certain Alloy Steel Wire Rod from Canada (A–122–840), October 1, 2006–September 30, 2007'' (July 2, 2008) (Ivaco Analysis Memorandum).

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is not a particular market situation that prevents a proper comparison with sales to the United States. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* section 773(a)(1) of the Act.

We found that Ivaco had a viable home market for steel wire rod because its home market sales, by quantity, exceeded the five percent threshold. *See* Ivaco Analysis Memorandum. Ivaco submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the ''Calculation of Normal Value Based on Comparison Market Prices'' section below.

B. Cost of Production Analysis

Because we disregarded below-cost sales in the most recently completed segment of the proceeding, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondent were made at prices below the cost of production (COP) during the POR, in accordance with section 773(b)(2)(A) of the Act. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Initiation of Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 64921, 64924 (November 6, 2006) (unchanged in final results, 72 FR 26591 (May 10, 2007)). Therefore, we required Ivaco to file a response to Section D of the Department's Questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP by model based on the sum of materials, fabrication, and general and administrative (G&A) expenses.

2. Test of Comparison Market Sales Prices

We compared the weighted-average COPs for the respondent to its home

market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below-cost sales where: (1) 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product were at prices that would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found Ivaco made sales below cost and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Comparison-Market Prices

We determined NV for Ivaco as follows. We made adjustments to the gross price to account for billing adjustments, and deducted discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses pursuant to sections 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we made adjustments for Ivaco's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses and warranty expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses and warranty expenses). *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). Where we compared Ivaco's U.S. sales to home market sales of merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

D. Arm's-Length Sales

The respondent reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). Ivaco's sales to affiliated parties that were determined not to be at arm's length were disregarded in our comparison to U.S. sales.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those models of steel wire rod for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses and warranty expenses). *See* Section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). For EP sales, we added U.S. direct selling expenses (*i.e.*, credit expenses and warranty expenses) to the NV.

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP and CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain o2f distribution between the producer and the unaffiliated (or arm's-length) customers. The Department identifies the LOT based on: the starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

Ivaco reported home market sales in two channels of distribution: (1) Direct sales by IRM and (2) direct sales by Sivaco Ontario.[3] Ivaco reported U.S. EP sales in two channels of distribution: (1) direct sales by IRM to U.S. customers and (2) direct sales by Sivaco Ontario to U.S. customers. Finally, Ivaco reported U.S. CEP sales in one channel of distribution: Direct sales by IRM to U.S. customers made from the facilities of unaffiliated U.S. processors or unaffiliated U.S. warehouses. Ivaco claims that all of IRM's home market and U.S. sales are at one LOT, and that all of Sivaco's home market and U.S. sales are at another, more advanced, LOT. Ivaco states that the Department

[3] Ivaco identified a third channel of distribution in the home market. Although proprietary treatment of the description prevents additional public discussion of the details of this proposed channel, it is simply a variation of direct sales by Sivaco Ontario. Ivaco has not claimed that this proposed channel constitutes an additional LOT, and the record does not indicate that it is one.

should calculate a LOT adjustment when sales by IRM are matched to sales by Sivaco. Ivaco also states that, if the Department determines that IRM's U.S. CEP sales are at a different LOT from all Ivaco's home market sales, the Department should grant a CEP offset.

To determine whether there were multiple LOTs, we examined the selling functions performed by Ivaco for its customers. We found few differences in selling functions across the various channels of distribution and, based on this examination, we preliminarily determine that Ivaco sold merchandise at one LOT in both markets. *See* the Memorandum from Steve Bezirganian, ''Level of Trade Analysis for Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P.: Carbon and Certain Alloy Steel Wire Rod from Canada (A–122–840), October 1, 2006—September 30, 2007'' (July 2, 2008). Consequently, there is no basis for calculating a LOT adjustment or a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as provided by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average margin exists for the period October 1, 2006, through September 30, 2007:

Producer/exporter	Weighted-average margin (percentage)
Ivaco	2.33

In accordance with 19 CFR 351.224(b), the Department will disclose calculations performed within five days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after submission of case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the arguments; and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to Section 751(a)(3) of the Act.

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. The Department will issue assessment instructions directly to CBP on or after 41 days following the publication of the final results of review, pursuant to 19 CFR 356.8(a). We will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results where the reviewed companies did not know the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there was no rate calculated in this review for the intermediary involved in the transaction. *See id.,* 68 FR at 23954.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of steel wire rod from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ivaco will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.11 percent, the all-others rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15753 Filed 7–9–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–469–814)

Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests by Biolab, Inc., Clearon Corporation and Occidental Chemical Corporation (collectively, ''Petitioners''), and Aragonesas Industrias y Energía S.A. (''Aragonesas''), the Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (''chlorinated

isos'') from Spain with respect to Aragonesas. The period of review (''POR'') is June 1, 2006 through May 31, 2007.

The Department preliminarily determines that Aragonesas made U.S. sales of chlorinated isos at prices less than normal value (''NV''). *See Preliminary Results of Review* section, below. If these preliminary results are adopted in our final results of administrative review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results. *See Disclosure and Public Hearing* section, below. We will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0780.

SUPPLEMENTARY INFORMATION: On June 24, 2005, the Department published in the **Federal Register** an antidumping duty order on chlorinated isos from Spain. *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005). In response to timely requests filed by Petitioners and Aragonesas, the Department published a notice of initiation of an administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). The POR for this administrative review is June 1, 2006 through May 31, 2007.

On August 24, 2007, the Department issued an antidumping duty questionnaire to Aragonesas. On September 25, 2007, the Department received Aragonesas's response to section A of the antidumping questionnaire. On October 12, 2007, the Department received Aragonesas's response to sections B and C of the antidumping questionnaire. On October 23, 2007, the Department received Aragonesas's response to section D of the antidumping questionnaire. We issued supplemental questionnaires to Aragonesas on November 19, 2007, December 3, 2007, January 3, 2008, and May 15, 2008. Aragonesas filed a timely response to each questionnaire.

The Department extended the time limit for the preliminary results by 120 days. *See Chlorinated Isocyanurates from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 12079 (March 6, 2008).

Scope of the Order

The products covered by this order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This order covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Date of Sale

Aragonesas reported invoice date as the date of sale for U.S. sales. The Department's regulations state that ''{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i). We examined the questionnaire responses and the sales documentation placed on the record by Aragonesas, and determine that invoice date is the appropriate date of sale in both the U.S. and home markets.

However, in accordance with the Department's practice, whenever shipment date precedes invoice date, we used shipment date as the date of sale. *See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–80 (April 10, 2006), remaining unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007); and *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part*, 72 FR 62630, (November 6, 2007) and accompanying Issues and Decision Memorandum at Issue 2, where the Department finds ''that it is appropriate to use the earlier of shipment or invoice date as Colakoglu's and Habas' U.S. date of sale in the instant review, consistent with the date–of-sale methodology established in the previous review.'' Accordingly, because Aragonesas has reported that shipment date for its U.S. sales always precedes invoice date, we are using shipment date as the date of sale for its U.S. sales.

Comparisons to Normal Value

To determine whether Aragonesas sold chlorinated isos in the United States at prices less than NV, the Department compared the export price (''EP'') of individual U.S. sales to the weighted–average NV of sales of the foreign like product made in the ordinary course of trade in a month contemporaneous with the month in which the U.S. sale was made. *See* section 777A(d)(2) of the Tariff Act of 1930 (''the Act''); *see also* section 773(a)(1)(B)(i) of the Act.

Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order that were produced by the same person and in the same country as the subject merchandise, and sold by Aragonesas in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to chlorinated isos sold in the United States.

Product Comparisons

In accordance with section 771(16) of the Act, the Department considered all products produced by the respondent, covered by the description in the ''Scope of the Order'' section above, to be foreign like products for purposes of

determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), the Department compared U.S. sales made by Aragonesas to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, the Department used the physical characteristics determined by the Department and reported by Aragonesas, to match foreign like products to U.S. sales: chemical structure, free available chlorine content, physical form, and packaging.

Export Price

The Department based the price of Aragonesas's U.S. sales on EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Aragonesas to the first unaffiliated purchaser in the United States prior to importation and the constructed export price (''CEP'') methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States. Aragonesas reported its U.S. sales on a delivered, duty paid basis. We made deductions from the starting price, where appropriate, for foreign inland freight, international freight, foreign inland and marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight, commissions and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's–length prices, and whether home market sales were at below–cost prices, we calculated NV for Aragonesas as noted in the ''Calculation of Normal Value Based on Comparison Market Prices'' section of this notice.

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared Aragonesas's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We excluded sales of merchandise that were not foreign like product for reasons that are of a business proprietary nature. See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Whether Certain Merchandise Sold By Aragonesas Industrias y Energía, S.A. Constitutes Subject Merchandise and Foreign Like Product,'' dated June 30, 2008 (''*Foreign Like Product Memorandum*''). Because Aragonesas's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that its home market was viable.

B. Arm's–Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length. *See* 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market that are determined not to be at arm's–length are excluded from our analysis. In this proceeding, Aragonesas reported sales of the foreign like product to affiliated customers. To test whether these sales were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). Where Aragonesas's sales to affiliated home market customers did not pass the arm's–length test, we excluded those sales from our analysis. See section 773(b)(1) of the Act.

C. Cost of Production Analysis

We calculated a margin for Delsa S.A. (Delsa) in *Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506, 24511 (May 10, 2005) (''*Final LTFV Determination*''), which was the most recently completed segment of this proceeding as of the publication date of the initiation of this review. In the *Final LTFV Determination*, the Department disregarded sales made at prices that were below COP. As a result, in accordance with section 773(b)(2)(A)(ii) of the Act, in this review the Department determined that there are reasonable grounds to believe or suspect that Aragonesas[1] sold the foreign like product at prices below the cost of producing the product during the instant POR. Accordingly, the Department required that Aragonesas provide a response to Section D of the questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, for each product, sorted by control number, sold by Aragonesas during the POR, the Department calculated Aragonesas's weighted–average COP based on the sum of its materials and fabrication costs, plus amounts for general and administrative (''G&A'') expenses and interest expenses. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of home market selling expenses. We relied on the COP information provided by Aragonesas in its questionnaire responses.

2. Test of Comparison Market Sales Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis, the Department compared Aragonesas's adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. The prices were inclusive of billing adjustments and exclusive of any applicable movement charges, discounts and rebates, direct and indirect selling expenses, and packing expenses, revised where appropriate.

[1] The Department determined Aragonesas to be the successor-in-interest to Delsa. *See Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 37189 (July 9, 2007) (unchanged in final results, *see Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 17, 2007)).

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, the Department does not disregard any below cost sales of that product, because the Department determines that in such instances the below cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, the Department disregards the below cost sales because they: (1) were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on the results of our test, we found that, for certain products, more than 20 percent of Aragonesas's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the prices at which the foreign like product was first sold by Aragonesas for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the comparison U.S. sale. We excluded sales of merchandise that were not foreign like product, for reasons that are of a business proprietary nature. *See Foreign Like Product Memorandum*. We calculated NV for Aragonesas using the reported gross unit prices to unaffiliated purchasers, or where appropriate, affiliated purchasers. Aragonesas reported that it offers its home market customers the following terms of delivery: carriage insurance paid, carriage paid, delivered duty paid, delivered duty unpaid, ex–works, and free carrier. Where appropriate, the Department made adjustments to the starting price for billing adjustments. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. We deducted, where appropriate, discounts and rebates, pursuant to section 773(a)(6)(B)(ii) of the Act. *See* Memorandum from Scott Lindsay, International Trade Compliance Analyst, to the File, ''Calculation Memorandum for the Preliminary Results for Aragonesas Industrias y Energia S.A.,'' dated June 30, 2008. We also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, the Department made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit and warranty expenses. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

We also made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (*i.e.*, commission offset). Specifically, where commissions are incurred in one market, but not in the other, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same LOT as the EP or CEP sales in the U.S. market (Aragonesas had only EP sales in the U.S. market). The NV LOT is based on the starting price of the sales in the comparison market. Where NV is based on CV, the Department determines the NV LOT based on the LOT of the sales from which the Department derives selling expenses, general and administrative expenses, and profit for CV, where possible. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile*, 63 FR 2664–2670 (January 16, 1998) (unchanged in final determination, *see Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, (June 9, 1998)). For EP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market.

To determine whether NV sales are at a different LOT than EP sales, the Department examines stages in the marketing process and level of selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). When the Department is unable to match U.S. sales to foreign like product sales in the comparison market at the same LOT as the EP sale, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison–market sales at the NV LOT and comparison–market sales at the LOT of the export transaction, the Department makes an LOT adjustment under section 773(a)(7)(A) of the Act.

In this administrative review, Aragonesas had only EP sales in the U.S. market, thus the CEP methodology was not employed in this review. The Department obtained information from Aragonesas regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Aragonesas reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to industrial users). Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market. Aragonesas reported that it made sales in the home market through three channels of distribution (*i.e.*, industrial customers, retail customers, and distributors). We compared the selling functions performed by Aragonesas for these three distribution channels and found that Aragonesas performed similar selling activities in the home market for the retail and distributor channels of distribution, and fewer selling activities for industrial home market customers. Thus, we preliminarily find that the retail and distributor channels of distribution constitute one NV LOT, while the channel of distribution for industrial customers is a second NV

LOT. Moreover, we preliminarily find that the NV LOT for retail and industrial purchasers is at a more advanced stage than the NV LOT for industrial customers. *See* Memorandum from Scott Lindsay, International Trade Compliance Analyst, through Thomas Gilgunn, Program Manager, to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Level of Trade Analysis: Aragonesas Industrias y Energía S.A. (Aragonesas),'' dated June 30, 2008 (*LOT Memorandum*).

Finally, the Department compared the EP LOT to the two home market LOTs. The Department finds that selling activities performed by Aragonesas for industrial users in the U.S. market and home market are similar. Because selling activities for industrial users in the U.S. market (the only LOT in the U.S. market) and industrial users in the home market are similar, the Department preliminarily determines that, for sales to the U.S. and home markets during the POR that were made at this same LOT (*i.e.*, sales to industrial users), the Department will not make an LOT adjustment to NV. However, where the Department matches sales between the U.S. and home markets where the home market sale is made at a more advanced LOT (*i.e.*, retail and distributor channels of distribution) than the sale in the U.S. market, the Department will grant an LOT adjustment to NV because there is a consistent pattern of price differences. For additional details regarding the Department=s LOT analysis, *see LOT Memorandum*.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as reported by the Federal Reserve Bank of the United States.

Preliminary Results of Review

As a result of this review, the Department preliminarily determines that the weighted–average dumping margin for the period June 1, 2006, through May 31, 2007, is as follows:

Manufacturer/Exporter	Weighted-Average Margin (percentage)
Aragonesas Industrias y Energía S.A.	4.16

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the ''All Others'' rate made effective by the LTFV investigation. *See Final LTFV Determination*. These requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party=s name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register** (*see* 19 CFR 351.309(c)). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15736 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act), that India Steel Works, Ltd. (India Steel) is the successor-in-interest to Isibars, Ltd. (Isibars). As a result, India Steel will be accorded the same treatment previously accorded to Isibars in regard to the antidumping duty order on certain forged stainless steel flanges from India as of the date of publication of this notice in the **Federal Register**.

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2008, India Steel requested that the Department conduct a changed circumstances review of the antidumping duty order on stainless steel flanges from India pursuant to section 751(b) of the Tariff Act and 19 CFR 351.216. In its request, India Steel claimed that the entity previously known to the Department as Isibars had changed its name to India Steel, and that India Steel should therefore be assigned the same antidumping duty cash deposit rate as Isibars. In response to this request, the Department initiated a changed circumstances review of the antidumping duty order on forged stainless steel flanges from India. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India,* 73 FR 14959 (March 20, 2008). On March 20, 2008, the Department issued a questionnaire to India Steel requesting information about its relation to Isibars. The Department received India Steel's response on April 16, 2008. On May 19, 2008, the Department preliminarily determined that India Steel was the successor-in-interest to Isibars. *See Certain Forged Stainless Steel Flanges from India; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 73 FR 28798 (May 19, 2008) (*Preliminary Results*). We invited parties to comment on the *Preliminary Results.* We received no comments.

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *Preliminary Results*, and because the Department did not receive any comments during the comment period following the preliminary results of this review, the Department continues to find that India Steel is the successor-in-interest to Isibars for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct CBP to suspend liquidation of all shipments of the subject merchandise produced and exported by India Steel entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice at zero percent (*i.e.*, Isibar's cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which India Steel participates.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: July 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15734 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone (202) 482–2243.

Background

On March 5, 2008, the Department of Commerce (''the Department'') published a notice for the preliminary results of the administrative review of the antidumping duty order on heavy forged hand tools from the People's Republic of China, covering the period February 1, 2006, through January 31, 2007. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Rescission of Antidumping Duty Administrative Review,* 73 FR 11867 (March 5, 2008). The final results for this administrative review are currently due no later than July 3, 2008.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department requires additional time to properly consider the issues raised in case briefs from interested parties such as the proper labeling of certain products as noted in the verification findings of the third-country reseller.

Thus, it is not practicable to complete these reviews within the original time limit. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than September 2, 2008.[1] We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2008.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15731 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] Sixty days from July 3, 2008, is September 1, 2008. However, Department practice dictates that where a deadline falls on a federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Act,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal from the People's Republic of China: Notice of Extension of Time Limit for Final Results of 2006–2007 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Scot T. Fullerton or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–4031, respectively.

Background

On March 7, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results and partial rescission of this antidumping duty administrative review. *Silicon Metal From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12378 (March 7, 2008). The period of review for this administrative review is June 1, 2006 to May 31, 2007.

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

In the instant review, the Department finds that the current deadline for the final results of July 7, 2008, is not practicable. The Department requires additional time to review and analyze interested party comments related to alleged transshipment of Chinese-origin silicon metal through Canada. As a result, the Department has determined to extend the current time limits of this administrative review. For these reasons, the Department is extending by 30 days the time limit for the completion of these final results until no later than August 4, 2008.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 2, 2008.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15746 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–875)

Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On March 3, 2008, the Department of Commerce (''Department'') initiated a sunset review of the antidumping duty order on non–malleable cast iron pipe fittings (''non–malleable pipe fittings'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). The Department conducted an expedited (120–day) sunset review of this order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Juanita Chen, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–1904, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On March 3, 2008, the Department published the notice of initiation of the first sunset review of the antidumping

duty order on non–malleable pipe fittings from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five–year (''Sunset'') Reviews*, 73 FR 11392 (March 3, 2008). The Department received Notice of Intent to Participate from Anvil International, Inc. and Ward Manufacturing (collectively ''the domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under 19 CFR 351.102(b), as manufacturers of a domestic–like product in the United States. Jinan Meide Casting Co., Ltd. (''JMC'') filed an entry of appearance as an interested party, specifically, as a PRC–based producer and exporter of the subject merchandise under section 771(9)(A) of the Act.

We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from JMC or from any other respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

Scope of the Order

For purposes of this review, the products covered are finished and unfinished non–malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un–threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.l6.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (''UL'') certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (''MJ''), or push on ends (''PO''), or flanged ends and produced to the American Water Works Association (''AWWA'') specifications AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China; Final Results,'' dated July 1, 2008 (''Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''July 2008.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on non–malleable pipe fittings from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Jinan Meide Casting Co., Ltd.	7.08
Shanghai Foreign Trade Enterprises Co., Ltd.	6.34
PRC–Wide Entity Rate (including Myland Industrial Co., Ltd., and Buxin Myland (Foundry) Ltd.)	75.50

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: July 01, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15738 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–931]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of circular welded austenitic stainless pressure pipe (CWASPP) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. See ''Disclosure and Public Comment'' section below for procedures on filing comments.

EFFECTIVE DATE: July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, or Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2209 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the issuance of the Department's notice of initiation in the **Federal Register**. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation,* 73 FR 9994 (February 25, 2008) (*Initiation Notice*), and accompanying initiation checklist (February 19, 2008) (Initiation Checklist). On February 19, 2008, the Department issued the results of its query of the U.S. Customs and Border Protection (CBP) trade database to interested parties. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Results of Query of Customs and Border Protection Database'' (February 19, 2008), a proprietary document of which the public version is on file in the Central Records Unit (CRU), room 1117 in the main Department building. On February 29, 2008, Zhejiang Jiuli High-Tech Metals Co. Ltd. (Jiuli), a Chinese producer and exporter of CWASPP, requested that the Department select the company as a mandatory respondent. Jiuli further requested that, in the event that the Department did not select it as a mandatory respondent, the Department designate Jiuli as a voluntary respondent as provided under 19 CFR 351.204(d). On March 3, 2008, Jiuli submitted comments regarding the Department's selection of mandatory respondents in the investigation. On March 14, 2008, the Department selected as mandatory respondents the two largest Chinese producers/exporters of CWASPP that could reasonably be examined. The mandatory respondents selected by the Department are, in alphabetical order, Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.) and Winner Stainless Steel Tube Co. Ltd. (Winner). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, through Melissa G. Skinner, Director, Office 3, Operations, from the team, ''Respondent Selection'' (March 14, 2008), a proprietary document of which the public version is on file in the CRU. On the same day, we issued a countervailing duty (CVD) questionnaire to the Government of China (GOC) requesting that the GOC forward the company sections of the questionnaire to the mandatory respondents. As a courtesy, we also issued the CVD questionnaire to Froch, and Winner, and to Jiuli.[1]

On March 17, 2008, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of CWASPP from the PRC. *See Welded Stainless Steel Pressure Pipe from China,* USITC Pub 3986, Investigation Nos. 701–TA–454 and 731–TA–1144 (Preliminary) (March 2008). On the same day, Prudential Stainless & Alloy (Prudential), a U.S importer and distributor of CWASPP, submitted comments regarding the scope of the investigation.[2]

On April 4, 2008, we published a postponement of the preliminary determination of this investigation until no later than June 30, 2008. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Amended Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 73 FR 18511 (April 4, 2008).

On May 5, 2008, we received the GOC's response to the Department's initial questionnaire. On May 9, 2008, we received a response to the initial questionnaire from Winner and its affiliates Winner Machinery Enterprises Company Limited (Winner HK) and Winner Steel Products (Guangzhou) Co., Ltd. (WSP) (collectively the Winner Companies). Froch did not respond to the Department's initial questionnaire. On May 14, 2008, the GOC submitted its response to the Department's government supplemental questionnaire. On June 10, 2008, the Winner Companies submitted their response to the Department's supplemental questionnaire. On June 16, 2008, the GOC submitted its response to the Department's second government supplemental questionnaire.

On May 30, 2008, petitioners submitted new subsidy allegations concerning 11 programs.[3] On June 9, 2008, members of the Import Administration staff met with officials from the GOC regarding new subsidy allegations filed by petitioners. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''*Ex Parte* Meeting with Officials from the Government of China'' (June 9, 2008), a public document on file in the CRU. On June 11, 2008, the GOC submitted comments to the Department urging it to reject petitioners' new subsidy allegations on the grounds that petitioners alleged them in an untimely matter and that they are without merit. On June 12, 2008, the Department issued a letter to petitioners asking them to explain why they were unable to submit their new subsidy allegations within the regulatory deadline established under 19 CFR 351.301(d)(4)(i)(A). On June 18, 2008, petitioners submitted their response to the Department and responded to the comments made by the GOC in its June 12, 2008 submission.

At this time, the Department continues to evaluate the timeliness of petitioners' new subsidy allegations. If the Department determines that the new subsidy allegations were submitted in accordance with 19 CFR 351.301(d)(4)(i)(A), then the Department will issue a new subsidy allegation decision memorandum in which it will identify, if any, the programs it will investigate. Any such decision memorandum will be provided to interested parties.

On June 25, 2008, petitioners requested that the Department align the final CVD determination with the final determination in the companion antidumping (AD) investigation of CWASPP from the PRC.

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials

[1] We received confirmation that the CVD questionnaire was delivered to Froch on March 19, 2008. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (March 26, 2008), which includes a copy of the documentation from FedEx confirming delivery, a public document on file in the CRU. Winner also received a copy of the CVD questionnaire. *See, e.g.,* Winner's April 29, 2008, request for an extension of time to respond to the due date deadline, which serves as confirmation of Winner's receipt of the CVD questionnaire. We also served Jiuli with a copy of the CVD questionnaire. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (March 26, 2008), a public document on file in room 1117 of the CRU, regarding the service of the initial questionnaire to Jiuli.

[2] These comments are identical to the comments filed by Prudential on March 10, 2008, in the companion antidumping duty investigation on these same products.

[3] Petitioners are Bristol Metals, LLC, Felker Brothers Corp., Marcegaglia U.S.A., Inc., Outokumpu Stainless Pipe, Inc., and the United Steelworkers.

(ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States. They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Scope Comments

In our *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice,* 73 FR at 9994. As stated above, on March 17, 2008, Prudential submitted timely scope comments.

Prudential argues that the current scope appears to cover all alloy grades within the specification ASTM A–312. However, according to Prudential, certain grades such as 309S, 310S, 321, 347, 317L, 904L (NO8904), 254SMO (S31254) and others are specialized, very low-volume products that do not compete with the high-volume commodity products such as 304, 304L, 316, and 316L that are manufactured by petitioners. Prudential contends that such low-volume, higher-priced specialty grades should be excluded from the scope. Specifically, Prudential argues that the Department should exclude all grades of CWASPP except the 304 series and 316 series. Prudential adds that series 304H and 304LN should remain within the scope in order to prevent circumvention.

Additionally, Prudential asserts that the scope of the investigation is unnecessarily broad with respect to schedules (*e.g.*, wall thickness) of CWASPP. Prudential contends that the scope should only cover schedules 40S and 10S, which it claims constitute the vast majority of pipe produced by petitioners. Prudential argues that schedules 5S, 20, 30, 60, and 80S should be excluded from the scope because they do not represent a threat to petitioners.

On March 14, 2008, petitioners filed rebuttal comments to Prudential's scope and product coverage comments. Petitioners oppose changing the scope of the investigation arguing that Prudential's proposed changes regarding alloy grade and schedules (wall thickness) would exclude products presently manufactured by the domestic industry that are important to the domestic industry. They note that these products were also covered by the ITC in its definition of like product in its preliminary investigation questionnaire.

On April 28, 2008, Prudential filed a letter in response to petitioners' March 14, 2008, submission. Prudential disagrees with petitioners' claim that the items Prudential is proposing to exclude are ''important'' to the domestic industry. Arguing that, as a specialty ''stockist,'' these items are important to Prudential, but not the industry as a whole. Prudential requests that the Department determine factually how much, of the approximately 35,000 tons produced last year domestically, were not 304, 304L, 304/L, 316, 316L or 316/L and were not schedule 10s or 40s. Prudential asserts that the percentages will be quite low and argues that it is doubtful that schedule 5s and 80s would be considered ''important'' and that, undeniably, the remaining schedules (20, 30, 60, 100, 120, 140, 160, and XXH) are of no importance to the domestic industry.

The Department is evaluating these comments and will issue its decision regarding the scope of the investigation in the preliminary determination of the companion AD investigation due no later than August 27, 2008.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On June 25, 2008, petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final CVD determination with the final determination in the companion AD investigation of CWASPP from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of CWASPP from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than November 10, 2008.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying decision memorandum (CFS from the PRC Decision Memorandum). In *CFS from the PRC,* the Department found that

> * * * given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

See CFS from the PRC Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008) (CWP from the PRC), and accompanying decision memorandum (CWP from the PRC Decision Memorandum).

Additionally, for the reasons stated in the CWP from the PRC Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* CWP from the PRC Decision Memorandum at Comment 2.

Period of Investigation (POI)

The period of investigation for which we are measuring subsidies is calendar year 2007.

Adverse Facts Available

A. The GOC

As discussed below, the Department is investigating whether GOC authorities provided stainless steel coil, a major input in the production of CWASPP to respondents for less than adequate

remuneration (LTAR). In our March 14, 2008, questionnaire, we asked the GOC to respond to the items in the Standard Questions Appendix at Appendix One and Provision of Goods/Services Appendix at Appendix Five with respect to the GOC's alleged provision of stainless steel coil for LTAR. In its May 5, 2008, response, the GOC stated that:

> Given that the GOC does not believe there is a program providing stainless steel coil for less than adequate remuneration, the GOC believes that responding to Appendices One and Five is improper.

See GOC's May 5, 2008, questionnaire response at 21.

On May 7, 2008, the Department issued a supplemental questionnaire to the GOC in which it requested that the GOC respond to the items contained in Appendices One and Five of the Department's initial questionnaire, as they pertain to the GOC's alleged provision of stainless steel coil for LTAR. In the May 7, 2008, supplemental questionnaire, the Department explained that failure to respond to the Department's questions in a timely fashion and in the manner requested may result in the Department resorting to the use of adverse facts available (AFA) within the meaning of section 776(b) of the Act.

In its May 14, 2008, supplemental questionnaire response, the GOC provided responses to most of the Department's questions. However, the GOC failed to adequately respond to the Department's questions concerning *de facto* specificity as it pertains to the GOC's alleged provision of stainless steel coil for LTAR. Regarding this alleged subsidy program, the Department, referencing its initial questionnaire, instructed the GOC in its May 7, 2008, supplemental questionnaire to:

> Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

Concerning the GOC's alleged provision of stainless steel coil for LTAR, the GOC stated that:

> No such list exists, nor does any data exist from which to derive such a list absent inquiring with every stainless steel coil producer in China. Such records would only reflect amounts sold and prices charged, as opposed to any ''benefit'' conferred by the transaction.

See GOC's May 14, 2008, supplemental questionnaire response at 8.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because the GOC failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the GOC provided stainless steel coil to producers of CWASPP in a manner that was *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, the Department must base its determination on the facts otherwise available in accordance with sections 776(a)(2)(A) and (B) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act, the use of AFA is appropriate for the preliminary determination with respect to the GOC's alleged provision of stainless steel coil to producers of CWASPP for LTAR.

As noted, the GOC refused to respond to the items contained in Appendices One and Five of the Department's initial questionnaire, as they pertain to the GOC's alleged provision of stainless steel coil to producers of CWASPP for LTAR. The Department issued a supplemental questionnaire in which it again instructed the GOC to respond to Appendices One and Five in regard to the LTAR allegations at issue. However, in its response, the GOC continued to provide insufficient information regarding the Department's questions pertaining to *de facto* specificity. Therefore, consistent with sections 776(a)(2)(A) and (B) of the Act, we find that the GOC did not act to the best of its ability and, therefore, we are employing adverse inferences in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that the provision of stainless steel coil to producers of CWASPP by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Thus, we preliminarily determine that the provision of stainless steel coil by GOC authorities to producers of CWASPP are countervailable to the extent that the provision of the goods constituted a financial contribution in accordance with 771(5)(D)(iii) of the Act and conferred a benefit upon producers of CWASPP within the meaning of 771(E)(iv) of the Act. The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the Government of Korea directed credit to the steel

industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively.

B. Froch

In this case, Froch did not provide the requested information that is necessary to determine a CVD rate for this preliminary determination. Specifically, Froch did not respond to the Department's March 14, 2008, initial questionnaire. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based Froch's CVD rate on facts otherwise available.

The Department has determined that, in the instant investigation, an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, Froch did not cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Froch will not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review,* 71 FR 66165 (November 13, 2006), and accompanying decision memorandum at ''Analysis of Programs'' and Comment 1.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990).

For the six alleged income tax programs pertaining to either the reduction of the income tax rates or exemption from income tax, we have applied an adverse inference that Froch paid no income tax during the POI. The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these six income tax rate programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (*i.e.*, the six programs combined provided a 33 percent benefit). Our approach is consistent with the Department's practice. This 33 percent AFA rate does not apply to income tax credit or rebate programs. *See* CWP from the PRC Decision Memorandum at ''Use of Adverse Facts Available'' section. Our preliminary finding in this regard includes the Reduced Income Tax Rate for FIEs Located in Economic and Technological Development Zones and Other Special Economic Zones program even though we have calculated a net subsidy rate for the Winner Companies for this program. *See Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642, 35644 (June 24, 2008) (*LWP from the PRC*), and accompanying decision memorandum (LWP from the PRC Decision Memorandum) at ''Income Tax Subsidies for Foreign Invested Enterprises (FIEs)—Reduced Income Tax Rates for FIEs Based on Location'' section, where the Department assigned an AFA rate of 33 percent for income tax programs alleged with respect to a non-responding mandatory respondent even though the Department calculated an income tax rate for a particular program for a mandatory respondent that participated in the proceeding.

For the program involving the provision of stainless steel coil for LTAR, the Department has preliminarily determined to use the Winner Companies' rate calculated in this investigation for this program (which is 1.39 percent). Because the Winner Companies did not use any of the other alleged subsidy programs, for the remaining programs in this investigation (including the tax credit and refund programs), we are applying, where available, the highest non-*de minimis* subsidy rate calculated for the same or similar program in a China CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed, which could conceivably be used by the respondents in this investigation. The Department has reached affirmative final CVD determinations in several investigations of products from the PRC. *See CFS from the PRC; CWP from the PRC; LWP from the PRC;* and *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639 (June 24, 2008) (*Sacks from the PRC*), and accompanying decision memorandum (Sacks Decision Memorandum). As such, we are including the subsidy rates calculated in those final determinations in our AFA analysis in the instant investigation because those final determinations were completed more than seven days prior to the deadline for our preliminary determination. For further information concerning the derivation of Froch's AFA rate, see the Memorandum to the File from Eric B. Greynolds, ''Calculations for Preliminary Determination'' (Preliminary Calculations Memorandum) at Attachment III (June 30, 2008), a proprietary document of which the public version is on file in the CRU.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See, e.g.,* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994) at 870. The Department considers information to be corroborated if it has probative value. *See* SAA at 870. To corroborate secondary information, the

Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

In instances in which it determines to apply AFA, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996). In the absence of record evidence concerning these programs due to Froch's decision not to participate in the investigation, the Department has reviewed the information concerning China subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy for any China program from which Froch could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a China program from which Froch could actually receive a benefit. Due to the lack of participation by Froch and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine the AFA countervailable subsidy rate for Froch to be 106.85 percent *ad valorem. See* Preliminary Calculations Memorandum at Attachment III.

Subsidies Valuation Information

Cross-Ownership

As stated above, Winner is affiliated with Winner HK and WSP. According to Winner, during the POI Winner HK purchased finished subject merchandise from Winner for sale and consigned steel coil to Winner for manufacturing into subject merchandise that Winner returned to Winner HK for sale. Winner further states that during the POI, WSP was a sub-contractor for Winner. Specifically, Winner provided coils or slit coils to WSP, which WSP slit and/or formed into pipe and returned it to Winner. Winner states it then manufactured the processed coil into subject merchandise. In addition, WSP provided slit and/or formed pipe to Winner, which Winner claims were used to make non-subject merchandise.

Winner states that during the POI, Winner, Winner HK, and WSP were ''directly or indirectly, partially or wholly, owned'' by the same shareholders. Under 19 CFR 351.525(b)(6)(vi) cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Based on the information supplied by Winner indicating that the Winner Companies are owned by the same shareholders parent, we preliminarily determine that Winner, WSP, and Winner HK are cross-owned under 351.525(b)(6)(vi).

For purposes of attributing subsidies received by WSP (an affiliate that supplies stainless steel coil inputs to Winner) under the Provision of Stainless Steel Coil for LTAR program, in accordance with 19 CFR 351.525(b)(6)(iv), we preliminarily determine to attribute subsidies received by WSP to the combined sales of WSP's sales of steel coil, and the total sales of Winner and Winner HK, excluding intra-company sales. We have adopted the same approach in the preliminary determination with respect to the attribution of subsidies received by Winner under the Provision of Stainless Steel Coil for LTAR and Reduced Income Tax Rate for Foreign Investment Enterprises (FIEs) Located in Economic and Technological Development Zones and Other Special Economic Zones programs. Regarding Winner HK, we preliminarily determine that Winner HK is a Hong Kong company and did not receive any subsidies from the GOC.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Reduced Income Tax Rate for Foreign Investment Enterprises (FIEs) Located in Economic and Technological Development Zones and Other Special Economic Zones

According to the GOC, this program provides tax incentives for enterprises located in special zones. The GOC states that the program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The GOC states that the program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone and confers a benefit equal to the amount of tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because eligibility under this program is limited to firms located within designated geographical regions, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. We note that the Department has found this program countervailable in previous CVD proceedings. *See, e.g.*, CFS from the PRC Decision Memorandum at ''Reduced Income Tax Rates for FIEs Based on Location'' section.

Under 19 CFR 351.509(b), in the case of an income tax reduction program, the Department normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the reduction. Normally, this date is the date on which the firm in question filed its tax return. In its questionnaire response, Winner indicates that it received an income tax reduction under the program with

respect to the tax return filed during the POI. Therefore, we preliminarily determine that Winner received a benefit under this program during the POI.

In accordance with 19 CFR 351.509(a), to calculate the benefit, we subtracted the income tax rate Winner paid under the program from the income tax rate Winner would have paid absent the program and multiplied the difference by Winner's taxable income.

To calculate the net subsidy rate, we divided the benefit by the total sales denominator for Winner and WSP, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine a net subsidy rate of 0.08 percent *ad valorem* for the Winner Companies.

B. Provision of Stainless Steel Coil for Less Than Adequate Remuneration

The Department is investigating whether GOC authorities provided stainless steel coil to producers of CWASPP for LTAR. As instructed in the Department's questionnaires, the Winner Companies identified the suppliers from whom they purchased stainless steel coil during the POI. In addition to the supplier names, the Winner Companies, as instructed, indicated the date of payment, quantity, unit of measure, purchase price (with and without VAT and quantity discounts), grade, and delivery terms. Having obtained permission from the Winner Companies to disclose the proprietary names of their suppliers to the GOC, we asked the GOC to provide certain information regarding the Winner Companies' domestic suppliers of stainless steel coil. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Consent to Release Company-Specific Proprietary Information to the Government of China (GOC)'' (May 28, 2008), a public document on file in the CRU.

In order to assess whether an entity should be considered to be the government for purposes of countervailing duty investigations, the Department has in the past considered the following factors to be relevant: (1) The government's ownership; (2) the government's presence on the entity's board of directors; (3) the government's control over the entity's activities; (4) the entity's pursuit of governmental policies or interests; and (5) whether the entity is created by statute. Not all of these criteria must be satisfied for an entity to be considered a government entity, but, taken together these five criteria inform our decision. *See e.g., Coated Free Sheet Paper from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007) (*CFS from Korea*), and accompanying decision memorandum (CFS from Korea Decision Memorandum) at Comment 11. In addition, we instructed the GOC to indicate whether the Winner Companies' domestic suppliers of stainless steel coil were trading companies, and if so, to provide information related to the five factors listed above as it pertains to the entities from whom the trading companies purchased the stainless steel coil.

In its response, the GOC provided information pertaining to the ''Five Factor Test'' for each of the Winner Companies'' domestic stainless steel coil suppliers. In its response, the GOC states that none of the domestic suppliers of the Winner Companies' stainless steel coils met criteria two through five under the ''Five Factor Test.'' However, the GOC provided information indicating that, in certain instances, domestic suppliers of the Winner Companies' stainless steel coil were majority-owned by GOC entities. *See* GOC's second supplemental questionnaire response at Exhibit 1; GOC's supplement to its second supplemental questionnaire response at Exhibits 1–24. Based on our review of the information submitted by the GOC, we preliminarily determine that domestic suppliers of the Winner Companies' stainless steel coil that were majority-owned by the GOC during the POI constitute government authorities.

In addition, in its response the GOC identified which of the Winner Companies' domestic stainless steel coil suppliers were trading companies. However, the GOC was unable to provide the requested information concerning the ''Five Factor Test'' as it pertains to the suppliers from whom the domestic trading companies purchased the stainless steel coil. *See* GOC's second supplemental questionnaire response at 3 (''The GOC does not possess the information requested by the Department'').

Regarding domestic trading companies that supplied stainless steel coil to the Winner Companies during the POI, the GOC was unable to provide the requested information concerning the entities from which the trading companies acquired the input, even in instances involving government-owned trading companies. Thus, we preliminarily determine that the necessary information is not on the record, and we are resorting to the use of facts available within the meaning of sections 776(a)(1) and (2) of the Act.

In its response, the GOC provided information on the amount of stainless steel coil produced by state-owned enterprises (SOEs) and private producers in China. *See* GOC's June 16, 2008, second supplemental questionnaire at page 4. Using these data, we derived the ratio of stainless steel coil produced by SOEs during the POI (82 percent).[4] Thus, pursuant to sections 776(a)(1) and (2) of the Act, for purposes of this preliminary determination we are resorting to the use of facts available (FA) with regard to the stainless steel coil sold to the Winner Companies by domestic trading companies. Specifically, we are assuming that the percentage produced by government authorities is equal to the ratio of stainless steel coil produced by SOEs during the POI.[5] This approach is consistent with the Department's practice. *See* CWP from the PRC Decision Memorandum at the ''Hot-rolled Steel for Less Than Adequate Remuneration'' section; *see also* LWP from the PRC Decision Memorandum at the ''Hot-rolled Steel for Less Than Adequate Remuneration'' section. For further discussion, see our description of the benefit calculations below. We will seek additional information regarding the amount of stainless steel coil purchased by domestic trading companies that was produced by SOEs.

In their submissions, the Winner Companies argue that the Department should not subject the stainless steel coils that WSP purchased from GOC authorities to our LTAR subsidy analysis because the inputs were not subsequently used to make CWASPP. For purposes of this preliminary determination, we disagree with the Winner Companies' arguments. We note that the Winner Companies are not arguing that the inputs WSP purchased from GOC authorities are incompatible with the production process used to produce CWASPP but that WSP did not use those inputs to produce CWASPP. In this regard, we note that 19 CFR 351.503(c) states that:

> In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

Further, the *Preamble* adds that:

[4] At this time, we have solicited from the GOC information concerning domestic consumption of imported stainless steel coil and stainless steel coil produced by SOEs and private companies.

[5] In other words, as FA, we are assuming that 82 percent of the stainless steel coil purchased by domestic trading companies during the POI was produced by SOEs.

In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy.

See Countervailing Duties; Final Rule, 63 FR 65348, 65361 (November 25, 1998) (*Preamble*)). *See also, Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 7708 (February 11, 2008), and accompanying decision memorandum at Comment 8 (explaining that because the imported equipment at issue could be used to make subject merchandise, the respondent failed to demonstrate that subsidy benefits were tied to non-subject merchandise, pursuant to 19 CFR 351.525(b)(5)). Therefore, in accordance with our regulations, we do not consider the manner in which WSP used its inputs as a factor that is germane to the Department's subsidy analysis and, thus, we have for purposes of this preliminary determination subjected WSP's purchases of stainless steel coils from GOC authorities to our LTAR subsidy analysis.

However, information on the record indicates that stainless steel coil that is of the grade 430 is incompatible with the production process used to produce CWASPP (*i.e.*, stainless steel coil that is grade 430 is not austentitic). *See* June 30, 2008, Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Public Information Concerning Stainless Steel of Grades 201 and 430,'' a public document on file in the CRU (June 30, 2008) (Steel Grade Memorandum). This circumstance is markedly different than the issue of whether or how a firm used a particular input and, therefore, is distinct from the issue described under 19 CFR 351.503(c). Thus, because record evidence indicates that stainless steel coil of grade 430 cannot, by its nature, be used to make CWASPP, we have for purposes of this preliminary determination excluded the grade from our LTAR subsidy analysis. *See* 19 CFR 351.525(b)(5).

Having identified the extent to which the Winner Companies' obtained stainless steel coil from GOC authorities, we preliminarily determine that the GOC authorities' provision of stainless steel coil constitutes a financial contribution under section 771(5)(D)(iii) of the Act.[6] Furthermore, as discussed above in the ''Adverse Facts Available'' section, pursuant to section 776(b) of the Act, we find that the provision of stainless steel coil to producers of CWASPP by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.

The Department's regulation at 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (''tier one''); (2) world market prices that would be available to purchasers in the country under investigation (''tier two''); or (3) an assessment of whether the government price is consistent with market principles (''tier three''). As we have explained in *Canadian Lumber*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[7] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether GOC authorities sold stainless steel coils to the Winner Companies for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[8]

As explained above, for purposes of this preliminary determination, we find that SOEs account for approximately 82 percent of the stainless steel coil production in the PRC during the POI (and approximately 71 percent of production if available data on import volume are included). Consequently, because of the government's overwhelming involvement in the PRC stainless steel coil market, the use of private producer prices in China would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[9] As we explained in *Canadian Lumber:*

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[10]

For these reasons, prices stemming from private transactions within China cannot give rise to a price that is sufficiently free from the effects of the GOC's actions, and therefore cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. We note that our finding in this regard is consistent with the Department's finding in *CWP from the PRC. See* CWP from the PRC Decision Memorandum at Comment 7, n. 206:

Even if, arguendo, we were to rely on the GOC's 71 percent production figure, we would still find that government production accounts for a significant portion of the HRS industry, so that it is reasonable to conclude that private prices in China are significantly distorted, and therefore unusable as benchmarks.

Next, turning to tier one benchmark prices stemming from actual import prices, there is record evidence that Winner HK purchased stainless steel coil from a supplier located outside of China during the POI.[11] The stainless steel coil Winner HK imported from the foreign supplier accounts for a significant percentage of the stainless steel coil purchased by the Winner Companies during the POI. The company-specific import price data contain information on monthly prices. In addition, the data contain prices for every grade of stainless steel that the Winner Companies purchased from

[6] For purposes of this preliminary determination, we find that private producers that provided stainless steel coil to the Winner Companies during the POI do not constitute government authorities and, thus, their provision of stainless steel coil to the Winner Companies does not constitute a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

[7] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002) (*Canadian Lumber*), and accompanying decision memorandum at 36.

[8] *See Preamble,* 63 FR at 65377.

[9] *See Canadian Lumber* decision memorandum at 34.

[10] *See Canadian Lumber* decision memorandum at 38–39.

[11] The identity of the foreign supplier is business proprietary.

GOC authorities during the POI, though month-to-month comparisons of prices within grades are not possible in some instances due to the lack of company-specific import prices in certain months.

In addition, the Department has on the record of the investigation tier two benchmark prices for certain grades of stainless steel coil, namely grades 304 and 316. The sources for the tier two benchmark prices are the *Steel Business Briefing* (SBB) publication and Management Engineering and Production Services (MEPS). The data reported by SBB contain delivered, monthly prices for stainless steel coil, grade 304, for Europe, North America, Asia (on an import price basis), and the world for the POI. The data reported by MEPS contain monthly prices for stainless steel coil (both hot- and cold-rolled), grades 304 and 316, for Europe, North America, Asia, and the world for the POI.[12] Further, as discussed above, the GOC reported aggregate import data for the POI, as reported by its Customs Service. However, these aggregate import data do not delineate the prices by grade or month. Therefore, because the aggregated import data submitted by the GOC do not delineate the prices by grade or month, we are excluding this information from consideration for use as benchmarks.

As stated above, we preliminarily determine that government production accounts for a significant portion of the stainless steel coil industry so that it is reasonable to conclude that private prices in China are significantly distorted, and therefore unusable as benchmarks. Given this finding, we must test the available company-specific import prices of stainless steel coil in order to ascertain whether they are also distorted by the dominance of government production in the PRC. To conduct the test, we have compared the company-specific import price data for stainless steel coil to the world price data for stainless steel coil reported in MEPS and SBB and have validated these import prices with market-based world prices.

Furthermore, we preliminarily find that the world prices for stainless steel coil reported by MEPS and SBB are comparable to the company-specific import prices reported by the Winner Companies. Therefore, for purposes of this preliminary determination, we conclude that the world prices for stainless steel coil reported by MEPS and SBB should be treated as surrogate import prices and, thus, serve as a tier one benchmark. Although the regulations refer to ''actual imports,'' we see no meaningful difference in actual and potential market-determined import prices stemming from transactions outside the country.[13] This is particularly the case where, as here, an actual import price is comparable to world market-determined price, such as those contained in MEPS and SBB. In effect, because of the comparability between the company-specific import prices and the MEPS and SBB world prices, we consider the latter to be equivalent or surrogates for actual imports. These prices are thus appropriately considered tier one benchmark prices. We note that this approach is consistent with the Department's approach in *CWP from the PRC. See* CWP from the PRC Decision Memorandum at Comment 7. For these reasons, to measure whether GOC authorities sold stainless steel coil to the Winner Companies for LTAR during the POI, we are relying on the simple average of the company-specific import prices, MEPS, and SBB.

To calculate the benefit, we first converted the benchmark prices into the same unit of measure (USD per tonne). Next, we converted the benchmark unit prices from U.S. dollars to renminbi (RMB) using average USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release. We then compared the benchmark unit prices to the unit prices the Winner Companies paid to domestic suppliers of stainless steel coil during the POI.

We conducted the benefit calculation by comparing prices within each grade. Information concerning the grades of stainless steel coil imported by Winner HK during the POI is business proprietary. Therefore, for further discussion regarding the manner in which the Department conducted its benefit calculation, see the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Comparisons of Grades of Stainless Steel Coil for Purposes of the Preliminary Determination'' (Jun 30, 2008), a business proprietary document, of which the public version is on file in the CRU.

Regarding petitioners' allegation concerning export restraints on stainless steel coil, we find that it is not necessary to examine the allegation because our benchmarks account for any influence that export restraints may have on domestic prices for the input.

We encourage interested parties to submit comments on our use of company-specific import prices and prices from MEPS and SBB in the derivation of the benchmark including the most appropriate method to employ to validate company-specific import prices into the PRC using world market pricing data. We also invite interested parties to comment on the manner in which we conducted the benefit calculation as it pertains to the comparison of prices by grade and month.

In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of stainless steel coil purchased from GOC authorities to arrive at the benefit. As explained above, in instances in which the Winner Companies purchased the stainless steel coil from government trading companies and/or private trading companies, we multiplied the product of the price difference per unit and the quantity of stainless steel coil purchased by 82 percent to arrive at the benefit.

To calculate the net subsidy rate, we divided the total benefit by the Winner Companies' total sales for the POI. On this basis, we calculated a total net subsidy rate of 1.39 percent *ad valorem* for the Winner Companies.

II. Program Preliminarily Found Not To Provide Countervailable Benefits During the POI

A. Provision of Land-Use Rights for Less Than Adequate Remuneration

As explained in the Initiation Checklist, the Department is examining whether GOC-owned/controlled entities sold land to producers of CWASPP for LTAR. In its questionnaire responses, Winner states in 1993, 1996, and 2000, it made payments for land-use rights. Winner states that in 1993, prior to the incorporation of Winner, one of its founders purchased land-use rights from a foreign investor, who had, in turn, acquired the land from the Xiaobu Village Administration. Similarly, Winner states that in 1996 it acquired land-use rights from an individual, who had in turn acquired the land-use rights from the Xiaobu Village Administration. Further, Winner states that in 1999 it

[12] The data reported by MEPS do not indicate whether the prices are reported on a delivered basis. However, when compared on a monthly basis, the prices reported by MEPS for grade 304 are, in some instances, higher than the prices for grade 304 reported by SBB, which are reported on a delivered basis. Thus, for purposes of the preliminary determination, we are assuming that the stainless steel coil prices in MEPS are reported on a delivered basis.

[13] *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada*, 66 FR 43186, 43197 (August 17, 2001) (unchanged in the final determination, *see Canadian Lumber* decision memorandum at 37–38).

purchased land-use rights from the Huasan Town Administration. Winner states that in 2000, the Huasan Town Administration ''confirmed'' the granting of land-use rights.

Winner also states that in 2002 it received from the Government of the Province of Guandong a certificate of land-use rights for the land it acquired in 1993, 1996, and 1999. Winner further states that no land-use payments were made to the GOC or GOC governments during the POI.

Based on Winner's questionnaire responses, we preliminarily determine that there were no payments associated with its acquisition of land-use rights after the December 11, 2001, ''cut-off'' date established in *CWP from the PRC*. *See* CWP from the PRC Decision Memorandum at Comment 2. Therefore, in accordance with the approach established in CWP from the PRC, we preliminarily determine that this program did not confer benefits upon Winner during the POI.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the Winner Companies did not apply for or receive benefits during the POI under the programs listed below.[14]

A. Preferential Lending

1. Loans and Export Credits Pursuant to the Northeast Revitalization Program Income Tax Programs.

B. Tax Programs

2. ''Two Free, Three Half'' Program.
3. Income Tax Reductions for Export-Oriented Foreign Investment Enterprises (''FIEs'').
4. Income Tax Credit or Refund for Reinvestment of FIE Profits.
5. Provincial and Local Tax Exemptions and Reductions for Productive FIEs.
6. Local Income Tax Reductions in Certain Development Zones.
7. Preferential Tax Policies for Research and Development at FIEs.

C. Indirect Tax Programs and Import Tariff Program

8. VAT Refunds on Purchases of Domestically Produced Equipment by FIEs.
9. Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies.

D. Provincial Subsidy Programs

10. Guangdong Province's ''Outward Expansion'' Program.
11. Preferential Loans Pursuant to Liaoning Province's Five-Year Framework.
12. Preferential Tax Policies for Town and Village Enterprises (''TVEs'').

E. Provision of Goods or Services for Less Than Adequate Remuneration

13. Provision of Stainless Steel Coil for Less than Adequate Remuneration.
14. Provision of Land-Use Rights for Less Than Adequate Remuneration.

Government Restraints on Exports

15. Export Restraints on Flat-rolled Steel.

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Winner Companies and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Exporter/manufacturer	Net subsidy rate
Winner Stainless Steel Tube Co. Ltd. (Winner)/ Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/ Winner Machinery Enterprises Company Limited (Winner HK) (Collectively the Winner Companies).	1.47 percent *ad valorem*.
Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.)	106.85 percent *ad valorem*.
All Others	1.47 percent *ad valorem*.

Sections 703(d) and 705(c)(5)(A)(i) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States, excluding any zero and *de minimis* net subsidy rates, and any rates determined entirely under section 776 of the Act. Thus, in accordance with sections 703(d) and 705(c)(5)(A)(i) of the Act, we are equating the net subsidy rate for all other producers/exporters of CWASPP from the PRC with the net subsidy rate calculated for the Winner Companies.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of CWASPP from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. The Department will notify interested parties of the schedule for submission of case briefs. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2). Rebuttal briefs must be limited to issues raised in the case briefs. *See* 19 CFR 351.309(d)(2).

[14] As explained above, Froch did not respond to the Department's initial questionnaire. Therefore, as AFA, we are assigning net subsidy rates to Froch for each of the programs listed in this section, the exception being Export Restraints on Hot Rolled Stainless Steel Coils, which as explained above, the Department has determined it is not necessary to examine this subsidy program due to the benchmark used to calculate the benefit calculation.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. *Requests for a public hearing should contain:* (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15733 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–923)

Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of raw flexible magnets (RFM) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–4793.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioner in this investigation is Magnum Magnetics Corporation (petitioner).

Period of Investigation

The period for which we are measuring subsidies, or period of investigation (POI), is January 1, 2006, through December 31, 2006.

Case History

On February 25, 2008, the Department published in the **Federal Register** its preliminary affirmative determination in the countervailing duty (CVD) investigation of RFM from the PRC. *See Raw Flexible Magnets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 9998 (February 25, 2008) (*RFM Preliminary Determination*).

On April 29, 2008, we received a case brief from the Government of the People's Republic of China (GOC). Petitioner submitted a rebuttal brief on May 5, 2008. Neither the GOC nor petitioner requested a hearing.

Scope of Investigation

The products covered by this investigation are certain flexible magnets regardless of shape,[1] color, or packaging.[2] Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co–polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this investigation are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (*e.g.*, ''print this side up,'' ''this side up,'' ''laminate here''); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non–permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re–printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are within the scope of this investigation. The products subject to the investigation are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of this proceeding is dispositive.

Scope Comments

Interested parties submitted comments on the scope of investigation. Those comments are fully addressed in the Decision Memorandum, which is hereby adopted by this notice.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (ITC) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On November 9, 2007, the ITC published its preliminary determination that there is

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[1] The term ''shape'' includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

[2] Packaging includes retail or specialty packaging such as digital printer cartridges.

a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of subject merchandise. *See Raw Flexible Magnets from China and Taiwan*, Investigation Nos. 701–TA–452 and 731–TA–1129 and 1130 (Preliminary), 72 FR 63629 (November 9, 2007).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Application of Facts Available, Including the Application of Adverse Inferences

For purposes of this final determination, we have relied on facts available and have used adverse inferences to determine the countervailable subsidy rates for the two mandatory respondents: China Ningbo Cixi Import Export Corporation (Cixi) and Polyflex Magnets Ltd. (Polyflex), in accordance with sections 776(a) and (b) of the Act. A full discussion of our decision to apply adverse facts available (AFA) is presented in the Decision Memorandum in the section ''Application of Facts Available and Use of Adverse Inferences'' and in ''Analysis of Comments'' at Comment 6.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Cixi and Polyflex. With respect to the all–others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all–others rate for exporters and producers not individually investigated. In this case, the rate calculated for the two investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all–others rate. As a result, we have used the AFA rate calculated for Cixi and Polyflex as the all–others rate. This method is consistent with the Department's past practice. *See Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007, 37008 (July 16, 2001); *see also Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356, 68357 (December 8, 2003).

Producer/Exporter	Subsidy Rate
China Ningbo Cixi Import Export Corporation	109.95 percent *ad valorem*
Polyflex Magnets Ltd.	109.95 percent *ad valorem*
All Others	109.95 percent *ad valorem*

As a result of our *RFM Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of RFM from the PRC which were entered or withdrawn from warehouse, for consumption on or after February 25, 2008, the date of the publication of the *RFM Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered on or after June 24, 2008, but to continue the suspension of liquidation of entries made from February 25, 2008, through June 24, 2008.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of CVD Law to China
Comment 2: Imposition of CVD Law on China and Administrative Procedures Act
Comment 3: Specificity of Tax Programs to Foreign–Invested Enterprises
Comment 4: Countervailability of Value Added Tax (VAT) Export Rebates
Comment 5: VAT and Import Duty Exemptions on Imported Equipment Are One Program
Comment 6: AFA Rates for Provincial Programs

[FR Doc. E8–15735 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Solicitation for Members

The Secretary of Commerce initially established the Exporters' Textile Advisory Committee (''Committee'') on March 24, 1966. The Committee's

Charter was last extended for two years on October 30, 2006 and will expire on October 30, 2008. It is anticipated that the Committee will be renewed for another term, from October 31, 2008 through October 30, 2010. Therefore, the Committee is seeking additional new members.

The Committee shall consist of approximately 35 members appointed by the Secretary of Commerce to ensure a balanced representation of textile and apparel products. Representatives of small, medium and large firms with broad geographical distribution in exporting shall be included on the Committee. Members shall represent the views of their companies, trade associations and other entities on matters that affect their business interest in exporting.

The Committee shall function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act.

Persons interested in becoming members are invited to submit a letter to R. Matthew Priest, Deputy Assistant Secretary for Textiles and Apparel, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3737. Letters must include the applicant's social security number, date of birth, place of birth and home address. This information is required to process a records check to determine suitability for membership.

Announcement closing date is August 5, 2008.

Dated: July 2, 2008.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E8–15755 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Import Administration

[A–552–801]

Certain Frozen Fish Fillets From Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2243.

SUPPLEMENTARY INFORMATION: On August 10, 2007, the Department of Commerce (the Department) issued its preliminary results for the changed circumstances review of the antidumping duty order of certain frozen fish fillets from Vietnam. *See Certain Frozen Fish Fillets from Vietnam: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 46604 (August 21, 2007) (*Preliminary Results*). On May 6, 2008, the Department published a notice extending the time limits for the changed circumstances review of the antidumping duty order of certain frozen fish fillets from Vietnam. *See Certain Frozen Fish Fillets from Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 28100 (May 15, 2008) (''*First Extension*''). The current deadline for the final results of this review is July 7, 2008.

Extension of Time Limits for Final Results

In our *Preliminary Results*, we indicated we would issue the final results in the instant review within 270 days after the date on which the changed circumstances review is initiated. In the *First Extension*, we stated that it was not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we extended the time limit by 60 days.

The Department finds that it is not practicable to complete this review by the current deadline. Subsequent to the *Preliminary Results*, and receipt of Vinh Hoan Co., Ltd./Corp.'s and Petitioners' (the Catfish Farmers of America and individual U.S. catfish processors) case briefs, the Department requested and received new information from Vinh Hoan on which the Department provided interested parties an opportunity to comment. Based on Vinh Hoan's submission and parties' additional comments, the Department intends to request additional information from Vinh Hoan. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in the instant review by 90 days. Therefore, the final results will be due no later than October 5, 2008. As October 5, 2008, falls on a Sunday, our final results will be issued no later than Monday, October 6, 2008.

This notice is published in accordance with section 771(i) of the Tariff Act of 1930, as amended.

Dated: July 2, 2008.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15760 Filed 7–9–08; 8:45 am]

BILLING CODE 3610–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–922

Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: July 10, 2008.

SUMMARY: The Department of Commerce (the ''Department'') has determined that raw flexible magnets from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (the ''Act''). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Shawn Higgins; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 25, 2008, the Department published in the **Federal Register** its preliminary determination that raw flexible magnets from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in the Act. *See Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China*, 73 FR 22327 (April 25, 2008) (''*Preliminary Determination*''). For the *Preliminary Determination*, the Department assigned a 185.28 percent dumping margin to the PRC–wide entity – including Polyflex Magnets Ltd. (''Polyflex'') – and a 105.00 percent dumping margin to Guangzhou Newlife Magnet Co., Ltd. (''Newlife''), a separate rate applicant. In May and June 2008, Magnum Magnetics Corporation (''Petitioner''), Target Corporation (''Target''), A–L-L Magnetics LLP (''A–L-L''), and SH Industries, LLC (''SH Industries'') filed comments regarding

the scope of the investigation, pursuant to the Department's request for scope comments contained in the *Preliminary Determination*. *See* ''Scope Comments'' section below. No party submitted case briefs.

Changes since the Preliminary Determination

As discussed below, we have made certain changes to the language describing the scope of this investigation. Otherwise, because no party submitted case briefs and there are no other circumstances which warrant the revision of our *Preliminary Determination*, we have not made changes to our analysis or the dumping margins assigned in the *Preliminary Determination*.

Period of Investigation

The period of investigation (''POI'') is January 1, 2007, through June 30, 2007. This period comprises the two most recently completed fiscal quarters prior to the month in which the petition was filed (*i.e.*, September 2007). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The products covered by this investigation are certain flexible magnets regardless of shape,[1] color, or packaging.[2] Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co–polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this investigation are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (*e.g.*, ''print this side up,'' ''this side up,'' ''laminate here''); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non–permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re–printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are within the scope of this investigation. The products subject to the investigation are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of this proceeding is dispositive.

Scope Comments

In the *Preliminary Determination*, the Department explained that, on November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the PRC and Taiwan. On November 13, 2007, Petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are within the scope of the investigations. On April 11, 2008, Petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for the *Preliminary Determination*, we did not have an opportunity to consider it prior to issuance of the *Preliminary Determination*.

In the *Preliminary Determination*, 73 FR at 22333, the Department invited interested parties to submit comments on Petitioner's April 11, 2008, submission and to present evidence concerning the meaning of the terms ''sheeting, strips, and profiles'' as those terms are used within the industry. Additionally, because the scope language stated that ''subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color,'' the Department encouraged interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description. In addition, the Department stated that interested parties could submit information that would be relevant in an analysis conducted pursuant to 19 CFR 351.225(k)(2).

In May and June 2008, Petitioner, Target, A–L-L, and SH Industries filed comments and rebuttal comments regarding the scope of the investigations and magnetic photo pockets. On June 9, 2008, officials from the Department met with representatives of Target to discuss the scope of the investigations. *See* ''Memorandum to the File,'' dated June 10, 2008. On June 13, 2008, counsel for Petitioner met with officials from the Department to discuss the scope of the investigations. *See* ''Memorandum to the File,'' dated June 16, 2008.

The Department has analyzed the comments submitted by SH Industries, Target, A–L-L, and Petitioner and has determined that magnetic photo pockets are within the scope of the investigations. The Department has also modified the language describing the scope of these investigations to clarify the product coverage. In its request, SH Industries acknowledges that its magnetic photo pockets consist of flexible magnet material with a layer of plastic laminate fused along the sides of the flexible magnet. At no point does SH Industries argue that the flexible magnetic material in its photo pockets does not meet the physical description of the flexible magnets covered by the scope of the investigations. Rather, SH Industries argues that the attachment of a layer of clear plastic to the flexible magnet results in a product that is outside the scope of the investigations because the purpose of the product is to protect photographs.

Similarly, Target asserts that, rather than being a raw flexible magnet, magnetic photo pockets are properly

[1] The term ''shape'' includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

[2] Packaging includes retail or specialty packaging such as digital printer cartridges.

characterized as finished retail products which use magnetic sheeting as an input. Target also argues that the clear plastic laminate is neither bonded nor laminated to the magnetic sheeting.

A–L-L argues that the scope should be limited to products produced by the Petitioner as evidenced by inclusion on the Petitioner's website.

As an initial matter, the Department does not generally define subject merchandise by end–use application. Moreover, because the language of the scope stated originally that ''{s}ubject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic, or other material, which paper, plastic, or other material may be of any composition and/or color,'' *Preliminary Determination*, 73 FR at 22332, the plastic laminate fused to the sides of the flexible magnet does not remove the photo pockets from the scope of the investigations. Finally, the issue of whether an item appears on the Petitioner's website is not relevant to our analysis. For these reasons, we have determined that the magnetic photo pockets described by SH Industries are within the scope of the investigations. In addition, we have clarified that ''{s}ubject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color.'' Finally, because we have received inquiries concerning the terminology in the scope language and product coverage, we have clarified product coverage by reordering the scope language and including certain explanatory definitions. Our revised scope language neither enlarges nor contracts product coverage. *See* ''Scope of Investigation'' section above.

The Department received a scope–ruling request from Magnet LLC on May 21, 2008. Because this request was made after the *Preliminary Determination*, the Department has not addressed this request in this final determination. The Department will consider Magnet LLC's scope–ruling request in the event the Department publishes an antidumping duty order in this proceeding.

Non–Market Economy Treatment

In the *Preliminary Determination*, the Department considered the PRC to be a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). No party has commented on the Department's classification of the PRC as an NME. Therefore, for the final determination, we continue to consider the PRC to be an NME.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Newlife demonstrated its eligibility for separate–rate status. Since the publication of the *Preliminary Determination*, no party has commented on Newlife's eligibility for separate–rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Newlife demonstrates both a *de jure* and *de facto* absence of government control with respect to its respective exports of the merchandise under investigation. Thus, we continue to find that Newlife is eligible for separate–rate status. Normally the separate rate is determined based on the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on adverse facts available (''AFA''). *See* section 735(c)(5)(A) of the Act. In this case, given the absence of participating respondents and having calculated no margins, we have assigned to Newlife the simple average of the margins alleged in the petition, *i.e.*, 105.00 percent. *See* section 735(c)(5)(B) of the Act and *Preliminary Determination*, 73 FR at 22329–30.

We determined in the *Preliminary Determination* that because Polyflex withdrew from the investigation, thus preventing the Department from asking additional questions on its separate rate status and preventing the Department from verifying its responses, the Department has no basis upon which to grant Polyflex a separate rate. We received no comments on this denial of a separate rate. Although Polyflex remains a mandatory respondent, the Department will continue to consider Polyflex part of the PRC–wide entity because it failed to demonstrate that it qualifies for a separate rate.

The PRC–Wide Rate

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination*, 73 FR at 22330. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* In addition, in the *Preliminary Determination*, the Department applied total AFA to Polyflex. We determined, as AFA, that Polyflex was not eligible for a separate rate and we are treating Polyflex as part of the PRC–wide entity. No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC–wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also ''Statement of Administrative Action''* accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994). We determine that, because the PRC–wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only Newlife has overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC–wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See*, *e.g.*, *Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC–wide entity rate applies to all entries of subject merchandise except for entries from Newlife.

In the *Preliminary Determination*, we assigned to the PRC–wide entity the highest margin alleged in the petition, as revised in Petitioner's supplemental responses, *i.e.*, 185.28 percent. *See Preliminary Determination*, 73 FR at 22331. We received no comments on this rate. For the final determination, we have continued to assign to the PRC–wide entity the rate of 185.28 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From Brazil*, 65 FR 5554, 5568 (February 4, 2000); *see*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

Because there are no cooperating mandatory respondents, to corroborate the 105.00 and 185.28 percent margins used as facts available for Newlife and as AFA for the PRC–wide entity, respectively, we relied upon our pre–initiation analysis of the adequacy and accuracy of the information in the petition. *See* ''Import Administration AD Investigation Initiation Checklist: Raw Flexible Magnets from the People's Republic of China,'' (October 11, 2007). During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner to determine the probative value of the margins alleged in the petition. During our pre–initiation analysis, we examined the information used as the basis of export price (''EP'') and normal value (''NV'') in the petition, and the calculations used to derive the alleged margins. Also during our pre–initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the EP and NV calculations. *Id.* We received no comments as to the relevance or probative value of this information. Therefore, for the final determination, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the facts available rate for Newlife and the AFA rate assigned to the PRC–wide entity.

Final Determination Margins

We determine that the following percentage dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Guangzhou Newlife Magnet Electricity Co., Ltd.[3]	105.00
PRC–wide Entity (including Polyflex)	185.28

[3] Newlife both manufactures and exports subject merchandise.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of raw flexible magnets from the PRC, as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after April 25, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15732 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–842]

Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 10, 2008.

SUMMARY: The Department of Commerce determines that imports of raw flexible magnets from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the section entitled ''Final Determination of Investigation.''

FOR FURTHER INFORMATION CONTACT: Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3174 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 2008, the Department of Commerce (the Department) published the preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of raw flexible magnets from Taiwan. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 22332 (April 25, 2008) (*Preliminary Determination*). Interested parties were invited to comment on our Preliminary Determination.

Period of Investigation

The period of investigation is July 1, 2006, through June 30, 2007.

Scope of Investigation

The products covered by this investigation are certain flexible magnets regardless of shape,[1] color, or packaging.[2] Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this investigation are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (e.g., ''print this side up,'' ''this side up,'' ''laminate here''); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are within the scope of this investigation. The products subject to the investigation are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of this proceeding is dispositive.

Scope Comments

In the *Preliminary Determination,* the Department explained that, on November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the People's Republic of China and Taiwan. On November 13, 2007, Magnum Magnetics Corporation (Petitioner) filed a response to the request by SH Industries, arguing that magnetic photo pockets are within the scope of the investigations. On April 11, 2008, Petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for the *Preliminary Determination,* we did not have an opportunity to consider it prior to issuance of the *Preliminary Determination.*

In the *Preliminary Determination,* 73 FR at 22333, the Department invited interested parties to submit comments on Petitioner's April 11, 2008, submission and to present evidence concerning the meaning of the terms ''sheeting, strips, and profiles'' as those terms are used within the industry. Additionally, because the scope language stated that ''subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color,'' the Department encouraged interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description. In addition, the Department stated that interested parties could submit information that would be relevant in an analysis conducted pursuant to 19 CFR 351.225(k)(2).

In May and June 2008, Petitioner, Target, A–L–L, and SH Industries filed comments and rebuttal comments regarding the scope of the investigations and magnetic photo pockets. On June 9, 2008, officials from the Department met with representatives of Target to discuss the scope of the investigations. See Memorandum to the File, dated June 10, 2008. On June 13, 2008, counsel for Petitioner met with officials from the Department to discuss the scope of the investigations. See Memorandum to the File, dated June 16, 2008.

[1] The term ''shape'' includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

[2] Packaging includes retail or specialty packaging such as digital printer cartridges.

The Department has analyzed the comments submitted by SH Industries, Target, A–L–L, and Petitioner and has determined that magnetic photo pockets are within the scope of the investigations. The Department has also modified the language describing the scope of these investigations to clarify the product coverage. In its request, SH Industries acknowledges that its magnetic photo pockets consist of flexible magnet material with a layer of plastic laminate fused along the sides of the flexible magnet. At no point does SH Industries argue that the flexible magnetic material in its photo pockets does not meet the physical description of the flexible magnets covered by the scope of the investigations. Rather, SH Industries argues that the attachment of a layer of clear plastic to the flexible magnet results in a product that is outside the scope of the investigations because the purpose of the product is to protect photographs.

Similarly, Target asserts that, rather than being a raw flexible magnet, magnetic photo pockets are properly characterized as finished retail products which use magnetic sheeting as an input. Target also argues that the clear plastic laminate is neither bonded nor laminated to the magnetic sheeting.

A–L–L argues that the scope should be limited to products produced by the Petitioner as evidenced by inclusion on the Petitioner's Web site.

As an initial matter, the Department does not generally define subject merchandise by end-use application. Moreover, because the language of the scope stated originally that ''{s}ubject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic, or other material, which paper, plastic, or other material may be of any composition and/or color,'' *Preliminary Determination,* 73 FR at 22332, the plastic laminate fused to the sides of the flexible magnet does not remove the photo pockets from the scope of the investigations. Finally, the issue of whether an item appears on the Petitioner's Web site is not relevant to our analysis. For these reasons, we have determined that the magnetic photo pockets described by SH Industries are within the scope of the investigations. In addition, we have clarified that ''{s}ubject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color.'' Finally, because we have received inquiries concerning the terminology in the scope language and product coverage, we have clarified product coverage by reordering the scope language and including certain explanatory definitions. Our revised scope language neither enlarges nor contracts product coverage. See *Scope of Investigation* section above.

The Department received a scope-ruling request from Magnet LLC on May 21, 2008. Because this request was made after the *Preliminary Determination,* the Department has not addressed this request in this final determination. The Department will consider Magnet LLC's scope-ruling request in the event the Department publishes an antidumping duty order in this proceeding.

Changes Since Preliminary Determination

As discussed above, we have made certain changes to the language describing the scope of this investigation. Otherwise, because no party submitted case briefs and there are no other circumstances which warrant the revision of our *Preliminary Determination,* we have not made changes to our analysis or the dumping margins assigned in the *Preliminary Determination.*

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Kin Fong Magnets Co., Ltd. (Kin Fong), Magruba Flexible Magnets Co., Ltd. (Magruba), and JASDI Magnet Co., Ltd. (JASDI), all mandatory respondents, did not act to the best of their ability in responding to our requests for information. Thus, the Department continues to find that the use of adverse facts available is warranted for these companies under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination,* 73 FR at 22334. As we explained in *Preliminary Determination,* the rate of 38.03 percent we selected as the adverse facts-available rate is the highest margin alleged in the petition. *Id.* 73 FR at 22335. See also *Antidumping Duty Investigation Initiation Checklist: Raw Flexible Magnets from Taiwan* (October 18, 2007) (*Taiwan Initiation Checklist*). We included the range of margins from our Taiwan Initiation Checklist in *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan,* 72 FR 59071, 59075 (October 18, 2007). Further, as discussed in *Preliminary Determination,* we corroborated the adverse facts-available rate pursuant to section 776(c) of the Act.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all-others rate, the simple average of the margins in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from the Republic of Korea,* 72 FR 67275 (November 28, 2007); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan,* 72 FR 67271 (November 28, 2007). Consistent with our practice we calculated a simple average of the rates in the *Petition,* as listed in the *Initiation Notice,* and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Catherine Cartsos to File entitled ''Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan—Analysis Memo for All-Others Rate,'' dated April 18, 2008.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or exporter	Margin (percent)
Kin Fong	38.03
Magruba	38.03
JASDI	38.03
All Others	31.20

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Taiwan entered, or withdrawn from warehouse, for consumption on or after April 25, 2008, the date of the publication of *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents will be the rates we have determined in this

final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 31.20 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15743 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Request for Public Comment

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of request for public comment.

SUMMARY: The Department of Commerce's International Trade Administration is seeking industry's involvement in providing information to inform the work program of the recently established Trilateral Committee on Transborder Data Flows under the Security and Prosperity Partnership of North America (SPP). In advance of its inaugural stakeholders' forum, tentatively scheduled for September 2008, the Committee is soliciting assistance in identifying and analyzing impediments to transborder data flows that impact on commercial activities. The Committee, composed of government representatives of each of the three countries, will work in consultation with the business community to identify and address impediments to electronic information flows across borders that impact economic growth. The Committee will also look at regulatory uncertainties related to the transborder flow of data and analyze the impact that they are having on the marketplace. The objective is to foster an integrated approach to information flows in North America while supporting regulatory cooperation to remove barriers to electronic information flows. Specifically, the Department is seeking: (1) A description of your company's activities. (2) How your company's activities involve cross-border data transfers and computerized information flows. (3) Impediments to cross-border data transfers and information flows. Impediments include legislative and regulatory requirements and other barriers. (4) Implications and costs for the company of these impediments (trade and investment). Business proprietary information should be marked accordingly.

Once this process has been completed, the Committee will make recommendations to Ministers responsible for SPP on how to solve identified impediments to such information flows.

DATES: August 18, 2008.

ADDRESSES: Input on the Committee's work program or inquiries about participation in the forum should be addressed to the contact below, and received by close of business on Monday, August 18, 2008.

FOR FURTHER INFORMATION CONTACT: Joshua Harris, U.S. Department of Commerce, Office of Technology and Electronic Commerce, 1401 Constitution Avenue, NW., Room 2003, Washington, DC 20230; Telephone: 202–482–0142; e-mail: *joshua.harris@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: The SPP was launched in March of 2005 to increase security and enhance prosperity among the United States, Canada and Mexico through greater cooperation and information sharing. Consistent with those goals, and to serve as a catalyst for the development of electronic commerce and online business in North America, officials from Industry Canada, Mexico's Ministry of the Economy, and the United States Department of Commerce recently signed the Statement on the Free Flow of Information and Trade in North America (*http://spp.gov/pdf/Eng_Statement_of_Free_Flow.pdf*), which formally established the Trilateral Committee. The Statement was announced at the SPP Leaders meeting April 21–22 in New Orleans.

Dated: July 2, 2008.

Robin Layton,

Director, Office of Technology and Electronic Commerce.

[FR Doc. E8–15626 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI91

Marine Mammals; File Nos. 848–1695 and 932–1489

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center, Marine Mammal Research Program (MMRP) has been issued an amendment to scientific research and enhancement Permit No. 848–1695; and Dr. Teri Rowles, NMFS Marine Mammal Health and Stranding Response Program, has been issued an amendment to scientific research and enhancement Permit No. 932–1489.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment

in the following office(s):

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, Kate Swails, or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Both permits were amended to extend the expiration dates from June 30, 2008 to June 30, 2009.

Issuance of these permit amendments, as required by the ESA, was based on a finding that such permit amendments: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Dated: July 2, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15605 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI98

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (CFMC) Advisory Panel (AP) will hold a meeting.

DATES: The AP meeting will be held on August 6, 2008, from 9:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Best Western San Juan Airport Hotel, Luis Munoz Marin Airport, Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The AP will meet to discuss the items contained in the following agenda:

- Call to order
- Annual Catch Limits (ACLs) /Accountability Measures (AM) Guidelines Summary Presentation
- Discussion on ACLs/AMs for Puerto Rico and the U.S. Virgin Islands
- Recommendations of the AP to the CFMC
- Other Business

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the CFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 7, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–15656 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI46

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has granted a request for an affirmative finding for the Republic of El Salvador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Republic of El Salvador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The affirmative finding is effective from April 1, 2008, through March 31, 2013, subject to annual review by NMFS.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of El Salvador or obtained from the IATTC and the Department of State and has determined that El Salvador has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued the Republic of El Salvador's affirmative finding, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction. El Salvador's affirmative finding will remain valid through March 31, 2013, subject to subsequent annual reviews by NMFS.

Dated: July 2, 2008.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–15604 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks).

Form Number(s): PTO Forms 2196, 2197, and 2201.

Agency Approval Number: 0651–0056.

Type of Request: Extension of a currently approved collection.

Burden: 12,491 hours annually.

Number of Respondents: 160,004 responses per year with an estimated 142,226 responses filed electronically.

Avg. Hours per Response: The USPTO estimates that it will take the public between 3 to 15 minutes (0.05 to 0.25 hours) to complete the information in this collection, depending on the nature of the information and whether the information is transmitted electronically or submitted in paper. This includes the time to gather the necessary information, prepare it, and submit it to the USPTO. The time estimates for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.* and is implemented through the Trademark rules set forth in 37 CFR Part 2. It provides for the appointment of attorneys of record or domestic representatives to represent applicants in the application process, for the revocation of those appointments, for attorneys to request permission to withdraw as the attorney of record, and for changes in the owner's addresses. The USPTO uses the information to process the various requests. This collection contains three electronic forms that are available through the Trademark Electronic Application System (TEAS); there are no official paper forms. The information in this collection is available to the public and is used in a variety of private business purposes related to establishing and enforcing trademark rights.

Affected Public: Primarily businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following:

- E-mail: *Susan.Fawcett@uspto.gov*. Include ''0651–0056 copy request'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan K. Fawcett.
- Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 11, 2008 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 2, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–15679 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Post Registration (Trademark Processing).

Form Number(s): PTO Forms 1553, 1583, 1597, 1963 and 4.16.

Agency Approval Number: 0651–0055.

Type of Request: Extension of a currently approved collection.

Burden: 6,689 hours.

Number of Respondents: 106,030 responses.

Avg. Hours per Response: 3 to 30 minutes (0.05 to 0.50 hours). This includes time to gather the necessary information, create the documents, and mail the completed request. The time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Needs and Uses: The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is available at USPTO facilities and also can be accessed at the USPTO Web site. Additionally, the USPTO provides the information to other entities, including Patent and Trademark Depository Libraries (PTDLs). The PTDLs maintain the information for use by the public.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897. Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0055 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 11, 2008 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: July 2, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–15681 Filed 7–9–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Federal Acquisition Regulation; Submission for OMB Review; Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the make-or-buy program. A request for public comments was published in the **Federal Register** at 73 FR 10007, February 25, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 11, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat Division (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, FAR 15.407–2, Make-or-Buy Programs—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

Respondents: 150.

Responses per Respondent: 3.

Total Responses: 450.

Hours per Response: 8.

Total Burden Hours: 3,600.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: July 2, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15742 Filed 7–9–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095]

Federal Acquisition Regulation; Submission for OMB Review; Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning commerce patent regulations. A request for public comments was published in the **Federal Register** at 73 FR 10006, February 25, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 11, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat Division, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Procurement Analyst, Contract Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Public Law 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the Commerce regulation was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060). The final rule was published without change on June 21, 1990.

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.227–12(c), and 52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(b)uuuuuuui(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(f); 52.227–12(f)).

B. Annual Reporting Burden

Respondents: 1,200.

Responses per Respondent: 9.75.

Total Responses: 11,700.

Hours per Response: 3.9.

Total Burden Hours: 45,630.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: July 3, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15744 Filed 7–9–08; 8:45 am]

BILLING CODE 6820–EP–P

ELECTION ASSISTANCE COMMISSION

Request for Public Comment on Proposed Guidelines Regarding Help America Vote Act (HAVA) Section 254(a)(11)

AGENCY: Election Assistance Commission.

ACTION: Notice.

SUMMARY: The EAC seeks public comment on proposed guidelines designed to assist States in determining what constitutes a ''material change in the administration of a State plan'' under HAVA Section 254(a)(11).

DATES: Comments must be received on or before 4 p.m. on August 11, 2008.

ADDRESSES: Comments must be submitted in either electronic or written form. Comments may be submitted electronically to *havafunding@eac.gov*. E-mail comments should contain ''State Plan Guidelines Comments'' in the subject line. Written comments should be sent to: State Plan Guidelines Comments, U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Edgardo Cortés, Acting Division Director, Election Administration Support Division, (202) 566–3100 or toll-free (866) 747–1471.

SUPPLEMENTARY INFORMATION:

Guidelines on HAVA Section 254(a)(11): Material Changes in the Administration of HAVA State Plans

A material change in the administration of the State plan (material change), as referenced by the Help America Vote Act (HAVA) Section 254(a)(11), occurs under five different circumstances. These guidelines are based on the general federal requirements for updating State plans and post award changes contained in Office of Management and Budget Circular A–102 (41 CFR part 105–71). Material changes require a State to amend the State plan according to the provisions of HAVA Sections 254, 255, and 256. The examples provided below may not be applicable in all circumstances; likewise, the specific instances for when the State plan should be amended are not limited to the examples provided. The Election Assistance Commission (EAC) advises States to amend the State plan in the event of any of following five circumstances:

(1) New or revised Federal laws or regulations affecting HAVA

implementation. [Based on requirement in 41 CFR 105–71.111(d)(1)]

New or amended Federal statutes or regulations, including appropriations statutes, resulting in a change in scope, purpose, budget, or period of availability of funds requires an amended State plan.

Example: Congress passes legislation to amend the Title III requirements of HAVA.

(2) New or revised State law, organization, or policy affecting HAVA implementation. [Based on requirement in 41 CFR 105–71.111(d)(2)]

New or amended State statutes, organization, or policy resulting in a change in scope, purpose, budget, or period of availability of funds requires an amended State plan.

Example: (1) State legislation is passed that changes the voting equipment requirements for the State, thus changing the method of implementation of Title III Voting Systems requirements; (2) The responsibility for implementing the plan was previously with the State Attorney General and has now changed to Secretary of State.

(3) A budget change of 10 percent or more of the HAVA fiscal year's cumulative budget across budgeted programs, activities, functions or activities. [Based on requirement in 41 CFR 105–71.130(c)(1)(ii)]

A change of more than 10 percent of the cumulative budget of the fiscal year's requirement payment from one budgeted category to another requires an amended State plan.

Example: A portion of funds, greater than 10 percent of the requirements payment received, budgeted for use in developing the Computerized Statewide Voter Registration List is determined to no longer be needed for the budgeted purpose, and the State would like to use the funds for improvements to the administration of Federal elections.

(4) A revision in the scope or objective of the project. [Based on requirement in 41 CFR 105–71.130(d)(1)]

A change in the means by which a State plans to achieve the HAVA objectives requires an amended State plan.

Example: (1) The State decides to purchase equipment at the State level instead of subgranting to the counties; (2) The State changes the development of the Computerized Statewide Voter Registration List from a bottom up system to a state centralized system; (3) The State files a certification under HAVA Section 251(b)(2)(A), indicating that the State has implemented the requirements of Title III and will use the requirements payments to carry out other activities to improve the administration of elections for Federal office, and did not account for post-Title III compliance activities in the original State plan; (4) The State changes the type of voting system originally planned for use in Title III compliance; the State decides to use an optical scan system with ballot marking devices instead of a direct recording electronic (DRE) system.

(5) An extension in the period of availability of HAVA funds. [Based on requirement in 41 CFR 105–71.130(d)(2)]

An increase in the amount of funding authorized under HAVA appropriated to the State not provided for in the original State plan or funds remaining in a fiscal year not covered by the original State plan requires an amended State plan.

Example: (1) A new requirements payment is appropriated for a fiscal year not covered by the State plan; (2) The State has funds from a previous fiscal year's requirements payment remaining in a fiscal year not provided for under the current State plan.

Dated: July 2, 2008.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E8–15690 Filed 7–9–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[Case No. CAC–011]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Daikin U.S. Corporation From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures and Denying a Waiver From the Residential Central Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CAC–011, which grants a waiver to Daikin U.S. Corporation (Daikin) from the existing Department of Energy (DOE) commercial package air conditioner and heat pump test procedures for specified VRV (commercial) Variable Refrigerant Volume multi-split heat pumps and heat recovery systems. As a condition of this waiver, Daikin must test and rate its VRV multi-split products according to the alternate test procedure as set forth in this notice. DOE is denying as moot Daikin's request for a waiver from the residential central air conditioner and heat pump test procedures, because those test procedures, as amended and currently effective, can be used to test Daikin's VRV–S (residential) products.

DATES: This Decision and Order is effective July 10, 2008, and will remain in effect until the effective date of a DOE final rule prescribing amended test procedures appropriate for the model series of Daikin VRV multi-split central air conditioners and heat pumps covered by this waiver.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l) and 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In the Decision and Order, DOE grants Daikin a waiver from the existing DOE commercial package air conditioner and heat pump test procedures [1] for its VRV multi-split products, subject to a condition requiring Daikin to test and rate its VRV multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's Decision and Order requires that Daikin may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions of the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing.[2] (42 U.S.C. 6293(c); 42 U.S.C. 6314(d))

DOE is denying as moot Daikin's request for a waiver from the DOE residential central air conditioner and

[1] For commercial products, the applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)).

heat pump test procedures [3] for its VRV–S multi-split products. As amended, the applicable DOE test procedure for these residential products will allow Daikin to test and rate its residential VRV–S multi-split products.

Issued in Washington, DC, on June 23, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin U.S. Corporation (Daikin) (Case No. CAC–011).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [4] (42 U.S.C. 6291–6309) Similar to the Program in Part A, Part A–1 of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment.[5] (42 U.S.C. 6311–6317)

Today's notice involves residential products under Part A, as well as commercial equipment under Part A–1. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, both parts generally authorize the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR part 430, subpart B, Appendix M. On October 22, 2007, DOE amended the test procedures for residential central air conditioners and central air conditioning heat pumps to implement test procedure changes for small-duct, high-velocity systems, two-capacity units, and to update references to the current American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards. 72 FR 59906. The October 22, 2007, final rule became effective on April 21, 2008. These amendments to the DOE test procedures set forth in 10 CFR part 430, subpart B, Appendix M now allow Daikin to test its VRV–S residential multi-split air conditioners and heat pumps. Therefore, a waiver is no longer necessary for Daikin's VRV–S residential multi-split air conditioners and heat pumps. Accordingly, the following discussion will focus only on Daikin's commercial VRV products, for which its waiver request remains pertinent.

For commercial package air conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), this section also directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The capacities of Daikin's commercial VRV multi-split products fall in the ranges covered by ARI Standard 340/360–2004.)

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, for which the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401. Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii); 10 CFR 431.401(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l); 10 CFR 431.401(f)(4). Waivers generally terminate on the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m); 10 CFR 430.401(g).

The waiver process contained in DOE's regulations also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2); 10 CFR 431.401(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. 10 CFR 430.27(g); 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h); 10 CFR 431.401(e)(4).

On May 12, 2005, Daikin filed a Petition for Waiver and an Application for Interim Waiver from the test

[3] For residential products, the applicable test procedure is set forth in 10 CFR part 430, subpart B, Appendix M.

[4] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Pub. L. 109–58.

[5] This part was originally titled Part C; however, it was redesignated Part A–1, after Part C of Title III was repealed by Pub. L. 109–58.

procedures applicable to its VRV–S and VRV lines of residential and commercial multi-split air conditioning and heating equipment. Daikin's petition requested a waiver from both the residential and commercial test procedures. As stated above, the applicable residential test procedures are contained in 10 CFR part 430, subpart B, Appendix M, and the applicable commercial test procedures are contained in ARI Standard 340/360–2004 [6] (incorporated by reference at 10 CFR 431.95(b)(2)). Daikin requested a waiver from the applicable test procedures because it argued that the design characteristics of its VRV–S and VRV systems prevent testing according to the currently prescribed test procedures.

On July 2, 2007, DOE published in the **Federal Register** Daikin's Petition for Waiver and published notice of the granting of the Application for Interim Waiver which had been granted on August 14, 2006. 72 FR 35986. In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to Daikin's VRV–S and VRV products. 71 FR 14858 (March 24, 2006). In the March 24, 2006 **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. Most of the comments responded favorably to DOE's proposed alternate test procedure. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. The MEUS Decision and Order, including the alternate test procedure, was published in the **Federal Register** on April 9, 2007. 72 FR 17528.

DOE received no comments on the Daikin Petition.

Assertions and Determinations

Daikin's Petition for Waiver

On May 12, 2005, Daikin submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to residential and commercial package air conditioning and heating equipment for its new VRV–S and VRV multi-split products. Daikin's petition presented several arguments in support of its claim that the design characteristics of its VRV–S and VRV multi-split systems prevent testing according to the currently prescribed test procedures. Daikin claimed that there are the following difficulties with applying the test procedures: (1) There is no provision to accommodate having indoor units operating at several different static pressure ratings during a single test; (2) The precise number of part-load tests required for fully or infinitely variable speed products are not identified; (3) There is no direction about how to test systems that have millions of combinations of indoor units configurable to a single outdoor unit; (4) There is no test method to measure part-load performance of a system performing both heating and cooling functions at the same time.

Therefore, the Daikin Petition requested that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. Daikin did not include an alternate test procedure in its Petition for Waiver. (However, DOE understands that Daikin is actively working with ARI to develop test procedures that accurately reflect the operation and energy consumption of these particular product designs.[7])

Regardless of their accuracy, DOE believes that these assertions are inapposite to the present case for the following reasons. First, for commercial systems, EPCA mandates use of the full-load energy efficiency ratio (EER) descriptor, and the relevant energy performance is the peak-load efficiency, not the seasonal energy savings. (42 U.S.C. 6313(a)(1)(C)) A waiver can only be granted if a test procedure does not fairly represent the peak-load energy consumption characteristics, which EER measures. Nevertheless, there are deficiencies in the current DOE test methods and calculation algorithms when applied to multi-split systems. DOE has previously acknowledged these limitations in its current test procedure, and accordingly, MEUS was granted a waiver on the following grounds:

1. No existing test procedure provides a method for testing and rating a system that utilizes one outdoor unit and sixteen indoor units.

2. No existing test procedure can provide a method for rating systems where the type and capacity of the indoor unit can be mixed in the same system. The multi-split system can mix together six different indoor models with seven different capacities, resulting in over 1,000 combinations.

Given the present situation, Daikin can make the same claims regarding its VRV multi-split products. Therefore, the bases for Daikin's Petition for Waiver involve: (1) The problem of being physically unable to test most of the complete systems in a laboratory; (2) difficulties associated with the regulatory requirement to test the highest-sales-volume combination; and (3) the lack of a method for predicting the performance of untested combinations.

As mentioned above, DOE recently addressed a situation regarding multi-split products that is relevant to the Daikin products at issue here. specifically, on March 24, 2006, DOE published in the **Federal Register** a Petition for Waiver from MEUS relating to its R410A CITY MULTI VRFZ products, which are very similar to Daikin's VRV multi-split products. 71 FR 14858. In that publication, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products (69 FR 52660 (August 27, 2004)).

71 FR 14858, 14861 (March 24, 2006).

Since that time, DOE has developed such an alternate test procedure. That alternate test procedure served as the basis for the October 22, 2007 final rule's relevant amendments to the test procedures for residential central air conditioners and central air conditioning heat pumps found at 10 CFR part 430, subpart B, Appendix M,

[6] In its petition, Daikin also requested a waiver from ARI Standard 210/240–2003 (incorporated by reference at 10 CFR 431.95(b)(1)). However, based on a review of the products listed by Daikin in its petition, DOE has determined that none of these products has the combined features (*i.e.*, three-phase power and rated capacity less than 65,000 Btu/h) as would necessitate a waiver from ARI Standard 210/240–2003.

[7] DOE understands that ARI is seeking to address this issue through promulgation of ARI Standard 1230. Once this standard has been formally adopted by ARI, it will then be ready for presentation to ASHRAE to be considered for incorporation into ASHRAE/IES Standard 90.1.

which became effective April 21, 2008. Since the residential test procedure is now in place for central air conditioners and central air conditioning heat pumps, this enables Daikin to make energy efficiency representations for its specified VRV–S residential multi-split products. Accordingly, a waiver for Daikin's residential units is no longer necessary. However, the same problem described above still applies to Daikin's commercial products. Therefore, DOE is issuing today's Decision and Order granting Daikin a test procedure waiver for its commercial VRV multi-split heat pumps and heat recovery systems, but is requiring the use of the alternate test procedure described below as a condition of Daikin's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver.

DOE's Alternate Test Procedure

The alternate test procedure has two basic components. First, it permits Daikin to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure. Second, provision of a DOE test procedure that can be applied to Daikin's product allows it to represent the energy efficiency of that product, because any such representation must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure provided in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or, if method (1) is not available, then (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

DOE believes that allowing Daikin to make energy efficiency representations for non-tested combinations by adopting this alternate test procedure for its commercial products as described above is reasonable because the outdoor unit is the principal efficiency driver. The current test procedures for commercial products tend to rate these products conservatively. This is because the multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the test procedure, which requires full-load testing. Under full load, the entire building would require cooling. Additionally, the current test procedure for commercial equipment requires full-load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such commercial products.

For today's Decision and Order, the changes made by the final rule published in the **Federal Register** on October 22, 2007 to test procedure sections 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2 that apply to residential central air conditioners and heat pumps constitute mandatory elements of the alternate test procedure for the commercial products covered under this waiver. These changes allow indoor units to cycle off, allow the manufacturer to specify the compressor speed used during certain tests, and introduce a new algorithm for estimating power consumption.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must meet the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory must be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if DOE decides to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. The comments generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. Such action has been completed for residential central air conditioners and heat pumps.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Daikin's VRV basic models according to the test procedures currently prescribed in ARI Standard 340/360–2004. After careful consideration, DOE has decided to adopt the alternate test procedure for Daikin's commercial products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with Federal Trade Commission (FTC) staff concerning the Daikin Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to Daikin.

Conclusion

After careful consideration of all the material that was submitted by Daikin and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' submitted by Daikin U.S. Corporation (Daikin) (Case No. CAC–011) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its commercial Variable Refrigerant Volume (VRV) products listed below on the basis of the currently applicable test procedures (contained in ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2))), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Outdoor units:

1. RXYQ Series Heat Pumps with nominal capacities of 72 and 96 kBtu/

h, when combined with two or more of the below listed indoor units.

2. REYQ Series Heat Recovery units with nominal capacities of 72 and 96 kBtu/h, when combined with two or more of the below listed indoor units.

Indoor units:

1. FXAQ Series wall mounted indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

2. FXLQ Series floor mounted indoor units with nominally rated capacities of 12, 18, and 24 kBtu/h.

3. FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12, 18, and 24 kBtu/h.

4. FXDQ Series low static ducted indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

5. FXSQ Series medium static ducted indoor units with nominally rated capacities of 7, 9, 12, 24, 30, 36, and 48 kBtu/h.

6. FXMQ Series high static ducted indoor units with nominally rated capacities of 30, 36, and 48 kBtu/h.

7. FXZQ Series recessed cassette indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

8. FXFQ Series recessed cassette indoor units with nominally rated capacities of 12, 18, 24, 30, and 36 kBtu/h.

9. FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12, 24, and 36 kBtu/h.

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in paragraph (2) above according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR part 431, except that for those commercial products covered by 10 CFR part 431, Daikin shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* In making representations about the energy efficiency of its VRV multi-split products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For VRV combinations tested in accordance with this alternate test procedure, Daikin must disclose these test results.

(ii) For VRV combinations that are not tested, Daikin must make a disclosure based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Decision and Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the above model series manufactured by Daikin.

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on June 23, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–15705 Filed 7–9–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. RF–008]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Whirlpool Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver and request for public comments.

SUMMARY: This notice announces receipt of and publishes Whirlpool Corporation's (Whirlpool's) Petition for Waiver (hereafter, ''Petition'') from parts of the Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Whirlpool's specified French door bottom-mounted residential refrigerators and refrigerator-freezers, a product line that utilizes a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions in order to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Whirlpool has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE is soliciting comments, data, and information concerning Whirlpool's Petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to Whirlpool's Petition until, but no later than August 11, 2008.

ADDRESSES: You may submit comments, identified by case number [RF–008], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Michael.Raymond@ee.doe.gov.* Include either the case number [RF–008] and/or ''Whirlpool Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J,

Petition for Waiver Case No. RF–008, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of 10 CFR part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Mr. Steven Church, Project Engineer, Whirlpool Corporation, 5401 U.S. Highway North, Evansville, IN 47727. *Telephone:* (812) 426–4659. E-mail: *steven_c_church@whirlpool.com*.

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note that the DOE's Freedom of Information Reading Room (formerly Room 1E–190 in the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority
II. Petition for Waiver
III. Alternate Test Procedure
IV. Summary and Request for Comments

I. Background and Authority

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A [1] of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, Appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the Petition for Waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR part 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). In general, waivers remain in effect until the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR part 430.27(m).

II. Petition for Waiver

On January 8, 2008, Whirlpool filed a Petition for Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, Appendix A1.[2] Whirlpool is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Whirlpool's technology is similar to that used by General Electric Company (GE) for its refrigerator-freezers which were the subject of a Petition for Waiver published April 17, 2007. 72 FR 19189. Whirlpool seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because it takes neither ambient humidity nor adaptive technology into account. Therefore, Whirlpool stated that the test procedure does not accurately measure the energy consumption of Whirlpool's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Whirlpool has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. Whirlpool's alternate test procedure is essentially the same as that prescribed for GE refrigerators and refrigerator-freezers that are equipped with the same type of technology. The alternate test procedure applicable to the GE products simulates the energy used by the

[1] This part was originally titled Part B; however, it was redesignated Part A after Part B was repealed by Pub. L. 109–58.

[2] Whirlpool submitted a modified petition on April 30, 2008, which was amended solely to set forth the specific models for which the company is seeking a waiver. DOE is publishing Whirlpool's Petition for Waiver, as amended, for public comment.

adaptive heaters in a typical consumer household, as explained in the Decision and Order which DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Alternate Test Procedure

When test procedures for refrigerators and refrigerator-freezers under 10 CFR part 430 were first developed, simple mechanical defrost timers were the norm. Today, Whirlpool's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total energy consumption will be calculated by the same methodology that was set forth in the GE Petition. For units with an energy saver switch, the energy test results with and without the added heater contribution would be averaged to produce the final energy number for the product. For those units that do not include an energy saver switch, the final energy number would be equal to the test result of the heater-disabled test plus the added heater contribution. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperatures and humidities for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Whirlpool is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE, Whirlpool includes in its test procedure a ''system-loss factor'' to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Whirlpool's Petition for Waiver from certain parts of the test procedure applicable to Whirlpool's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters. DOE is publishing Whirlpool's Petition for Waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The Petition contains no confidential information. The Petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Whirlpool's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. DOE is interested in receiving comments from interested parties on all aspects of the Petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on June 23, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Submitted by:

Steven Church, Whirlpool Corporation, 5401 U.S. Highway North, Evansville, IN 47727. 812–426–4659.

Introduction

Whirlpool Corporation, a leading manufacturer and marketer of household appliances, in accordance with 10 CFR 430.27, files this Petition for Waiver in order to request exemption from certain parts of the test procedure endorsed by the U.S. Department of Energy for determining refrigerator-freezer energy consumption. Granting this waiver will allow Whirlpool to test its refrigerator-freezers utilizing the procedure described within this Petition.

Background

Whirlpool is upgrading its Bottom Mount refrigerator-freezer products in order to meet the newly revised requirements of the Energy Star program scheduled to be implemented in April 2008.

Whirlpool is seeking the Department's approval to use the proposed method so that it can be assured of properly calculating and labeling the energy consumption of its products. Such approval will also allow assurance that the new products will achieve the energy limits proposed under the Energy Star Program.

Recently, General Electric Corporation (''GE'') filed a Petition for Waiver to establish a new method to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-condensation heaters. In order to meet the more stringent Energy Star standards, Whirlpool has developed its own adaptive anti-condensation system which utilizes a humidity sensor to modify the power used by the anti-condensation heaters. In support of GE's position, Whirlpool could have designed the system so that the anti-condensation heaters showed no impact during energy testing. However, like GE, Whirlpool is following the regulation's intent to more accurately represent the energy consumed by the product when used in the home. Accordingly, Whirlpool is filing this Petition for Waiver to modify the portions of the regulation that are inappropriate.

The Department's regulations provide that the Assistant Secretary will grant a Petition upon: ''Determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.'' [1]

Whirlpool requests that the Assistant Secretary grant this Petition based on the second point. Because the current test procedure does not fully specify test room conditions, i.e. the ambient relative humidity is not controlled; the adaptive nature of the anti-condensation heaters may cause the energy consumption of the unit to be significantly overstated. To test the units assuming that they do not adapt will misrepresent the energy used by the appliance when installed in a consumer's home.

The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption [2] specifies that the test chamber be maintained at 90 °F. Although not typical of conditions in most consumer's homes, this higher ambient simulates the heat load of a refrigerator in a 70 °F ambient with typical usage by the consumer.

[1] 10 CFR part 430.27(l).

[2] 10 CFR part 430, subpart B, App. A1.

However, the test procedure does not address what humidity level to maintain in the test room when collecting data. Condensation occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. The appliance industry currently utilizes anti-condensation loops and heaters that increase the temperature of local areas above the dew point to prevent condensation. Typical applications employ a heater that utilizes a pre-determined amount of power without regard to humidity and the likelihood of condensation occurring on the unit. Such an application will require more energy to prevent condensation than one that can adapt to changing ambient conditions.

Whirlpool's Proposed Modification

Whirlpool now seeks to change how it tests its upgraded models which include, but not restricted to, all French Door Bottom Mount Refrigerators whether or not they have exterior ice dispensing. The following bottom mounted freezer models with French doors are representative of similar models that will utilize this technology. These particular models do not use this technology at this time but as they are upgraded to add new features, or reach new energy levels this technology will be included.

The actual model numbers may vary but the technology will be used for the control of heaters to prevent the formation of condensation on external surface on French door bottom mounted freezer models.

MFI2569VE*	AFI2538AE*	KBFC42FT*0*
JFI2089A**	JF42REF**B0*	KBFO42FT*0*
JFI2589A**	JF42PPF**B0*	MBF1956KE*
MFI2266AE*	JF42SEF**B0*	KBFS20ET*
MFI2067AE*	JF42CXF**B0*	KBFA20ER*
MFI2568AE*	KBFC42FS*0*	MBF2256KE*
596.7753*	KBFO42FS*0*	MBF1956KE*

Whirlpool proposes to run the energy consumption test with the anti-condensation heaters disabled. A contribution will be added to this result, which is related to the amount of energy used by the anti-condensation heaters when they are active. This contribution will be calculated by the same method that was proposed by GE in their Petition. For units with an energy saver switch, the energy test results with and without the added heater contribution will be averaged together to produce the final energy number for the product. For those units that do not include an energy saver switch, the final energy number will be equal to the test result of the heater disabled test plus the added heater contribution. The objective of the proposed approach is to simulate the average energy used by the adaptive anti-condensation heaters as activated in typical consumer households across the United States.

In formulating their Petition, GE completed research in order to determine the average humidity level experienced across the United States. The result of this research was that GE was able to determine the probability that any U.S. household would experience certain humidity conditions during any month of the year. This data was consolidated into 10 bands each representing a 10% range of relative humidity. In submitting this Petition, Whirlpool is confirming the validity of using such bands to represent the average humidity experienced across the United States and will adopt the same population weighting as proposed by GE. The bands proposed by GE are as follows:

Percent RH	Probability (percent)	Constant designation
1. 0–10	3.4	A1
2. 10–20	21.1	A2
3. 20–30	20.4	A3
4. 30–40	16.6	A4
5. 40–50	12.6	A5
6. 50–60	11.9	A6
7. 60–70	6.9	A7
8. 70–80	4.7	A8
9. 80–90	0.8	A9
10. 90–100	1.5	A10

When using external anti-condensation heaters, Whirlpool's experience has been the increase in total energy used by the system is greater than the power used by the heaters alone. This increased energy can be related to energy consumed by, but not limited to, increased run time of the compressor and fan to remove the extra heat leak from the heaters, wire harnesses, and the operation of electronic controls. Based upon Whirlpool's experience, an energy increase of 30% is required to compensate for the extra heat leak. When calculating the contribution due to the heaters, Whirlpool recommends multiplying the power directly consumed by the heaters by 1.3 to calculate the energy used by the system as a whole.

The Heater Contribution that Whirlpool proposes will be added to the result of the energy-consumption test results with the heaters disabled. This result will be used in the energy calculations as the results for when the switch is in the ''heater on'' position. This number is calculated as follows:

Heater Contribution = (Anti-condensation Heater Power × 1.3) × (24 hours/1 day) × (1 kW/1000 W).

To determine the average power used by the anti-condensation heaters, the constant associated with each band is multiplied by the heater wattage used by a refrigerator operating at the average humidity level of each band and standard refrigerator conditions (72 °F ambient, fresh food average of 45° and freezer average of 5°). The total of the products from each humidity band will

represent the average power used by the anti-condensation heater in the equation above. This may be represented as:

Anti-condensation Heater Power = A1 * (Heater Watts at 5% RH) + A2 * (Heater Watts at 15% RH) + A3 * (Heater Watts at 25% RH) + A4 * (Heater Watts at 35% RH) + A5 * (Heater Watts at 45% RH) + A6 * (Heater Watts at 55% RH) + A7 * (Heater Watts at 65% RH) + A8 * (Heater Watts at 75% RH) + A9 * (Heater Watts at 85% RH) + A10 * (Heater Watts at 95% RH).

As explained above, bands A1–A10 were selected as representative of humidity conditions of all U.S. households. Utilizing such weighed bands will allow the calculation of the national average energy consumption for each product.

Based on the above, Whirlpool proposes to test its upgraded models as if the test procedure were modified to calculate the energy of the unit by testing the unit with the anti-condensation disabled plus the Anti-Sweat Heater Power multiplied by 1.3 to determine the energy of the unit when the heaters are active.

Conclusion

Whirlpool urges the Assistant Secretary to grant this Petition and allow Whirlpool to test its upgraded French Door Bottom Mount refrigerator models as described above. We believe that granting our request will encourage manufacturers to introduce new technologies into their products without having to worry about any adverse impact to energy consumption.

Respectfully submitted,

Steven Church

Affected Persons

Primary affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux Home Products, Equator, Fisher & Paykel Appliances, Inc., General Electric Corporation, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics USA Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, and Viking Range. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances. Consumers' Union, ACEEE, NRDC, [and] Alliance to Save Energy are not manufacturers but have an interest in this matter. Whirlpool will notify all these organizations as required by the Department's rules and provide them with a non-confidential version of this Petition.

[FR Doc. E8–15748 Filed 7–09–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 2, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–092.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company LP submits two capacity release agreements containing negotiated rate provisions executed with Q-West Energy Company.
Filed Date: 06/27/2008.
Accession Number: 20080630–0020.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, July 09, 2008.

Docket Numbers: RP99–176–163.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits an Amendment to the Firm Transportation and Storage Negotiated Rate Agreement etc.
Filed Date: 06/27/2008.
Accession Number: 20080630–0019.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, July 09, 2008.

Docket Numbers: RP01–382–018.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas submits for filing its annual report setting forth the Carlton Resolution buyout and surcharge dollars reimbursed to the Carlton Sourcers.
Filed Date: 06/26/2008.
Accession Number: 20080626–5030.
Comment Date: 5:00 p.m. Eastern Time on Tuesday, July 08, 2008.

Docket Numbers: RP03–36–032.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits Thirty-Seventh Revised Sheet 9 et al. to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 06/27/2008.
Accession Number: 20080630–0018.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, July 09, 2008.

Docket Numbers: RP06–200–044.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline, LLC submits Third Revised Sheet 9H et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 7/1/08.
Filed Date: 06/26/2008.
Accession Number: 20080627–0007.
Comment Date: 5:00 p.m. Eastern Time on Tuesday, July 08, 2008.

Docket Numbers: RP96–272–077.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Co submits Eighth Revised Sheet 66B.01 et al. to FERC Gas Tariff, Fifth Revised Volume 1, to become effective 7/1/08.
Filed Date: 06/30/2008.
Accession Number: 20080701–0102.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP00–426–037.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Original Sheet 55D et al. to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 06/30/2008.
Accession Number: 20080701–0103.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP00–632–029.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. files its Informational Annual Fuel Report.
Filed Date: 06/30/2008.
Accession Number: 20080630–5051.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–423–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Co submits Third Revised Sheet 12A to FERC Gas Tariff, First Revised Volume 1, to be effective 7/1/08.
Filed Date: 06/26/2008.
Accession Number: 20080627–0122.
Comment Date: 5:00 p.m. Eastern Time on Tuesday, July 08, 2008.

Docket Numbers: RP08–424–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: Tres Palacios Gas Storage, LLC submits Original Sheet 0 et al. to FERC Gas Tariff Original Volume 1, Volume 1; Part 2 of 3.
Filed Date: 06/27/2008.
Accession Number: 20080630–0022.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, July 09, 2008.

Docket Numbers: RP08–426–000.
Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff sheets that propose a system-wide increase in rates and several incremental refinements to EPNG's existing service and penalty structure etc., effective 1/1/09.

Filed Date: 06/30/2008.

Accession Number: 20080701–0153.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, July 15, 2008.

Docket Numbers: RP08–427–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overhurst Pipeline Company submits Second Revised Sheet 83 to its FERC Gas Tariff, Second Revised Volume 1–A.

Filed Date: 06/30/2008.

Accession Number: 20080701–0101.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–428–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply submits the 116th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1, to become effective 7/1/08.

Filed Date: 06/30/2008.

Accession Number: 20080701–0100.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–429–000.

Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Company, LLC submits Fourteenth Revised Sheet 5 to FERC Gas Tariff, Second Revised Volume 1–A, to become effective 8/1/08.

Filed Date: 06/30/2008.

Accession Number: 20080701–0099.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–430–000.

Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Company submits FERC Gas Tariff Second Revised Volume 1–A, to become effective 8/1/08.

Filed Date: 06/30/2008.

Accession Number: 20080701–0098.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–431–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits First Revised Sheet 241 et al., to become effective 8/7/08.

Filed Date: 06/30/2008.

Accession Number: 20080701–0097.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–435–000.

Applicants: Dominion Transmission, Inc.

Description: Report of Annual Overrun/Penalty Revenue Distribution of Dominion Transmission, Inc.

Filed Date: 07/01/2008.

Accession Number: 20080701–5126.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–15609 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–200–193.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits negotiated rate agreements between CEGT and Petrohawk Energy Corporation.

Filed Date: 07/01/2008.

Accession Number: 20080702–0224.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP96–200–194.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits two negotiated rate agreements between CEGT and Chesapeake Energy, Inc.

Filed Date: 07/01/2008.

Accession Number: 20080702–0223.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP96–383–087.CP07–10–002.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Eighth Revised Sheet 36 et al in its FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 07/01/2008.

Accession Number: 20080702–0299.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP99–176–164.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America's First Revised Sheet 33G.01 to FERC Gas Tariff, Seventh Revised Volume 1, & an amendment to the Firm Transportation Service Negotiated Rate Agreement with Interstate Power & Light Co.

Filed Date: 07/02/2008.

Accession Number: 20080703–0065.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP99–301–210.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits an amendment to one Rate Schedule FSS negotiated rate agreement between ANR and Tenaska Marketing Ventures.
Filed Date: 07/01/2008.
Accession Number: 20080702–0222.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP99–301–211.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits an amendment to one Rate Schedule FTS–1 negotiated rate agreement between ANR and Wisconsin Public Service Corporation.
Filed Date: 07/01/2008.
Accession Number: 20080702–0221.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–432–000.
Applicants: MIGC LLC.
Description: MIGC LLC submits First Revised Sheet 2 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/08.
Filed Date: 07/01/2008.
Accession Number: 20080702–0265.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–433–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Co submits Sixty-Sixth Revised Sheet 7 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/08.
Filed Date: 07/01/2008.
Accession Number: 20080702–0264.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–434–000.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Twenty-Seventh Revised Sheet 25 et al to FERC Gas Tariff, Seventh Revised Volume 1 and First Revised Volume 2, to be effective 8/1/08.
Filed Date: 07/01/2008.
Accession Number: 20080702–0266.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–435–000.
Applicants: Dominion Transmission, Inc.
Description: Report of Annual Overrun/Penalty Revenue Distribution of Dominion Transmission, Inc.
Filed Date: 07/01/2008.
Accession Number: 20080701–5126.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–438–000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits Original Volume 1 et al effective 8/1/08.
Filed Date: 07/01/2008.
Accession Number: 20080702–0300.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–439–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits Third Revised Sheet 6 to FERC Gas Tariff, Original Volume 1.
Filed Date: 07/01/2008.
Accession Number: 20080703–0066.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: RP08–440–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Forty-Fourth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1 and Forty-Sixth Revised Sheet 8 to FERC Gas Tariff, Original Volume 3, effective 8/1/08 under RP08–440.
Filed Date: 07/02/2008.
Accession Number: 20080703–0067.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–15612 Filed 7–9–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11841–002 Alaska]

Ketchikan Public Utilities; Notice of Availability of Final Environmental Assessment

July 2, 2008.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR Part 380, Commission staff has reviewed the application for an original license for the proposed Whitman Lake Hydroelectric Project (FERC No. 11841–002) and has prepared a final environmental assessment (final EA) for the project. The project would be located on Whitman Creek, approximately 4 miles east of the City of Ketchikan, Alaska. The project would occupy 155.8 acres of lands of the United States, 155 acres administered by the U.S. Department of Agriculture, Forest Service and 0.8 acres administered by the U.S. Bureau of Land Management.

On February 8, 2008, Ketchikan Public Utilities (KPU) filed a multi-party Settlement Agreement. In addition to KPU, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, Division of Mining, Land and Water, Water Resources Section, and the Southern Southeast Regional

Aquaculture Association were signatories to the Settlement Agreement.

The final EA contains the staff's analysis of the potential environmental effects of the proposed project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the final EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The final EA may also be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

For further information, contact Kenneth Hogan at (202) 502–8434 or by e-mail at *kenneth.hogan@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15701 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10854–080–MI]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

July 2, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed Upper Peninsula Power Company's proposed shoreline management plan for the Cataract Hydroelectric Project, located on the Middle Branch of the Escanaba River in Marquette County, Michigan, and has prepared an Environmental Assessment (EA).

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–10854) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by August 1, 2008, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–10854) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Jon Cofrancesco at (202) 502–8951.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15700 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–5–009]

Empire Pipeline, Inc. and Empire State Pipeline; Notice of Intent To Prepare an Environmental Assessment for the Amended Empire Connector Project and Request for Comments on Environmental Issues

July 2, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the amended portion of the Empire Connector Project involving construction and operation of facilities by Empire Pipeline, Inc. (EPI) and Empire State Pipeline (Empire), a subsidiary of National Fuel Gas Company, in Ontario County, New York.[1] These amended facilities would consist of about 1 mile of 24-inch-diameter pipeline. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice EPI provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

EPI and Empire's Empire Connector Project (project) which expands Empire's pipeline system in New York was approved by the FERC on December 21, 2006, and is a part of the Northeast-07 Project (NE–07 Project)[2] and is currently under construction. Through its recent easement negotiations about the crossing of the New York State Thruway (Thruway) with the New York State Department of Transportation (NYSDOT), Empire learned that a portion of the approved route between approximate mileposts (MPs) 4.0 and 4.8 along Crowley Road lies within the NYSDOT property and is part of the Thruway easement. The NYSDOT's policy prohibiting lateral occupancy of limited access highways by utilities (other than communication utilities) applies to this location. Empire has developed the proposed alternative pipeline route to avoid construction within the easement. Empire seeks authority to construct and operate:

- About 1 mile of 24-inch-diameter pipeline between MPs 3.8 and 4.8 of the project.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 11.0 acres of land. Following construction, about 5.3 acres would be maintained within the

[1] EPI and Empire's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The notice of availability for the final supplemental environmental impact statement for the NE–07 Project was issued October 13, 2006. It will be incorporated by reference into the EA for this amendment project.

permanent right-of-way. The remaining 6.7 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils
- Land Use
- Water Resources, Fisheries, and Wetlands
- Cultural Resources
- Vegetation and Wildlife
- Endangered and Threatened Species
- Hazardous Waste
- Public Safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 3.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by EPI and Empire. This preliminary list of issues may be changed based on your comments and our analysis.

- About 0.6 acre and 0.3 acre of agricultural land would be impacted by construction and operation of the proposed project, respectively.
- About 1.1 acres of forest would be impacted by construction of the project, respectively.
- About 1.7 acres and 0.9 acre of residential property would be affected by construction and operation of the project, respectively.
- About 0.9 acre and 0.6 acre of wetland would be impacted by construction and operation of the project, respectively.
- One irrigation water supply well would be within 150 feet of the proposed alternative pipeline alignment.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before August 1, 2008.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP06–5–009 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling feature,* which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426; label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15703 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 2277–023]

Union Electric Company, dba AmerenUE; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2277–023.

c. *Date Filed:* June 24, 2008.

d. *Applicant:* Union Electric Company, dba AmerenUE.

e. *Name of Project:* Taum Sauk Pumped Storage Project.

f. *Location:* The project is located on the East Fork Black River and Taum Sauk Creek, in Reynolds, Iron, St. Francois, and Washington counties, near the Town of Lesterville, Missouri. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael O. Lobbig, P.E., Managing Supervisor, Hydro Licensing, AmerenUE, 1901 Chouteau Avenue, St. Louis, MO 63103; *mlobbig@ameren.com.*

i. *FERC Contact:* Allan Creamer, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426; 202–502–8365; *allan.creamer@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 18 CFR Section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: August 25, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The 408-megawatt (MW) Taum Sauk Project consists of the following principal features: (1) A roller compacted concrete dam, with (i) a crest elevation of 1,601.0 feet mean sea level (msl), (ii) 3.5-foot-high parapet walls to an elevation of 1,604.5 feet msl, and (iii) a 700-foot-long overflow release structure with a crest elevation of 1,599.0 feet msl; (2) a 54.5-acre upper reservoir, having a total useable volume of 4,360 acre-feet; (2) a 390-foot-long ogee-shaped concrete-gravity dam, with (i) a 26-foot-long gated sluice, (ii) a steel-lined conduit having a capacity of 2,500 cubic feet per second (cfs), (iii) a 16-inch, spiral-welded pipe having a capacity of 50 cfs, and (iv) a crest elevation of 750 msl; (3) a 363-acre lower reservoir, with normal maximum and minimum operating elevations of 749.5 and 736 feet msl and a total usable storage of 3,869 acre-feet; (4) a tunnel and penstock, having a total volume of 82.5 acre-feet, that consists of (i) a 451-foot-long lined and unlined vertical shaft, (ii) a two-section, 6,572-foot-long tunnel, and (iii) a short penstock that bifurcates into the powerhouse, (5) a concrete powerhouse equipped with two reversible pump generating units, each rated at 204 MW; (6) a 5,500-foot-long tailrace channel; (7) a sediment trap (about 400 feet in length, with a crest elevation of about 748.0 msl); and

(8) transmission and other appurtenant facilities. The project has an average annual generation of just over 497 gigawatt-hours (2000–2005).

AmerenUE is rebuilding the project's upper reservoir. However, AmerenUE proposes no changes to the existing pump-storage operation of the project, at

this time. As part of the rebuild, AmerenUE will be installing a new water control system. In addition, AmerenUE and the resource agencies are assessing a new water management plan during the 2-year rebuild period. AmerenUE is not proposing any PM&Es (except for a 1.4-cfs flow in the river downstream from the project and a historic properties management plan, if needed), but will undertake studies and surveys aimed at providing information needed to develop its proposed environmental measures.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Missouri State Historic Preservation Officer (SHPO), as required by Section 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—August 2008
Request Additional Information—September 2008
Issue Acceptance letter—November 2008
Issue Scoping Document 1 for comments—April 2011
Request Additional Information—June 2011
Issue Scoping Document 2—July 2011
Notice of application is ready for environmental analysis—August 2011
Notice of the availability of the draft NEPA Document—February 2012
Notice of the availability of the final NEPA Document—June 2012

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15702 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

July 2, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date received	Presenter or requester
1. CP08–6–000; DCP08–9–000; PR08–1–000	6–12–08	Hon. Kay Bailey Hutchinson.
2. CP08–6–000; CP08–9–000; PR08–1–000	6–16–08	Hon. Mac Thornberry.
3. CP08–85–000	6–17–08	Hon. Charles S. McCann.
4. P–12569–000	6–30–08	Robert G. Whitlam, PhD.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15699 Filed 7–9–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8690–2; Docket ID No. EPA–HQ–ORD–2007–0983]

2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document titled, ''2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' (EPA/600/R–07/094). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 45-day public comment period begins July 10, 2008, and ends August 25, 2008. Technical comments should be in writing and must be received by EPA by August 25, 2008.

ADDRESSES: The draft ''2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from NCEA's Information Management Team; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title ''2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3.''

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Brooke L. Hemming, PhD, National Center for Environmental Assessment (NCEA); telephone: 919–541–5668; e-mail *hemming.brooke@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

The ''2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' is intended to provide air quality managers and scientists a summary and synthesis of the scientific results that have emerged from the EPA ORD Global Change Research Program (ORD GCRP) assessment of the impact of global change on U.S. regional air quality. The report discusses the studies that have focused on the sensitivity of U.S. air quality to meteorological changes associated with a warming climate in large regions within the continental U.S.

The EPA recognizes that climate-air quality interactions occur at multiple scales (both spatial and temporal), and that an understanding of these interactions demands contributions from several scientific disciplines. The EPA ORD GCRP developed a research and assessment program that combines the resources and expertise of the ORD labs and centers toward the goal of developing the necessary scientific underpinnings. The ultimate goal of the Program is to provide air quality managers with the scientific information and tools needed to evaluate the implications of global change and to enhance their ability to consider global change in their decisions. The ''2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on O_3'' is a preliminary step in that direction.

This report provides an update of the progress that has been made in applying climate and atmospheric chemistry models to investigate potential future meteorological effects on air quality. It does not include changes in air pollutant emissions other than those that are explicitly linked to meteorological variables and incorporated within the models (e.g., biogenic VOC emissions). In addition, it provides a preliminary interpretation of what this improved scientific understanding means for air quality management. Future assessment reports will cover the combined impacts of changing climate and air pollutant emissions on air quality. The program also plans to develop additional reports that focus on additional pollutants, including PM and mercury.

NCEA worked collaboratively with the EPA Office of Air and Radiation (OAR), and ORD's National Risk Management Research Laboratory (NRMRL), National Exposure Research Laboratory (NERL) and National Center for Environmental Research (NCER) on this report.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0983, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*
- *Fax:* 202–566–1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0983. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 24, 2008.

Rebecca Clark,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E8–15727 Filed 7–9–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8690–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1698.07; EPA's WasteWise Program (Renewal); was approved 06/24/2008; OMB Number 2050–0139; expires 06/30/2011.

EPA ICR Number 1736.05; EPA's Natural Gas STAR Program (Renewal); was approved 07/01/2008; OMB Number 2060–0328; expires 07/31/2011.

EPA ICR Number 1800.05; Information Requirements for Locomotives and Locomotive Engines (Final Rule for Locomotive and Marine Engines); in 40 CFR part 1033, subparts C, D, E and G; was approved 07/03/2008; OMB Number 2060–0392; expires 07/31/2009.

EPA ICR Number 0559.10; Application for Reference and Equivalent Method Determination (Final Rule); in 40 CFR part 53; was approved 07/03/2008; OMB Number 2080–0005; expires 07/31/2011.

Short Term Extension of Expiration Date

EPA ICR Number 0922.07; Data Call-ins for the Special Review and Registration Review Programs; a short term extension of the expiration date was granted by OMB on 06/30/2008; OMB Number 2070–0057; expires 09/30/2008.

EPA ICR Number 1911.02; Data Acquisition for Anticipated Residue and Percent of Crop Treated; a short term extension of the expiration date was granted by OMB on 06/30/2008; OMB Number 2070–0164; expires 09/30/2008.

EPA ICR Number 1504.05; Data Generation for Pesticide Reregistration; a short term extension of the expiration date was granted by OMB on 06/30/2008; OMB Number 2070–0107; expires 09/30/2008.

Comment Filed

EPA ICR Number 2294.01; National Emission Standards for Hazardous Air Pollutants for Plating and Polishing Area Sources (Proposed Rule); in 40 CFR part 63, subpart WWWWWW; OMB filed comments on 07/01/2008.

EPA ICR Number 2298.01; NESHAP for Nine Metal Fabrication and Finishing Source Categories (Proposed Rule); in 40 CFR part 63, subpart XXXXXX; OMB filed comments on 07/01/2008.

EPA ICR Number 2307.01; NSPS for Portland Cement Plants (Proposed Rule); in 40 CFR part 60, subpart F; OMB filed comments on 07/03/2008.

EPA ICR Number 0940.21; Ambient Air Quality Surveillance (Proposed Rule for Lead); OMB filed comments on 07/03/2008.

Dated: July 3, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–15724 Filed 7–9–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8689–6]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of New Carlisle Well Contamination Site, New Carlisle, Clark County, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the New Carlisle Well Contamination (''NCWC'') Site, New Carlisle, Clark County, Ohio, Waste Management of Ohio, Inc., (''WMOI''). The settlement requires WMOI to pay $335,000.00 to the Hazardous Substance Superfund, which represents approximately 90% of U.S. EPA's documented past costs.

Under the terms of the settlement, WMOI agrees to pay the settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the NCWC Site. In addition, WMOI is entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the NCWC Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the New Carlisle Public Library, 111 E. Lake St., New Carlisle, OH 45344, Contact: Ted Allison.

DATES: Comments must be submitted on or before August 11, 2008.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670. Comments should reference the New Carlisle Well Contamination Site, New Carlisle, Clark County, Ohio, and EPA Docket No. V–W–08–C–904, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: July 1, 2008.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. E8–15723 Filed 7–9–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8–14916 published on page 37970 of the issue for Wednesday, July 2, 2008.

Under the Federal Reserve Bank of Kansas City heading, the entry for Brian Wallman, Denver, Colorado, 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. Brian Wallman, individually and as a member of the Wallman Family Group; and Liam Wallman, both of Denver, Colorado; Zachary Sherwin, Adam Sherwin and Emily Sherwin, all of Union, Nebraska; Molly Sherwin, Omaha, Nebraska; and Susan Sherwin, Nebraska City, Nebraska, all members of the Wallman Family Group, to retain control of Wallco, Inc., and thereby indirectly retain control of Nehawka Bank, both in Nehawka, Nebraska

Comments on this application must be received by July 16, 2008.

Board of Governors of the Federal Reserve System, July 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15689 Filed 7–9–08; 8:45 am]

BILLING CODE 6210–01–S

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 July 25, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Mark R. Dickert Revocable Living Trust, Mark R. Dickert, Lori Dickert, of Brandenton, Florida; and Paul W. Dickert, trustees; Paul W. Dickert and Laura H. Dickert, of Gainesville, Florida; Jerry D. Dickert Revocable Living Trust, Perry, Florida; Mark R. Dickert and Paul W. Dickert, trustees; and Coleene S. Dickert Revocable Living Trust, Perry, Florida; Mark R. Dickert and Paul W. Dickert, trustees, to retain voting shares of Perry Banking Company and thereby indirectly retain voting shares of Citizens State Bank, both of Perry, Florida.

Board of Governors of the Federal Reserve System, July 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15688 Filed 7–9–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Monday, July 14, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may **register online**. You may pre–register until close of business July 11, 2008. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please

call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts, and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Final Amendments to Regulation Z (Truth in Lending).

Note:

1. The staff memo to the Board will be made available to the public in paper and the background material will be made available on a computer disc in Word format. If you require a paper copy of the document, please call Penelope Beattie on 202–452–3982.

2. This meeting will be recorded for the benefit of those unable to attend. Computer discs (CDs) will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a **recorded announcement** of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an **electronic announcement**. (The Web site also includes procedural and other information about the open meeting.)

Board of Governors of the Federal Reserve System, July 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–1427 Filed 7–7–08; 4:09 pm]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. TCB Corporation, to acquire at least 73 percent of the voting shares of Greenwood Capital Associates, LLC, both of Greenwood, South Carolina, and thereby engage in financial and investment advisory services, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15687 Filed 7–9–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through July 31, 2011, the current PRA clearance for information collection requirements contained in its Funeral Industry Practice Rule (''Funeral Rule'' or ''Rule''). That clearance expires on July 31, 2008.

DATES: Comments must be submitted on or before August 11, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Paperwork Comment: FTC File No. P084401'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, the comment must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

Comments filed in electronic form should be submitted by clicking on the following: *https://secure.commentworks.com/ftc-FuneralRule* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-FuneralRule*. You also may visit *http://*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

www.regulations.gov to read this Rule, and may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Rule should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–288, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION: On March 28, 2008, the FTC sought comment on the information collection requirements associated with the Funeral Rule, 16 CFR Part 453 (Control Number: 3084–0025).[2] No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501–3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before August 11, 2008.

The Funeral Rule ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

The estimated burden associated with the collection of information required by the Rule is 20,300 hours for recordkeeping, 101,389 hours for disclosures, and 40,600 hours for training, for a total of 162,000 hours (rounded to the nearest thousand). This estimate is based on the number of funeral providers (approximately 20,300),[3] the number of funerals per year (approximately 2.4 million),[4] and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 20,300 providers is 20,300 hours. This estimate is lower than FTC staff's 2005 estimate of 21,500 hours due to a decrease in the number of funeral providers.

Disclosure: The Rule requires that funeral providers: (1) Maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining current price lists requires that funeral providers revise their price lists from time to time throughout the year to reflect price changes. Staff estimates, consistent with its current clearance, that this task requires a maximum average burden of two and one-half hours per provider per year for this task. Thus, the total burden for 20,300 providers is 50,750 hours.

2. Staff retains its prior estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[5]

According to the rulemaking record, the 13% of funeral providers who did not provide written documentation prior to enactment of the Rule are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form (an example of which the FTC has provided to all funeral providers in its compliance guide).[6] Based on an estimate that these smaller funeral homes arrange, on average, approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider, for a total of 2,639 hours [(20,300 funeral providers × 13%) × (20 statements per year × 3 minutes per statement)].

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Information received in 2002 from the industry indicates that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes.[7] Thus, assuming that the average purchaser who makes telephone inquiries places one call per funeral to determine prices, the estimated burden is 48,000 hours (2.4 million funerals per year × 12% × 10 minutes per inquiry). This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 101,389 hours (50,750 + 2,639 + 48,000).

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. While staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for state licensing and voluntary certification

[2] 73 FR 16681.

[3] The estimated number of funeral providers is from data provided on the National Funeral Directors Association Web site (see *http://www.nfda.org/careers.php*), which was accessed in March 2008.

[4] The estimated number of funerals conducted annually is derived from the National Center for Health Statistics (''NCHS''), *http://www.cdc.gov/nchs/*. According to NCHS, 2,448,017 deaths occurred in the United States in 2005, the most recent year for which final data is available. *See* National Vital Statistics Reports, vol. 56, no. 10 ''Deaths: Final Data for 2005,'' *available at http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_10.pdf.*

[5] In a 2002 public comment, the National Funeral Directors Association asserted that nearly every funeral home had been providing consumers with some kind of final statement in writing even before the Rule took effect. Nonetheless, in an abundance of caution, staff continues to retain its prior estimate based on the original rulemaking record.

[6] The FTC has provided its compliance guide to all funeral providers at no cost, and additional copies are available on the FTC Web site, *http://www.ftc.gov,* or by mail.

[7] No more recent information thus far has been available. The Commission invites submission of more recent data or studies on this subject.

programs, staff estimates that, industry-wide, funeral homes should incur no more than 40,600 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an ''average'' funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees (three directors and a clerical employee) per firm would each require one-half hour, at most, per year, for such training. Thus, total estimated time for training is 40,600 hours (4 employees per firm × 1/2 hour × 20,300 providers).

Estimated annual cost burden: $3,524,000 in labor costs and $1,226,000 in non-labor costs.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an estimated hourly rate of $13, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 20,300 hours, the estimated labor cost burden for recordkeeping is $263,900.

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at an estimated $27.50 per hour, and one hour of clerical time, at $13 per hour, for a total of $54.25 per provider [8] [($27.50 per hour × 1.5 hours) + ($13.00 per hour × 1 hour)]. Thus, the estimated total labor cost burden for maintaining price lists is $1,101,275 ($54.25 per provider × 20,300 providers).

The incremental cost to the 13% of small funeral providers not previously providing written documentation of the goods and services selected by the consumer, as previously noted, is 2,639 hours. Assuming managerial or professional time for these tasks at approximately $27.50 per hour, the associated labor cost would be $72,572.50 (2,639 hours × $27.50 per hour).

As previously noted, staff estimates that 48,000 hours of managerial or professional time is required annually to respond to telephone inquiries about prices. The cost of 48,000 hours of managerial or professional time for responding to telephone inquiries about prices at $27.50 per hour, is $1,320,000 (48,000 hours × $27.50 per hour).

The cost of training licensed and non-licensed funeral home staff to comply with the Funeral Rule is two hours per funeral home, with four employees of varying ranks each spending one-half hour on training. Consistent with estimates in the current clearance, the Commission is assuming that three funeral directors, at hourly wages of $27.50, $20, and $15, respectively, as well as one clerical or administrative staff member, at $13 per hour, require such training, for a total burden of 40,600 hours (20,300 funeral homes × 2 hours total per establishment), and $766,325 [($27.50 + $20 + $15 + $13) × 1/2 hour per employee × 20,300 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $2,493,847.50 ($1,101,275 + $72,572.50 + $1,320,000). The total labor cost for recordkeeping is $263,900. The total labor cost for disclosures, recordkeeping and training is $3,524,000 ($263,900 for recordkeeping + $766,325 for training + $2,493,847.50 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Assuming that two price lists per funeral/cremation are created by industry to adhere to the Rule, 4,800,000 copies per year are made for a total cost of $1,200,000 (2,400,000 funerals per year × 2 copies per funeral × $.25 per copy). In addition, the estimated 2,639 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at twenty-five cents per page, at an average of twenty funerals per year, the added cost burden would be $26,390 (2,639 providers × 20 funerals per year × 2 pages per funeral × $.25). Thus, estimated non-labor costs are $1,226,000, rounded to the nearest thousand.

William Blumenthal,

General Counsel.

[FR Doc. E8–15659 Filed 7–9–08; 8:45 am]

BILLING CODE 6750–01–P

[8] Based on the National Compensation Survey: Occupational Wages in the United States, June 2006, U.S. Department of Labor, Bureau of Labor Statistics (June 2007) (''BLS National Compensation Survey'') (citing the mean hourly earnings for funeral directors as $22.11/hour), available at *http://www.bls.gov/ncs/ocs/sp/ncbl0910.pdf.* As in the past, staff has increased this figure on the assumption that the owner or managing director, who would be paid at a slightly higher rate, would be responsible for making pricing decisions. Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, e.g., bookkeeping, file clerks, new accounts clerks, data entry.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through October 31, 2011, the current OMB clearance for information collection requirements contained in its Negative Option Rule. That clearance expires on October 31, 2008.

DATES: Comments must be filed by September 8, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Negative Option Rule: FTC File No. P789003'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the

document must be clearly labeled ''Confidential.'' [1]

Comments filed in electronic form should be submitted by using the following Weblink: *https://secure.commentworks.com/ftc-NegativeOptionRule* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the Weblink: *https://secure.commentworks.com/ftc-NegativeOptionRule.* If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2984.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements contained in the Commission's Use of Prenotification Negative Option Plans Rule (''Negative Option Rule'' or ''Rule''), 16 CFR Part 425 (OMB Control Number 3084–0104).

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 8, 2008.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will ship merchandise, such as books, compact discs, or tapes, automatically and bill the subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such ''negative option'' plans.

Estimated annual hours burden: 13,000 hours rounded to the nearest thousand.

Staff estimates that approximately 158 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 11,850 hours (158 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 7 new clubs come into being each year. These clubs require approximately 120 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 840 hours. Combined with the estimated burden for established clubs, the total burden is 12,690 hours or 13,000, rounded to the nearest thousand.

Estimated annual cost burden: $511,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics, the average compensation for advertising managers is approximately $44 per hour. Compensation for office and administrative support personnel is approximately $15 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (*e.g.*, placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately $510,510 [(65 hours managerial time x 158 existing clubs × $44 per hour) + (10 hours clerical time × 158 existing clubs × $15 per hour) + (110 hours managerial time × 7 new clubs × $44 per hour) + (10 hours clerical time × 7 new clubs × $15)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

William Blumenthal,

General Counsel.

[FR Doc. E8–15660 Filed 7–9–08; 8:45 am]

BILLING CODE 6750–01–P

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–07BN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Study to Assess Hepatitis Risk (STAHR)—New—National Center for AIDS Viral Hepatitis and TB Prevention, (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Hepatitis C is the most prevalent bloodborne infection in the United States. Approximately 3.2 million persons are chronically infected with hepatitis C virus (HCV).

Identifying and reaching persons at risk for HCV infection is critical to prevent infection. Currently the Centers for Disease Control and Prevention (CDC) monitor the national incidence of acute hepatitis C through passive surveillance of acute, symptomatic cases of laboratory confirmed hepatitis C cases. However, only a small group of people with acute infection exhibit symptoms (<25%). Passive surveillance only captures a small fraction of acutely infected people. Injection drug users (IDUs) are the primary risk group for acute hepatitis C. Thus, it is necessary to consider strategies other than passive surveillance for incidence monitoring. One such strategy is to conduct serial cross-sectional seroprevalence surveys among populations at increased risk of infection. Better methods of identification of persons at risk will enhance current surveillance efforts.

The purpose of the proposed study is to develop and test different methods to recruit a sample of young IDUs at risk for HCV infection. These recruitment methods will be compared and contrasted to identify a methodology to be used in ongoing serial cross-sectional seroprevalence surveys. CDC is requesting approval for two years.

Working with the University of California, San Diego (UCSD), the project will recruit a total of 1000 young IDUs during the 2 years using several methods. These methods are street outreach, respondent driven sampling and venue based. They are to be conducted in a sexually transmitted disease clinic and syringe exchange program. Young IDUs who consent to participate will be administered an eligibility interview questionnaire by a trained field staff member. If found eligible, the participant will take an audio-computer assisted self interview that includes questions on drug use and sexual behavior, HCV and Human Immunodeficiency Virus (HIV) status, knowledge of HCV, and missed opportunities for hepatitis prevention. The project will also collect blood samples from each consenting participant to test for HCV infection and hepatitis A and B vaccination without cost. Participants needing medical and/or drug treatment services will be referred to the appropriate services.

Participation in the data collection is voluntary and there is no cost to respondents other than their time. The total estimated annual burden hours are 816.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Young IDUs	Screener	1000	1	5/60
Eligible young IDUs	Survey	800	1	55/60

Dated: July 1, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–15630 Filed 7–9–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0576]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576)—Revision—Division of Select Agents and Toxins (DSAT), Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER), Centers for Disease Control and Prevention (CDC). The revisions to the data collection are primarily changes to the guidance documents and forms to clarify instructions, correct editorial errors from previous submission, and reformat the structure of the forms based on the day-to-day processing of these forms. This request is for approval for three years.

Background and Brief Description

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Subtitle A of Public Law 107–188 (42 U.S.C. 262a), requires the United States Department of Health and Human Services (HHS) to regulate the possession, use, and transfer of biological agents or toxins (i.e., select agents and toxins) that could pose a severe threat to public health and safety. The Agricultural Bioterrorism Protection Act of 2002, Subtitle B of Public Law 107–188 (7 U.S.C. 8401),

requires the United States Department of Agriculture (USDA) to regulate the possession, use, and transfer of biological agents or toxins (i.e., select agents and toxins) that could pose a severe threat to animal or plant health, or animal or plant products. In accordance with these Acts, HHS and USDA promulgated regulations requiring entities to register with the CDC or the Animal and Plant Health Inspection Service (APHIS) if they possess, use, or transfer a select agent or toxin (42 CFR part 73, 7 CFR part 331, and 9 CFR part 121). CDC and APHIS coordinate regulatory activities for those agents that would be regulated by both agencies (''overlap'' select agents). CDC and APHIS adopted an identical system to collect information for the possession, use, and transfer of select agents and toxins.

CDC is requesting continued OMB approval to collect this information through the use of five forms. The forms are: (1) Application for Registration, (2) Request to Transfer Select Agent or Toxin, (3) Report of Theft, Loss, or Release of Select Agent and Toxin, (4) Report of Identification of Select Agent or Toxin, and (5) Request for Exemption. The Application for Registration (42 CFR, 73.7(d)) will be used by entities to register with CDC. Entities may amend their registration (42 CFR, 73.7(h)1)) if any changes occur.

The Request to Transfer Select Agent or Toxin form (42 CFR 73.16) will be used to request transfer of a select agent or toxin to their facility. CDC, with APHIS, has revised the form by requiring the recipient to submit the initial request, be notified by the sender of the expected shipment date, and verify if the shipment did not occur.

The Report of Theft, Loss, or Release of Select Agent and Toxin form (42 CFR 73.19(a)(b)) must be completed by entities if there is theft, loss, or release of a select agent or toxin. The Report of Identification of Select Agent or Toxin form 42 CFR 73.5(a)(b) and 73.6(a)(b)) will be used by clinical and diagnostic laboratories to notify CDC that select agents or toxins identified as the result of diagnostic or proficiency testing have been disposed of in a proper manner. The form will be used by Federal law enforcement agencies to report the seizure and final disposition of select agents and toxins. CDC has revised the Report of Identification of Select Agent or Toxin form to ensure duplicate reports are not submitted by requesting the entity that makes the final identification report the select agents or toxins identified as the result of diagnostic or verification testing.

The Request for Exemption form (42 CFR 73.5(d)(e) and 73.6(d)(e)) will be used by entities that use an investigational product that are, bear, or contain select agents or toxins or in cases of public health emergency. An entity may apply to HHS for an exclusion of an attenuated strain of a select agent or toxin that does not pose a severe threat to public health and safety (42 CFR 73.3(e)(1) and 73.4(e)(1)).

This regulation outlines situations in which an entity must notify or may make a request of HHS in writing. An entity may apply to the HHS Secretary for an expedited review of an individual by the Attorney General (42 CFR 73.10(e)). CDC has not developed standardized forms for these situations. The entity should provide the information in the appropriate section of the regulation.

As part of the requirements of the Responsible Official, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents or toxins are stored. Results of these self-inspections must be documented (42 CFR 73.9(a)(5)).

As part of the training requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training (42 CFR 73.15(c)).

An individual or entity may request administrative review of a decision denying or revoking certification of registration or an individual may appeal a denial of access approval (42 CFR 73.20). An entity must implement a system to ensure certain records and databases are accurate and that the authenticity of records may be verified (42 CFR 73.17(b).

Prior to issuance of a certificate of registration, CDC inspects entities to ensure compliance with this regulation (42 CFR 73.18).

The estimated annual burden is 9,657 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

CFR reference	Data collection	Number of respondents	Responses per respondent	Average burden per response (in hours)
73.7(d)	Registration Application	5	1	4.5
73.7(h)(1)	Amendment to Registration Application	264	5	1
73.19(a)(b)	Notification of Theft, Loss, or Release form	60	1	1
73.5 & 73.6(d–e)/73.3 & 73.4(e)(1)	Request for Exemption/Exclusion	5	1	1
73.16	Request to Transfer Select Agent or Toxin	264	4	1.5
73.5 & 73.6(a)(b)	Report of Identification of Select Agent or Toxin form.	264	10	1
73.10(e)	Request expedited review	10	1	30/60
73.9(a)(5)	Documentation of self-inspection	264	1	1
73.15(c)	Documentation of training	264	1	2
73.20	Administrative Review	15	1	4
73.17	Ensure secure recordkeeping system	264	1	4
73.18	Inspections	264	1	8

Dated: July 2, 2008.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–15749 Filed 7–9–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families.

ACTION: Single-Source Program Expansion Supplement.

CFDA#: 93.583.

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $1,312,414 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered welfare system for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, and Trafficking Victims. San Diego County is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, Catholic Charities Diocese of San Diego, to provide refugee cash assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the San Diego Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: July 1, 2008.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E8–15633 Filed 7–9–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0381]

Draft Guidance for Industry on Voluntary Third-Party Certification Programs for Foods and Feeds; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Voluntary Third-Party Certification Programs for Foods and Feeds.'' This draft guidance describes the general attributes FDA believes a voluntary third-party certification program should have in order to help ensure its certification is a reliable reflection that the foods and feeds from certified establishments are safe and meet applicable FDA requirements.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by September 8, 2008.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sharon Lindan Mayl, Food and Drug Administration, 5600 Fishers Lane (HF–11), Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Voluntary Third-Party Certification Programs for Foods and Feeds.'' This draft guidance is issued in response to the recommendations contained in the Action Plan for Import Safety: A Roadmap for Continual Improvement (Action Plan) issued on November 6, 2007, by the Interagency Working Group on Import Safety (Working Group) established by Executive Order 13439, as well as FDA's Food Protection Plan released on the same date. Both those plans emphasize certification as a way to help verify the safety of products from a growing food establishment inventory, both domestic and foreign.

In the **Federal Register** of April 2, 2008 (73 FR 17989), FDA issued a notice requesting comments on the use of third-party certification programs for foods and animal feeds. FDA received approximately 70 comments in response to that notice. The comments were generally supportive of the use of third-party certification programs. Many encouraged FDA to recognize such programs as a way to increase participation and improve the safety and security of foods.

This draft guidance, when finalized, will represent FDA's current thinking on the certification process and will describe the general attributes FDA believes a voluntary third-party certification program should have in order to provide FDA with confidence in that program. If FDA has such confidence, we may choose to recognize the program and provide incentives for establishments to obtain certification by recognized certification programs. Recognition in this context means that FDA has determined that certification may be a reliable reflection that the foods from the certified establishment are safe and meet applicable FDA requirements. Such recognition would be tailored to particular categories of products and would occur in a separate document that builds upon the general attributes set forth in this document. Therefore, this draft guidance is intended as one of the steps in FDA's future recognition of one or more voluntary third-party certification programs for particular product types.

To further that process, FDA is also announcing, in a separate notice issued in this **Federal Register**, a voluntary pilot program for third-party certification bodies that certify foreign processors of aquacultured shrimp. This pilot is intended to gather technical and operational information that will assist

FDA in determining its infrastructure needs, as well as the process for evaluating third-party certification programs. The criteria for selection for that pilot are based upon the attributes set forth in the draft guidance.

As with the pilot, the 12 attributes discussed in the draft guidance are intended to provide a model that could be tailored for particular categories of products and incorporated by FDA as it recognizes third-party certification programs for those products. These attributes incorporate such things as the authority of the certification body to adequately inspect the establishments seeking certification, qualifications, and training for the third-party inspectors, self-assessment of the certification programs and its inspectors, elements of an effective inspection program, notification to FDA, and preventing conflicts of interest. While FDA invites comments on all aspects of the draft guidance, FDA is particularly interested in receiving comments on this list of attributes for the certification program. More specifically, we would like to know whether there are some attributes that should be removed or added and whether the draft guidance provides sufficient information about each attribute. We are also interested in knowing how this list compares with existing, well-accepted guidelines or requirements for certification programs.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on Voluntary Third-Party Certification Programs for Foods and Feeds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. 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 the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination 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 Division of Dockets Management 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*.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/oc/guidance/thirdpartycert.html* or *http://www.regulations.gov*.

Dated: July 7, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15715 Filed 7–9–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0382]

Voluntary Third-Party Certification Programs for Imported Aquacultured Shrimp; Notice of Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is seeking third-party certification bodies that certify foreign processors of aquacultured shrimp for compliance with FDA's Seafood Hazard Analysis and Critical Control Point (HACCP) regulations to volunteer to participate in a pilot program to be conducted by FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Office of Regulatory Affairs (ORA). The goal of the pilot program is to gather technical and operational information that will assist FDA in determining its infrastructure needs, as well as the process for evaluating third-party certification programs, in order to assist FDA in moving towards broader recognition of voluntary third-party certification programs, including third-party certification programs for aquacultured shrimp, at a later time.

DATES: Submit written and electronic requests to participate in the pilot program by August 25, 2008.

ADDRESSES: Submit written requests to participate in the pilot program to the Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Submit electronic requests to participate to *aquaculture@fda.hhs.gov*. We strongly encourage interested persons to electronically submit their request to participate.

FOR FURTHER INFORMATION CONTACT: Brett Koonse, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1700.

SUPPLEMENTARY INFORMATION:

I. Background

Ensuring the safety of food for human and animal use is a shared responsibility between the public and private sectors. FDA has the authority to establish regulatory standards, inspect facilities, and take action if there are violations, but it is primarily the responsibility of industry to ensure that foods products intended for human and animal consumption in the United States are safe and meet applicable FDA standards. An increasing number of establishments that sell foods to the public, such as retailers and food service providers, are independently requesting, as a condition of doing business, that their suppliers, both foreign and domestic, become certified as meeting safety (as well as quality) standards. In addition, domestic and foreign suppliers (such as producers, co-manufacturers, or re-packers) are increasingly looking to third-party certification programs to assist them in meeting U.S. requirements.

On July 18, 2007, the President issued Executive Order 13439 to establish the Interagency Working Group on Import Safety (Working Group). On November 6, 2007, the Working Group released an ''Action Plan for Import Safety: A Roadmap for Continual Improvement'' (Action Plan) (*http://www.importsafety.gov/report/actionplan.pdf*). The Action Plan contains 14 broad recommendations and 50 specific short- and long-term action steps to better protect consumers and enhance the safety of the increasing volume of imports entering the United States. The Action Plan stresses the importance of the private sector's responsibility for the safety of its products and the importance of ongoing private-sector mechanisms and experience as a basis for ongoing, substantive public-private collaboration. The public and private sectors have a shared interest in import safety, and substantive improvement will require

the careful collaboration of the entire importing community.

Recommendation 2 of the Action Plan is to ''verify compliance of foreign producers with United States safety and security standards through certification.'' Third-party certification can augment the Federal Government's and the importing community's ability to help ensure that products imported into the United States meet U.S. safety and security standards. The Action Plan states ''[f]or foreign producers, the ability to participate in voluntary certification programs could allow products from firms that comply with U.S. safety and security standards to enter the United States more quickly. This would facilitate trade, while allowing federal departments and agencies to focus their resources on products from non-certified firms or for which information suggests there may be safety or security concerns. This would allow federal departments and agencies to more effectively target their resources.''

Action Steps 2.2 and 2.4 of the Action Plan call for the recognition or development of voluntary third-party certification programs, based on risk, for foreign producers of certain products who export to the United States and the creation of incentives for foreign firms to participate in voluntary certification programs and for importers to purchase only from certified firms.

In conjunction with the Action Plan, on November 6, 2007, FDA released its Food Protection Plan (FPP), a comprehensive strategy designed to bolster efforts to better protect the Nation's food supply (*http://www.fda.gov/oc/initiatives/advance/food/plan.html*). The FPP is a three-part plan that uses science and a risk-based approach of prevention, intervention and response to ensure the safety of domestic as well as imported foods eaten by American consumers. The FPP emphasizes certification as a way to help verify the safety of products from a growing food establishment inventory, both foreign and domestic.

On April 2, 2008, FDA published a notice in the **Federal Register** (73 FR 17989) requesting comments by May 19, 2008, on the use of third-party certification programs for foods and animal feeds. The notice was FDA's first step in soliciting public input in the design and development or recognition of voluntary third-party certification programs.

In order to assist FDA in moving towards broader recognition of third-party certification programs, FDA is now seeking voluntary participants for a third-party certification pilot program for aquacultured shrimp. This pilot program is the next step in gathering technical and operational information that will assist FDA in determining its infrastructure needs. The information from this pilot also will assist with subsequent steps, such as developing the process for evaluating third-party certification programs should FDA decide to recognize voluntary third-party certification programs and to consider certification in its decision making. Certification might be considered, for example, in decision making regarding determination of establishment inspection priorities, entry admissibly, field exam and sampling priorities, ''may proceed'' rates, and requests by firms to have their products removed from an import alert. If FDA were to recognize third-party certification programs, we would do so on a product-by-product basis. We would also provide an opportunity for both foreign and domestic certification bodies to voluntarily seek FDA recognition and for foreign and domestic establishments to voluntarily seek certification.

II. Voluntary Third-Party Certification Pilot Program

A. Scope and Selection Attributes

FDA is seeking a limited number of third-party certification bodies (such as private, non-government entities, other Federal government, State government, and foreign government agencies) that currently certify foreign processors of aquacultured shrimp for compliance with FDA's Seafood HACCP regulations to volunteer to participate in the pilot program. Participants in the pilot program will be asked to provide FDA with technical feedback on the pilot.

A limited number of voluntary participants are needed for the pilot program. The agency will use its discretion in choosing participants for Phase II of the pilot (see following discussion) from those who apply during Phase I of the pilot based on the following attributes:

1. Authority of the Certification Body. The certification body should have the authority to perform inspection activities, collect and evaluate records, collect and analyze samples, and assess and report on compliance as necessary to ensure certification standards and requirements are met and maintained.

2. Qualification and Training for Inspectors. The certification body should ensure that its inspectors are adequately trained to perform their work assignments. Such training includes course work, field work, and continuing education.

3. Elements of an Effective Inspection Program. The certification body should ensure that its inspectors are consistently using established, widely-recognized standards when performing inspections. The inspector should prioritize and target the elements of producing, manufacturing, processing, packing, and holding that pose the greatest risk to human and/or animal health. The certification body should have written policies and procedures describing the protocol to be used by all inspectors during an inspection. During an inspection, inspectors should verify that the establishments and products meet and maintain certification criteria that include the following:

- The processor is in compliance with applicable FDA regulatory requirements for food, including FDA's Seafood HACCP regulations;
- If appropriate, the processor has in place, and effectively executes, management systems that ensure the safety of all shrimp products, from production to distribution, as applicable, including the feed used, the hatchery, the growing area, harvesting, processing, and transportation. This may include a preventive control program for farms (e.g., Good Aquaculture Practices, Best Management Practices, farmer training along with farm inspections), a verification program (e.g., an effective testing scheme to ensure products are free of unapproved drugs, chemicals, and pathogens), a traceability program, or recall and follow-up procedures in case of an outbreak or illness associated with a product.

4. Inspection Audit Program. The third-party certification body should conduct audits of its inspections to assess the effectiveness of the inspections and sample collections and to ensure the competency and consistency of its inspectors.

5. Cooperation with FDA and Other Appropriate Government Officials When Safety Problems Occur. The certification body should cooperate as necessary with FDA and other appropriate government authorities if the certification body discovers a situation in which there is a reasonable probability that U.S. consumers may consume or be exposed to a food product that could cause serious adverse health consequences or death to humans or animals, whether the contamination or problem was caused intentionally or unintentionally. Such cooperation may include notification to relevant agencies inside and outside of the United States, where the food is sold or distributed. Moreover, when FDA has reliable information from the Centers for

Disease Control and Prevention (CDC) or other reliable sources about a health risk associated with an FDA-regulated food product and FDA is conducting a traceback of a product, FDA may request information from the certification body regarding the supply chain. Such information may be requested based on preliminary information that an establishment under the certification program may be implicated. The certification body should provide FDA with this information in a timely manner. Such information would be disclosed (or protected from disclosure) in accordance with applicable laws and policies.

6. Compliance and Corrective Action. The certification body should have strategies, procedures, and actions to ensure the establishments and products it certifies comply with FDA laws and regulations and otherwise meet certification standards, to take action when there is non-compliance, and to evaluate the effectiveness of corrective action programs.

7. Industry Relations. At a minimum, the certification body should provide establishments seeking certification with information about current FDA requirements and guidances.

8. Resources. The certification body should have sufficient resources, such as technological tools and infrastructure, to carry out its certification program.

9. Self-Assessment of Overall Certification Program. In addition to auditing the inspection program, the certification body should assess the effectiveness of the certification program as a whole.

10. Laboratories. The certification body should have access to laboratory services to support the program functions. The laboratories should be accredited by an accreditation body operating in accordance with International Organization for Standardization (ISO) standard 120/IEC 17011, General requirements for Accreditation bodies accrediting conformity assessment bodies.

11. Notifications to FDA. The certification body should promptly notify FDA of problems or changes that can affect product safety or security. We expect prompt notification of the following:

a. Safety Issues. The certification body should immediately notify FDA if an inspector finds or discovers a situation in which there is a reasonable probability that U.S. consumers may consume or be exposed to a food that could cause serious adverse health consequences or death to humans or animals. This information may pertain to intentional or unintentional contamination. The certification body should provide detailed information that describes the extent and nature of the problem and allows us to identify the product and source, including traceability records.

b. Fraud. The certification body should promptly notify FDA if it has information that the establishment or any of its officers or employees engages in any fraudulent acts related to foods, including providing false information to the certification body or any inspectors acting on its behalf.

c. Criminal Acts. The certification body should promptly notify FDA if it has information that the establishment or any of its officers or employees has been convicted of a crime relating to foods or any crime involving false statements, fraud, or dishonesty.

12. Conflict of Interest. The certification body and its inspectors should be free from conflicts of interest.

These attributes are described in greater detail in a draft guidance issued today entitled, ''Voluntary Third Party Certification Programs for Foods and Feeds'' (*http://www.fda.gov/oc/guidance/thirdpartycert.html* or *http://www.regulations.gov*). The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Certification bodies interested in participating in this pilot should review the draft guidance.

Favorable consideration will be given to third-party certification bodies that: (1) Currently certify foreign shrimp processors for controls designed to ensure the safety of the product from production through distribution, in addition to compliance with FDA's Seafood HACCP regulations; (2) certify processors of aquacultured shrimp in countries that export significant amounts of aquacultured shrimp to the United States; and/or (3) are accredited or are in the process of becoming accredited by a recognized accreditation body.

B. Pilot Program and FDA Audit

The pilot program will be conducted in two phases. Phase I begins with the issuance of this document and will run through December 2008. During Phase I, FDA will receive and evaluate requests to participate in the pilot, including conducting paper audits to determine whether applicants have the attributes described in this document. During the paper audit, applicants will be asked to provide FDA with a list of inspectors for the products covered under this pilot and the inspectors' locations. In addition, applicants may be asked to provide FDA with other documents such as certification or recertification audit reports and product sampling results.

Phase II will begin in December 2008 with notification of the applicants that have been selected for participation. During Phase II, which will run through June 2009, FDA will conduct onsite audits of third-party certification programs by accompanying certain inspectors during certification and/or recertification inspections. FDA will also conduct targeted sampling of imported shrimp products. FDA may elect to increase the ''may proceed'' rate during Phase II for shrimp products from certified establishments, if warranted based on information generated as a result of participation in the pilot. FDA's decision would be made on a case-by-case basis.

The pilot program will not preclude FDA, U.S. Customs and Border Protection, or other agencies from inspecting or taking other action with respect to any firm or imported product. Further, FDA may terminate a certifying body's participation in the pilot at any time for any reason.

C. Duration

FDA plans to conduct the pilot program for a period of 12 months, beginning in July 2008. Either phase of the pilot program may be extended or shortened as appropriate.

D. Submission of Requests to Participate

Written requests to participate in the pilot program should be submitted to the Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Electronic requests to participate should be submitted to *aquaculture@fda.hhs.gov*. We strongly encourage interested persons to electronically submit their request to participate. Written and electronic requests to participate in the pilot program should be submitted to FDA by August 25, 2008.

The request to participate should include the following information:

1. The docket number found in brackets in the heading of this document;

2. The applicant's name, telephone number, address, and e-mail address;

3. A signed statement indicating the following:

a. The certification body, its inspectors, and any subcontractors that might be used (e.g., laboratories, sampling services) agree to participate in the pilot program and are free from any conflict of interest;

b. The certification body agrees to undergo an FDA audit of its certification program, and supply information requested by FDA for the evaluation of the participant's certification program or of products certified under the program; and

c. The certification body agrees to: (i) Immediately notify FDA if an inspector finds or discovers a situation in which there is a reasonable probability that U.S. consumers may consume or be exposed to a food that could cause serious adverse health consequences or death to humans or animals; (ii) promptly notify FDA if it has information that the establishment or any of its officers or employees engages in any fraudulent acts related to foods, including providing false information to the certification body or any inspectors acting on its behalf; and (iii) promptly notify FDA if it has information that the establishment or any of its officers or employees has been convicted of a crime relating to foods or any crime involving false statements, fraud, or dishonesty.

4. The name and address of each certified foreign aquaculture shrimp farming and/or processing facility that has agreed to participate in the pilot and to be available for an FDA audit and a description of the products certified;

5. A detailed written description of the extent to which the applicant's certification program conforms to the 12 attributes listed previously; and

6. Any accreditation the applicant may have from an accreditation body operating in accordance with the International Organization for Standardization (ISO) standard ISO/IEC 17011, General requirements for accreditation bodies accrediting conformity assessment bodies, or information confirming that the applicant is in the process of becoming accredited by such an accreditation body.

FDA notes that statements made to FDA as part of this pilot are subject to the provisions of 18 U.S.C. 1001, which provides for criminal penalties for anyone who, among other things, makes a materially false, fictitious, or fraudulent statement to the U.S. government.

E. Evaluation of Pilot Program

FDA intends to evaluate the pilot program based on several factors, including, but not limited to, the extent to which certification provides adequate assurances of the safety of aquacultured shrimp from certified establishments, FDA's ability to accurately and efficiently evaluate third-party certification programs, and FDA's current ability and future needs to operationalize the recognition of third-party certification programs and the utilization of certification in agency decision making. After FDA evaluates the pilot program, the agency may extend, modify, or terminate the pilot program.

As noted previously, FDA will take the results of the pilot program into consideration in future decisions of whether to provide incentives for voluntary certification, including considering whether to adjust the ''may proceed'' rate for imports, and/or begin the process to recognize voluntary third-party certification programs for aquacultured shrimp or other food or feed on a non-pilot basis.

Dated: July 7, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15713 Filed 7–9–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Nursing, Office of Public Health Nursing

Funding Opportunity Number: HHS–2008–IHS–PHN–0001.

Announcement Type: New.

Catalog of Federal Domestic Assistance Number(s): 93.933.

Key Dates:

Application Deadline Date: August 4, 2008.

Review Date: August 15, 2008.

Award Announcement: August 22, 2008.

Earliest Anticipated Start Date: August 29, 2008.

I. Funding Opportunity Description

The Indian Health Service (IHS) Division of Nursing, Office of Public Health Nursing (PHN) announces a new competitive grant application for community based model of PHN case management services. This program is authorized under the Snyder Act, 25 U.S.C. 13; Section 301(a), Public Health Service Act, as amended; and the Indian Health Care Improvement Act (IHCIA) 25 U.S.C. 1652. This program is described at 93.933 in the Catalog of Federal Domestic Assistance (CFDA).

The purpose of the program is to improve health outcomes of high risk patients through a community case management model that utilizes the PHN as case manager. Research indicates nursing case management is a cost effective way to maximize health outcomes. The PHN Model of community based case management utilizes roles and functions of PHN services of assessment, planning, coordinating services, communication and monitoring. The goals and outcomes of the PHN Case Management model are early detection, diagnosis, treatment and evaluation that will improve health outcomes in a cost effective manner. This model utilizes all prevention components of primary, secondary and tertiary prevention in the home with patient and family. The community based case management model addresses the scope of practice of PHN working with individuals and families in a population-based practice.

Health disparities are greater for American Indian/Alaska Native (AI/AN) communities than the general United States population. Infant mortality is greater in the AI/AN population than United States in general, suicide rates are greater, unintentional injuries are greater, and chronic disease is increasing. This project will focus on a PHN community based case management model. The project will be conducted in a phased approach, using the nursing process—assessment, planning, implementation, and evaluation.

First Phase: Assessment—Conduct a comprehensive community assessment. The Senior Nurse Consultant will recommend a community assessment tool and provide appropriate training to the grantees in the Fall of 2008. Include, if available, pertinent data from the various community assessments and local health status data of the community in the community assessment.

In addition, obtain input from key stake-holders such as, community members and healthcare administration and community health groups to determine the health care priorities. Develop plans for project sustainability.

The PHN case management model will develop case management services addressing the priority health issues identified from the community assessment. The PHN case management program will establish policies and procedures, best practice (BP) for services, and mechanisms for tracking outcomes using the recommended PHN community based case management tool to improve the health care status.

Second Phase: Planning—After the community assessment is completed and priorities for Public Health Nursing case management services are determined, planning the case management model project will begin. Obtain additional staff training needed

for the community based case management model and additional training needed such as evidence based practice, motivational interviewing, and any other training that would be applicable to the health issues addressed in the case management model. Plan specific case management services such as admission criteria, caseload size, policies and procedures, and an evaluation plan to include data tracking for outcomes generated and feedback to key stakeholders. Develop program guidelines. Obtain approval from healthcare administration. Develop patient education materials and community education materials for the program.

Third Phase: Implementation—Case management program includes admission criteria, caseload size, and at risk population to receive this service with appropriate care standards. Patient caseload established. Monitor progress and make adjustments as needed. Track patient data outcomes. Continue to plan ongoing sustainability of program after award period ends.

Fourth Phase: Patient Satisfaction Surveys—Data evaluation obtained from key stakeholders. Evaluate program services from population served and obtain satisfaction surveys. Evaluate and revise if needed, review policy and procedures and education materials. Report back to key stake-holders progress of the project.

Each site will share program material with IHS Headquarters PHN program. This will be shared IHS-wide for replication of the project across IHS with credit given to the organization that developed the material. Poster presentation or oral presentation will be given at the National Combined Councils or IHS annual national nursing meeting.

The Senior Nurse Consultant for PHN will make one or two site visits to each site.

The program established must be sustainable after completion of the project.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount identified for fiscal year (FY) 2008 is $1,200,000. The awards are for 48 months in duration and the average award is $150,000 per year. Continuation awards under this announcement are subject to the availability of funds and satisfactory performance.

Anticipated Number of Awards: A total of eight awards will be made under this Program Announcement. One award will be made to an urban program and seven awards to Tribes and/or Tribal programs.

Project Period: 4 years (48 months).

Award Amount: $150,000 per year.

III. Eligibility Information

1. Eligible applicants, the AI/AN must be one of the following (please specify in the application which category applies to each applicant):

A. A Federally-recognized Indian Tribe, or

B. A Non-Profit Urban Indian Organization as defined by the IHCIA, 25 U.S.C. 1603(f), or

C. A Non-Profit Tribal organization as defined by the IHCIA, 25 U.S.C. 1603(e).

2. Supporting Documentation to Determine Eligibility:

A. Tribal Resolution—If the applicant is an Indian Tribe or Tribal organization, a resolution from the Tribal government of all Tribes to be served supporting the project must accompany the application submission. Applications by Tribal organizations will not require resolutions if the current Tribal resolutions under which they operate would encompass the proposed activities. In this instance, a copy of the current resolution must accompany the application. The list of Tribes to be served by the project in the proposal must match the set of appended resolutions. If a resolution from an appropriate representative of each Tribe to be served is not submitted, the application will be considered incomplete and will not be considered for review. No separate mailings of documents will be accepted for the proposal; all documents, Tribal resolutions, etc., must accompany the submission as one complete proposal.

B. Non-Profit applicants must submit proof of non-profit status. A current IRS tax exemption certificate or a copy of 501(c)3 form is required proof that must accompany all applications.

3. Cost Sharing or Matching—The PHN will not require matching funds or cost sharing.

4. Other Requirements

- If the application budget exceeds $150,000 per year, the application will not be considered for review.
- Each application must be accompanied by a Tribal Resolution or a 501(c)3. If applicant is unable to obtain an approved Tribal resolution by the application deadline, a letter explaining the steps taken to achieve one, and any barriers confronted should be explained. Urban centers should include a letter from their Board of Directors.

IV. Application and Submission Information

1. Applicant package HHS–2008–IHS–PHN–0001 may be found at *http://www.grants.gov* Web site. Please use CFDA number HHS–2008–IHS–PHN–0001 to search for the grant opportunity. Information regarding the electronic application process may be directed to Grants.gov Help Desk; 1–800–518–4726. If the applicant is unable to resolve issues, applicant should contact Michelle Bulls at 301–443–6290.

The entire application package and downloadable application instructions are available at *http://www.grants.gov*.

2. *Content and Form of Application Submission:*

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 15 typed pages that includes the other submission requirements below. The 15 page narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with exception of the discrimination public policy.

3. *Submission Dates and Times:* Applications must be submitted electronically through Grants.gov by August 4, 2008, 6 p.m. Eastern Standard Time (EST). If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant should contact Grants Policy Staff (GPS) at 301–443–6290 at least fifteen days prior to the application deadline and describe the difficulties that your organization continues to experience. The grantee must obtain prior approval, in writing (e-mails are acceptable), allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to: Norma Jean Dunne, Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by August 4, 2008 6:00 p.m. EST. Applications not submitted through Grants.gov or submitted in hard copy without an approved waiver will be returned to the applicant without review or consideration. Late applications will not be accepted for processing, it will be returned to the applicant without further consideration.

4. *Intergovernmental Review:* Executive Order 12372 requiring

intergovernmental review is not applicable to this program.

5. *Funding Restrictions:*

• Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

• The available funds are inclusive of direct and appropriate indirect costs.

• Only one grant will be awarded per eligible applicant.

• IHS will not acknowledge receipt of applications.

6. *Other Submission Requirements:* If the applicant is unable to submit via Grants.gov and obtains a waiver from the standard application requirements please use the following forms: SF–424, 424A, 424B, and certification forms, as appropriate. One original and two copies must be submitted to: Attn: Norma Jean Dunne; Division of Grants Operations; 801 Thompson Avenue, TMP 360, Rockville, MD 20852. Applications are due on August 4, 2008 prior to 6 p.m. EST.

Electronic Submission—the preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. EST. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

To submit an application electronically, please use the *http://www.Grants.gov* Web site and select ''Apply for Grants'' link on the home page. Download a copy of the application package, on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site.

You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

• Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please contact directly Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport*.

• Upon contacting grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from GPS must be obtained.

• If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov, completed, and sent directly to the Division of Grants Operations, 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by August 4, 2008 6 p.m. EST.

• Upon entering the Grants.gov Web site, there is information available that outlines the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• To use Grants.gov, you, as the applicant, must have a Data Universal Numbering System (DUNS) number and register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below on how to apply.

• You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

• Your application must comply with any page limitation requirements described in the program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS DGO will download your application from Grants.gov and provide necessary copies to the cognizant program office. The DGO will not notify applicants that the application has been received.

• You may access the electronic application for this program on *http://www.Grants.gov*.

• You may search for the downloadable application package by either the CFDA 93.933 number or the Funding Opportunity Number (FON) HHS–2008–IHS–PHN–0001.

• The applicant must provide FON HHS–2008–IHS–PHN–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number.

Registration with the CCR is free of charge. Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister*.

More detailed information regarding these registration processes can be found at *http://www.grants.gov*.

V. Application Review Information

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include four years of activities. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

a. Format—maximum of 15 pages (5 Points).

• Be single spaced.

• Be typewritten.

• Have consecutively numbered pages.

• Use black type not smaller than 12 characters per one inch.

• The narrative should not exceed 15 typed pages that include the other submission requirements below. The 15 page narrative does not include the work plan, standard forms, Tribal

resolutions (if necessary), or organization's letter of support, proof of Non-Profit status, table of contents, budget, budget justifications, narratives, and/or other appendix items.

b. Background/Problem Statement (5 Points).

• Provide demographic information, prevalence rates of disease, and baseline health data to substantiate the proposal.

• Describe how data collection will support the stated project objectives and how it will support the project evaluation in order to determine the impact of the project. Address how the proposed project will result in health improvements.

• Name of facility, location, type of site (Direct Care, Tribal or urban).

• Contact person and phone number, address, e-mail address, and fax number.

c. Goals and Objectives (25 Points).

• Establish two to three measurable objectives within a plan that will provide significant outcome. Goals/Objectives should be specific with a realistic time line.

d. Methodology/Activities (20 Points).

• Describe the activities that will be implemented in a work plan to meet the objectives. The work plan should be directly related to the objectives.

• Describe how you will monitor the objectives (chart reviews, survey, etc.).

• Describe any collaborative efforts with programs outside of PHN.

e. Budget (15 Points).

• Discuss all expected expenses for each project year, one through four.

• Provide a justification of the funds for each project year, one through four.

• Provide a succinct description of specific roles and activities of each person involved in the proposed project and their ability to perform in that capacity.

f. Evaluation (30 Points).

Describe the methods for evaluating the project activities. Each proposed project objective should have an evaluation component and the evaluation activities should appear on the work plan. At a minimum, projects should describe plans to collect or summarize evaluation information about all project activities. Please address the following for each of the proposed objectives:

• Describe the community assessment tool that will be reviewed and what data will be selected to evaluate the success of the objective(s)?

• How the data will be collected to assess the program's objective(s) (e.g., methods used such as, but not limited to, community focus groups, surveys, interviews, or other data collection activities)?

• When the data will be collected and the data analysis completed?

• The extent to which there are specific data sets, data bases or registries already in place to measure/monitor meeting objective.

• Who will collect the data and any cost of the evaluation (whether internal or external)?

• Where and to whom the data will be presented, key stake holders?

• Address anticipated obstacles to the success of the proposal such as underlying causes and the nature of their influence on accomplishing the objectives.

• Describe how the community assessment will be evaluated.

• Describe the process that will be used to follow-up on the PHN Case Management Project findings/conclusions.

When the applicant is approved for funding, the award recipient must comply with the proposal or provisions may result in withholding of support of other eligible projects.

2. Review and Selection Process

a. The review committee will review each proposal according to this program announcement and undertake an in-depth evaluation based on the reviewer's findings, recommendations, scoring, and approval or disapproval. The final selection determination will be made by the PHN Nurse Consultant.

b. All applications meeting the proposal requirements will be scored.

c. The final score will be ranked by totaling the numerical scores and dividing by the number of reviewers which will be read into the record.

d. Each reviewer will use the score sheet when evaluating proposals, a signature and date will complete the evaluation record which will be returned to the committee chairperson.

e. The review committee may provide differing scores to the chairperson for discussion, resolution, and committee consensus.

f. The review will be conducted in accordance with the IHS Objective Review Guidelines. The applications will be evaluated and rated on the basis of the evaluation criteria.

g. An Executive Summary will be used to provide advice to the program officials in making award decisions and comments to applicants.

• The review committee chairperson will compile an Executive Summary of the review, findings, recommendation, and comments of the project type, and proposal scores.

• The reviewer's written evaluation will be used by the selecting official.

3. Anticipated Announcement and Award Dates

Anticipated Announcement date is August 22, 2008 and Award Date is August 29, 2008.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer, and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget and project periods. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative Requirements.

Grants are administrated in accordance with the following documents:

• This Program Announcement.

• Administrative Requirements: 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.''

• Grants Policy Guidance: HHS Grants Policy Statement, January 2007.

• Cost Principles: OMB Circular A–87, ''State, Local, and Indian'' (Title 2 Part 225).

• Cost Principles: OMB Circular A–122, ''Non-Profit Organizations'' (Title 2 Part 230).

• Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-profit Organizations.''

3. Indirect Costs: This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement

must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior, National Business Center at *http://www.nbc.gov/acquisition/ics/icshome.html* Web site. If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually and the final reports, Financial Status Report (SF–269) and Program Progress Report are due 90 days after each budget period. The grantee must verify how the value was derived and submit reports according to the terms and conditions of the award.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

For program-related information regarding the community based model of PHN case management services: Cheryl Peterson, R.N., Project Official, Indian Health Service, 801 Thompson Avenue, Suite 329, Rockville, Maryland 20852, (301) 443–1840, *Cheryl.Peterson@ihs.gov*.

For general information regarding this announcement: Ms. Orie Platero, Office Clinical and Preventive Services, Indian Health Service, 801 Thompson Avenue, Suite 326, Rockville, Maryland 20852, (301) 443–2522, Fax: (301) 594–6213.

For specific grant-related and business management information: Ms. Norma Jean Dunne, Division of Grant Operations, Indian Health Service, 801 Thompson Avenue, TMP 360–79, Rockville, Maryland 20852, (301) 443–5204, Fax: (301) 443–9602.

VIII. Other Information

The Department of Health and Human Services (HHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a HHS-led activity for setting priority areas. This project will aid the accomplishment of Healthy People 2010 Focus Area 1—Access. Potential applicants may obtain a printed copy of Healthy People 2010, (Summary Report No, 017–001–00549–5) or CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *http://www.healthypeople.gov/Publications*.

The IHS is focusing efforts on three Health Initiatives that, linked together, have the potential to achieve positive improvements in the health of AI/AN people. These three initiatives are Health Promotion/Disease Prevention, Management of Chronic Disease, and Behavioral Health. Further information is available at the Health Initiatives Web site: *http://www.ihs.gov/NonMedicalPrograms/DirInitiatives/index.cfm*.

Dated: June 27, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–15773 Filed 7–9–08; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: July 10, 2008.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 3, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–15652 Filed 7–9–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5230–01]

OIG Fraud Alert: Bulletin on Charging Excess Rent in the Housing Choice Voucher Program

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice.

SUMMARY: This **Federal Register** notice provides important information recently issued by HUD's Office of the Inspector General (OIG) on a recurring problem in the Housing Choice Voucher program. The problem, which this notice

addresses, is landlords submitting false claims for periodic payments under housing assistance payment (HAP) contracts.

FOR FURTHER INFORMATION CONTACT: Bryan P. Saddler, Counsel to the Inspector General, Office of Legal Counsel Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410–4500, telephone (202) 708–1613 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Mission of HUD's OIG

The mission of HUD's OIG is to provide policy direction to HUD and to conduct, supervise, and coordinate audits, investigations, and other activities for the purpose of promoting economy and efficiency in the administration of the programs and operations of HUD and preventing and detecting fraud and abuse in such programs.

Consistent with this mission, Section II of this notice presents OIG's fraud information bulletin on charging excess rent in the Housing Choice Voucher program.

II. Fraud Information Bulletin: Excess Rent

Purpose

This Bulletin highlights a recurring problem in the Housing Choice Voucher (HCV) program. Specifically, this Bulletin discusses the submission by landlords of false claims for periodic payments under Housing Assistance Payment (HAP) contracts, where such landlords have violated their continuing obligations to not charge tenants rents in excess of what is authorized by the HAP contracts.

The Problem

Improperly requiring tenants to pay rent in excess of what is authorized by the applicable HAP contract represents both an actionable offense under the False Claims Act and deplorable behavior directed towards the very persons whom the HCV program was designed to serve. (Additionally, depending on the intent, such an action may qualify as a criminal offense under 18 U.S.C. 287, 1343, etc.) OIG will not tolerate such conduct, and rather will cooperate with efforts to bring offending landlords to justice and to remedy their wrongs.

Background

HUD administers Federal aid to local housing agencies (HAs) that is intended to implement housing assistance programs for low-income residents. With respect to the HCV program, HUD funds HAs via annual contributions contracts. The HAs, in turn, enter into HAP contracts with individual landlords. These HAP contracts provide for periodic housing assistance payments on behalf of eligible low-income tenants. The HAP contracts also may require eligible tenants to make supplemental rent payments; however, the contracts expressly prohibit landlords from requiring tenants to pay rent in excess of what is authorized by the HAP contracts.

Pursuant to qui tam complaints and citizen complaints filed throughout the nation and subsequent activities, OIG has become aware of a number of landlords who have improperly required tenants to pay rent in excess of what is authorized by the HAP contracts, and thereby submitted or caused to be submitted false claims for HAP contract periodic rent payments.

Example

On July 29, 2005, a Connecticut tenant filed a qui tam complaint, under 31 U.S.C. 3730, against her former landlord. *See Coleman* v. *Hernandez,* 490 F. Supp.2d 278 (D. Conn. 2007). The tenant complained that pursuant to a HAP contract the landlord had agreed to accept $1,550 per month for the rental of an apartment in Stamford. Of this $1,550, the tenant was personally responsible for $20, and HUD via the HA paid the complementary $1,530. In spite of the explicit prohibition in the HAP contract, however, the landlord required the tenant to pay an ''additional rent payment'' of $60 on six separate occasions. In other words, the landlord inappropriately extracted an additional $360 from the helpless tenant.

OIG is aware of numerous similar examples of this sort of egregious conduct nationwide.

Penalty

Pursuant to the False Claims Act, 31 U.S.C. 3729 *et seq.,* persons who submit to HUD or a HUD intermediary claims that are false, fictitious or fraudulent are liable for an assessment equal to three times the amount of the claim, plus a penalty of between $5,500 and $11,000 per claim. The United States may take the position that the entire amount of its HAP payment, not merely the amount of the excess payment by the tenant, is the claim that should be trebled where landlords make false certifications concerning excess rent charged. Additionally, each periodic rent payment constitutes a separate claim; thus, in the *Coleman* case the court levied a $33,000 (6 × $5,500) penalty against the landlord for her $360 victimization of the tenant.

Pertinent Information

If you have pertinent information regarding this bulletin, please contact: Office of Legal Counsel, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh St., SW., Room 8260, Washington, DC 20410.

Dated: July 1, 2008.

Kenneth M. Donohue,

Inspector General.

[FR Doc. E8–15663 Filed 7–9–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fish and Wildlife Service and Confederated Salish and Kootenai Tribes Sign Annual Funding Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On June 19, 2008, the U.S. Fish and Wildlife Service (the Service) and the Confederated Salish and Kootenai Tribes (CSKT) (collectively the Parties) signed an annual funding agreement (AFA) under the Tribal Self-Governance Act of 1994. The Tribal Self-Governance Act provides for the Secretary of the Interior (the Secretary) to negotiate and enter into an AFA with a tribe participating in Self-Governance, authorizing the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof (Activities), administered by the Secretary, which are of special geographic, historical, or cultural significance to that tribe. This includes such Activities within the National Wildlife Refuge System (NWRS).

Under the AFA, the CSKT will function in partnership with the Service and will be directly involved with our management mission at the National Bison Range Complex (NBRC). CSKT will perform a variety of Activities at the NBRC, including operational responsibility for mission-critical Activities such as the biology, maintenance, visitor services, and fire programs. The NBRC will remain a unit

of the NWRS and will continue to be administered and managed by the Service in accordance with the NWRS Administration Act (16 U.S.C. 668dd–ee, as amended), and all other applicable Federal laws, regulations, and policies.

On June 19, 2008, the AFA was signed by the Tribal Chairman and the Director of the Service, and endorsed by the following senior Department of the Interior management officials: The Secretary of the Interior, Deputy Secretary of the Interior, Assistant Secretary for Fish and Wildlife and Parks, and Acting Director, Office of Economic Development, on behalf of the Office of the Acting Assistant Secretary—Indian Affairs. Copies of the AFA have been forwarded to the U.S. Congress for a 90-day review period, pursuant to the implementing regulations at 25 CFR 1000.177–178.

DATES: The AFA term is October 1, 2008, through September 30, 2011. The Parties may agree in writing to extend the term for performing any Activity covered by the AFA, as provided at 25 CFR 1000.146, and subject to applicable Federal laws and regulations. All of the terms and conditions of the AFA will apply during any extension. The Parties may modify the Activities covered by the AFA or the consideration paid by the Service to the CSKT for performing an Activity only by amendment as provided in Section 21.A of the AFA.

ADDRESSES: You may obtain a copy of the AFA and Attachments A–D at any of the following Internet or U.S. mail addresses:

1. Internet—*http://mountain-prairie.fws.gov/cskt-fws-negotiation*.
2. Montana—National Bison Range Headquarters, 132 Bison Range Road, Moiese, Montana 59824.
3. Denver—U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System—Mountain-Prairie Region, P.O. Box 25486, DFC, Denver, Colorado 80225.
4. Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855.

FOR FURTHER INFORMATION CONTACT: Dean Rundle, Refuge Supervisor, at (303) 236–4306.

SUPPLEMENTARY INFORMATION: What is the NBRC? Located in northwestern Montana, the NBRC is part of the NWRS and consists of the National Bison Range, the Pablo and Ninepipe National Wildlife Refuges, and that portion of the Northwest Montana Wetland Management District that lies in Lake County. Established in 1908 to conserve the American Bison, the NBRC provides important habitat for a variety of species such as elk, pronghorn antelope, and migratory birds.

How Was the AFA Developed? The Service and the CKST negotiated in accordance with 25 CFR part 1000.

What Events Led to this AFA? In January 2008, at the request of Department of the Interior and Service leadership, representatives of the Parties entered into a facilitated process to create a framework for negotiating an AFA pursuant to the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). The overarching goal of this process and the subsequent negotiations was to build trust and ensure a solid understanding of both Parties' interests and intentions with regard to the long-term conservation and stewardship of the NBRC.

Throughout the period of January-June 2008, the parties engaged in government-to-government negotiations, led by professional, field-level staff, to draft the AFA in a manner that balanced the intent and function of the Self-Governance Act and the NWRS Administration Act, as well as other applicable Federal laws, regulations, and policies. Following the conclusion of negotiations in June 2008, the Service and the Department of the Interior conducted an extensive legal and policy review of the AFA to ensure it met all applicable requirements before signing the AFA on behalf of the United States.

What is the Tribal Self-Governance Act of 1994? The Tribal Self-Governance Act (codified at 25 U.S.C. 458aa–458hh) was enacted as an amendment to Public Law 93–638 (codified as the Indian Self-Determination Act, 25 U.S.C. 450–450n) and incorporated as Title IV of that Law. The Tribal Self-Governance Act allows qualifying tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA bureaus within the Department of the Interior. When dealing with non-BIA bureaus, including the Service, qualifying tribes may enter into AFAs that allow them to conduct certain activities of such non-BIA bureaus. Eligible activities include Indian programs (programs created for the benefit of Native Americans because of their status as Native Americans); activities otherwise available to Native American tribes (any activity that a Federal agency might otherwise contract to outside entities); and activities that have a special geographic, historical, or cultural significance to the Indian tribe requesting a compact. Public Law 93–638 and the implementing regulation at 25 CFR 1000.129 prohibit the inclusion of Activities in an AFA that are inherently Federal functions. The NBRC has no special Tribal programs. All activities conducted by the Service on national wildlife refuges are for the benefit of the fish and wildlife resources, their habitats, and the American public. Activities that may have a special relationship with a tribe are the most promising for inclusion in an AFA. Whether to enter into an AFA with a tribe for these activities is discretionary on the part of the Service. The Service recognizes that the CSKT has a cultural, historical, and/or geographical connection to the lands and resources of the NBRC. The proposed AFA provides for the CSKT to perform certain Activities for the NBRC during a 3-year period.

What Happens Now?

As noted above, the AFA has been signed by the Director of the Service, and endorsed by senior Department of the Interior management. In accordance with 25 CFR 1000.177, the Assistant Secretary for Fish and Wildlife and Parks has forwarded copies of the AFA to the Senate Committee on Indian Affairs and the House Subcommittee on Native American and Insular Affairs, as well as other Congressional committees with jurisdictions related to the NWRS and the Service. If there are no objections to the AFA, the agreement will take effect 90 days after submission to Congress.

Dated: June 27, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–15685 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0174; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting, on July 23–24, 2008. The meeting is open to the public. The meeting agenda will include reports from the Subcommittees on Existing Guidelines, Legal, Landscape Habitat (Mapping), Science Tools and Procedures, and Other Models/Uncertainty; and briefings from

Service regional offices on wind/wildlife issues.

DATES: The meeting will take place on July 23–24, 2008, from 8 a.m. to 4:30 p.m.

ADDRESSES: South Interior Auditorium, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20240. For more information, see ''Public Workshop and Meeting Location Information'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2007, the Department of the Interior (Interior) published a notice of establishment of the Committee and call for nominations in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is expected to exist for 2 years and meet approximately four times per year. Its continuation is subject to biennial renewal. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter has been filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The USFWS has held Committee meetings in February, April, and June of 2008. All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

Meeting Location Information

Please note that the South Main Interior auditorium is accessible to wheelchair users. If you require additional accommodations, please notify us by July 16, 2008.

All persons planning to attend the meeting will be required to present photo identification when entering the building. Because of building security in the Department of the Interior, we recommend that persons planning to attend the workshop and/or meeting register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by July 16, 2008, to allow us sufficient time to provide the building security staff with a list of persons planning to attend. You may still attend if you register after July 16, 2008; however, seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. There will be standing room available if all seats are filled.

Dated: July 26, 2008.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E8–15665 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Cowlitz Indian Tribe's Proposed 151.87–Acre Fee-to-Trust Transfer, Reservation Proclamation, and Casino-Resort Project, Clark County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of extension of the date of issuance of the Record of Decision and reopening of the comment period.

SUMMARY: This notice announces that the Bureau of Indian Affairs is extending the date of issuance of the Record of Decision and reopening the comment period originally announced on May 30, 2008 (73 FR 31143) for the Final Environmental Impact Statement (FEIS) for the Cowlitz Indian Tribe's Proposed 151.87-acre fee-to-trust transfer, reservation proclamation, and casino-resort project, in Clark County, Washington.

DATES: The Record of Decision on the proposed action will be issued on or after August 12, 2008. Any comments on the FEIS must arrive by August 11, 2008.

ADDRESSES: You may mail or hand carry written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 NE 11th Avenue, Portland, Oregon 97232. Please include your name, return address and the caption, ''FEIS Comments, Cowlitz Indian Tribe Trust Acquisition and Casino Project,'' on the first page of your written comments.

The FEIS will be available for public review at the following Fort Vancouver Public Library branches: La Center Community Library, 1402 East Lockwood Creek Road, La Center, Washington 98629; Ridgefield Community Library, 210 North Main Avenue Ridgefield, Washington 98642. General information for the Fort Vancouver Public Library system can be obtained by calling (360) 659–1561. The FEIS is also available on the following Web site: *http://www.cowlitzeis.org*.

To obtain copies of the FEIS, please provide your name and address in writing or by voicemail to Dr. B.J. Howerton, Environmental Protection Specialist, at the BIA address above or at the telephone number provided below.

FOR FURTHER INFORMATION CONTACT: B.J. Howerton, (503) 321–6749.

SUPPLEMENTARY INFORMATION: The BIA published its Notice of the Final Environmental Impact Statement for the Cowlitz Indian Tribe on May 30, 2008, in the **Federal Register** (73 FR 31143). Please refer to that notice for project details.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing addresses shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address or other personal identifying information in your comments, you should be aware that your entire comments-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.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 1, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary, for Policy and Economic Development—Indian Affairs.

[FR Doc. E8–15741 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW157574]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Yates Petroleum Corporation, ABO Petroleum Corporation, MYCO Industries, Inc., and Yates Drilling Company for Competitive oil and gas lease WYW157574 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157574 effective May 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–15623 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1910–BK], Group 178, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The land we surveyed are:

Fifth Principal Meridian, Minnesota

T. 144 N., R. 37 W

The plat of survey represents the dependent resurvey and subdivision of section 33, Township 144 North, Range 37 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted June 19, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: July 2, 2008.

Joseph W. Beaudin,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–15692 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–DF; HAG 08–0138]

Southeast Oregon Resource Advisory Council: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council (SEORAC).

Time and Date: 8 a.m. August 7, 2008; 8 a.m. August 8, 2008.

Place: Holiday Inn Ontario, 1249 Tapadera Avenue, Ontario, Oregon 97914.

Status: Open to the public.

Matters to be Considered: The SEORAC will be briefed on BLM's Oregon Energy Corridor proposal, fire and fuels management program, Vegetation Treatments Environmental Impact Statement, wild horse and burro program, and Eastside Transportation Strategy. Presentations will be heard on the results of The Nature Conservancy's June After Fire Re-vegetation Symposium, progress of the Steens Mountain Advisory Council Science Strategy and Oregon Explorer project, and status of the Fremont-Winema National Forests' Draft Environmental Impact Statement for Invasive Plant Treatment. Council members will also receive information from designated federal officials, provide constituent updates, tour sites managed by the Vale District of the BLM, give subgroup reports and develop agenda items for the next meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 11:30 a.m. on August 8, 2008. Those who verbally address the SEORAC during the public comment period are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

For Further Information Contact: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, public affairs specialist, 1301 South G Street, Lakeview, OR 97630, (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the BLM Lakeview District at (541) 947–2177 as soon as possible.

Thomas E. Rasmussen,

Field Manager.

[FR Doc. E8–15761 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–609]

In the Matter of Certain Buffer Systems and Components Thereof Used in Container Processing Lines; Notice of a Commission Determination Not To Review an Initial Determination Terminating Two Respondents From the Investigation on the Basis of a Settlement Agreement and License Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 26) of the presiding administrative law judge (''ALJ'') in the above-captioned investigation terminating two respondents on the basis of a settlement agreement and license agreement and terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. 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 July 5, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Sidel Participations of France, Sidel Canada Inc. of Canada, and Sidel Inc. of Norcross, Georgia. Complainants supplemented their complaint on June 18, 2007. The respondents named in the complaint are Krones AG and KHS AG of Germany; Krones Inc., of Franklin, Wisconsin; and KHS USA, Inc. of Waukesha, Wisconsin. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain buffer systems and components thereof used in container processing lines by reason of infringement of U.S. Patent No. 6,168,005. The complaint further alleged that a domestic industry exists in the United States as required by subsection (a)(2) of section 337. The complainants request that the Commission issue a general exclusion order and cease and desist orders.

On May 28, 2008, complainants and the two remaining respondents, KHS AG and KHS USA, Inc. (collectively ''KHS''), filed a joint motion pursuant to Commission rule 210.21 for termination of the investigation based upon a settlement agreement and license agreement. The Commission investigative attorney filed a response in support of the motion.

On June 11, 2008, the ALJ issued the subject ID, granting the joint motion and terminating the investigation with respect to KHS on the basis of the settlement agreement and license agreement. No petitions for review were filed and the Commission has determined not to review the subject ID. The investigation is 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 Commission rules 210.21, 210.42, 19 CFR 210.21, 210.42.

Issued: July 3, 2008.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15634 Filed 7–9–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–618]

In the Matter of: Certain Computer Systems, Printers and Scanners; 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 a 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: On December 3, 2007, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Acer Incorporated (''Acer'') of Taipei, Taiwan, as supplemented, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain computer systems, printers and scanners by reason of infringement of certain claims of U.S. Patent Nos. 5,214,761 and 5,581,122. 72 *FR* 67960 (December 3, 2007). The complainant named Hewlett-Packard Company (''HP'') of Palo Alto, California, as respondent.

On June 6, 2008, Acer and HP jointly moved to terminate the investigation on the basis of a settlement agreement. On June 16, 2008, the Commission investigative attorney filed a response supporting the motion.

On June 17, 2008, the ALJ issued the subject ID granting the joint motion to terminate the investigation based on the settlement agreement. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(b) by including copies of the settlement agreement and a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. The ALJ concluded, pursuant to Commission Rule 210.50(b)(2), that 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).

By order of the Commission.

Issued: July 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15721 Filed 7–10–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AGOA–002]

Denim Fabric: Use in AGOA Countries During Fiscal Year 2007

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

Determination: Based on the information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 112(c)(2)(B)(iii) of the African Growth and Opportunity Act (AGOA),[1] that the quantity of denim fabric [2] produced in beneficiary sub-Saharan African (SSA) countries for use by lesser-developed beneficiary (LDB) SSA countries that was used in the production of apparel articles receiving U.S. preferential treatment during the period October 1, 2006–September 30, 2007 (fiscal year 2007) was 21,120,000 square meter equivalents (SMEs).

Background: Section 112(c)(2)(B)(iii) of AGOA requires the Commission to determine, after the end of each year for which an availability determination is in effect, the extent to which the fabric or yarn determined to be available in commercial quantities for use in LDB SSA countries was used in the production of apparel articles receiving preferential treatment. To the extent that the quantity so determined was not so used, section 112(c)(2)(B)(iii) requires the Commission to add to the quantity of that fabric or yarn determined to be available in the next applicable 1-year period the quantity not so used in the preceding applicable 1-year period. Congress, in section 112(c)(2)(C) of AGOA, deemed the subject denim fabric to be available in commercial quantities for use in LDB SSA countries in the amount of 30 million SMEs during fiscal year 2007, as if the Commission had made such a determination.

Having determined that the quantity of subject denim fabric used in the production of apparel articles receiving preferential treatment during fiscal year 2007 (21,120,000 SMEs) was less than the 30 million SMEs deemed to be available by statute for that year, the Commission has added the shortfall of 8,880,000 SMEs to the quantity of subject denim fabric that it previously determined will be so available during fiscal year 2008 (21,303,613 SMEs).[3] The adjusted quantity of subject denim fabric that will be so available during fiscal year 2008 is 30,183,613 SMEs.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing in connection therewith was given by posting a copy of the notice on the Commission's Web site (*http://www.usitc.gov*) and by publishing the notice in the **Federal Register** of December 3, 2007 (72 FR 67961). The hearing was held on April 9, 2008, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication No. 4021 entitled *Denim Fabric: Use in AGOA Countries During Fiscal Year 2007.*

By order of the Commission.

Issued: July 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15718 Filed 7–10–08; 8:45 am]

BILLING CODE 7020–02–P

[1] 19 U.S.C. 3721(c)(2)(B)(iii).

[2] Denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule. See section 112(c)(2)(C) of AGOA, 19 U.S.C. 3721(c)(2)(C).

[3] See the Commission's determination in investigation No. AGOA–001, *Commercial Availability of Fabric & Yarn in AGOA Countries: Certain Denim,* Publication 3950 (Sept. 2007) at 1; 72 FR 56382 (Oct. 3, 2007).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–606]

In the Matter of: Certain Personal Computers and Digital Display Devices; 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. 31) 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 May 21, 2007, based on a complaint filed by Hewlett-Packard Company (''HP'') of Palo Alto, California. 72 *FR* 28520–1. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 personal computers and digital display devices by reason of infringement of certain claims of U.S. Patent Nos. 6,691,236; 6,029,119; 5,353,415; and 6,894,706. The complaint further alleges the existence

of a domestic industry. The Commission's notice of investigation named Acer Incorporated of Taipei, Taiwan and Acer America Corporation of San Jose, California as respondents (collectively ''Acer'').

On June 6, 2008, HP and Acer jointly moved to terminate the investigation on the basis of a settlement agreement. On June 16, 2008, the Commission investigative attorney filed a response supporting the motion.

On June 17, 2008, the ALJ issued the subject ID granting the joint motion to terminate the investigation based on the settlement agreement. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(b) by including copies of the settlement agreement and a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. The ALJ concluded, pursuant to Commission Rule 210.50(b)(2), that 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).

By order of the Commission.

Issued: July 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15719 Filed 7–10–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–652]

In the Matter of Certain Rubber Antidegradants, Antidegradant Intermediates, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 12, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Flexsys America L.P. of St. Louis, Missouri. A supplement to the complaint was filed on June 2, 2008. On June 2, 2008, the Commission voted to extend by 30 days the deadline for its decision on whether to institute an investigation based on the complaint. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rubber antidegradants, antidegradant intermediates, and products containing the same that infringe certain claims of U.S. Patent Nos. 5,453,541 and 5,608,111. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 2, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rubber antidegradants, antidegradant intermediates, or products containing the same that infringe one or more of claims 61–74 of U.S. Patent No. 5,453,541 and claims 23–28 of U.S. Patent No. 5,608,111, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Flexsys America L.P., 575 Maryville Centre, St. Louis, Missouri 63141.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sinorgchem Co., Shandong, No. 1, Beihuan Road, Caoxian, Shandong, China 274400;

Korea Kumho Petrochemical Co., Ltd., 15/16F Kumho-Asiana Building, #57, 1-Ga, Shinmun-Ro, Jongro-Gu, Seoul, South Korea;

Kumho Tire USA, Inc., 10299 6th Street, Rancho Cucamonga, California 91730;

Kumho Tire Co., Inc., 58–31, 1-Ga, Shinmun-Ro, Jongro-Gu, Seoul, South Korea.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

The Commission notes that the patents at issue were the subject of earlier litigation, which raises the question of whether the complainant is precluded from asserting those patents. In instituting this investigation, the Commission has not made any determination as to whether the complainant is so precluded. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination (ID). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any petitions for review of the ID must be filed within ten (10) days after service thereof. Any review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45.

By order of the Commission.

Issued: July 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15607 Filed 7–9–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Final Consent Decree With Newmont USA Limited and Resurrection Mining Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 2, 2008, a Final Consent Decree with Newmont USA Limited and Resurrection Mining Company (''Final Consent Decree'') in *State of Colorado* v. *ASARCO Incorporated et al.*, Civil Action No. 86–cv–1675–WYD (consolidated with 83–cv–2388–WYD) was lodged with the United States District Court for the District of Colorado.

The United States and the State of Colorado previously entered into a consent decree with Newmont Mining Corporation (now Newmont USA Limited, ''Newmont'') and Resurrection Mining Company (''Resurrection'') concerning, among other things, Newmont's and Resurrection's performance of response actions addressing areas designated as Operable Units (''OUs'') 4, 8 and 10 of the California Gulch Superfund Site located in Lake County, Colorado (''Site''). That consent decree was approved and entered by the United States District Court for the District of Colorado on August 26, 1994 (the ''1994 Decree'').

The proposed Final Consent Decree implements a settlement of the remainder of the claims concerning the Site (as that term is defined in the Final Consent Decree) filed by the Plaintiffs. In general, pursuant to the terms of the Final Consent Decree, Newmont and Resurrection will: (1) Pay $2,000,000 in Past Response Costs, of which the United States will receive $1,813,200 and the State of Colorado will receive $186,800; (2) pay the United States $6,500,000 for OUs 11 and 12 and additional source control in OUs 4, 8, and 10; (3) pay $10,500,000 for natural resource damages, of which the United States will receive $5,250,000 and the State of Colorado will receive $5,250,000; (4) pay the future oversight costs incurred by the U.S. Environmental Protection Agency and the State of Colorado with respect to OUs 1, 4, 8 and 10; (5) implement the OU1 work plan; and (6) continue performance of the Operation and Maintenance Plan for OUs 4, 8 and 10. In addition, Newmont and Resurrection will, subject to the specific terms of the Final Decree, reclaim the Black Cloud Mine. The Final Consent Decree will resolve the Governments' claims against Newmont and Resurrection at the Site and at the Black Cloud Mine, and replace the 1994 Decree. In exchange for their commitments under the Final Consent Decree Newmont and Resurrection receive covenants not to sue from the Governments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Final Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Apache Energy and Minerals Company*, D.J. Ref. 90–11–3–138.

The Final Consent Decree may be examined at the Office of the United States Attorney for the District of Colorado, 1225 Seventeenth Street, Suite 700, Denver, CO 80202, and at U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop St., Denver, CO 80202–1129. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Final 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 of the Final Consent Decree exclusive of appendices from the Consent Decree Library, please enclose a check in the amount of $20.50 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. In requesting a copy of the Final Consent Decree with all appendices, please enclose a check in the amount of $138.75.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–15647 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Final Modification of 1994 Consent Decree With ASARCO Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 2, 2008, a Final Modification of 1994 Consent Decree with Asarco (''Final Consent Decree Modification'') in *State of Colorado* v. *ASARCO Incorporated et al.*, Civil Action No. 86-cv-1675-WYD (consolidated with 83-cv-2388-WYD) was lodged with the United States District Court for the District of Colorado.

The United States and the State of Colorado previously entered into a consent decree with ASARCO Incorporated (now ASARCO, LLC) (''ASARCO'') concerning, among other things, ASARCO's performance of response actions at various Operable Units (''OUs'') of the California Gulch Superfund Site located in Lake County, Colorado (''Site'') including OUs 5, 7 and 9. That consent decree was approved and entered by the United

States District Court for the District of Colorado on August 26, 1994 (the ''1994 Decree''). The 1994 Decree was modified concerning OU 9, and approved and entered by the United States District Court for the District of Colorado on May 1, 2008.

The proposed Final Consent Decree Modification implements a settlement of the remainder of the claims concerning the Site filed by the Plaintiffs (as that term is defined in the Final Consent Decree Modification) in *In re ASARCO LLC, et al.*, a bankruptcy case pending in the Southern District of Texas, Corpus Christi Division, Case No. 05–21207 (the ''Bankruptcy Case''). In general, pursuant to the terms of the Final Consent Decree Modification, the United States, on behalf of the United States Environmental Protection Agency, shall have an allowed general unsecured claim in the Bankruptcy Case in the amount of $8,833,000 for past and future response costs. In addition, the United States, on behalf of the United States Department of the Interior, shall have an allowed general unsecured claim in the Bankruptcy Case in the amount of $5,000,000 for natural resource damages. Under the terms of the Final Consent Decree Modification, the State of Colorado shall have an allowed general unsecured claims in the amount of $467,000 for past and future response costs, and in the amount of $5,000,000 for natural resource damages. This Final Consent Decree Modification will resolve the Governments' claims against ASARCO with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Final Consent Decree Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Apache Energy and Minerals Company*, D.J. Ref. 90–11–3–138.

The Final Consent Decree Modification may be examined at the Office of the United States Attorney for the District of Colorado, 1225 Seventeenth Street, Suite 700, Denver, CO 80202, and at U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop St., Denver, CO 80202–1129. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Final Consent Decree Modification 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 $9.00 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 E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–15648 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed Consent Decree, in *United States and the State of Illinois* v. *Hamilton Sundstrand Corporation,* Civil No. 08–CV–50129 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on July 3, 2008, pertaining to Source Area 9/10 (the ''Site'') of the Southeast Rockford Groundwater Contamination Superfund Site (''SERGWCS Site''), located in Rockford, Winnebago County, Illinois. In this action, the United States and the State of Illinois brought civil claims under Sections 106, 107 and 113(g)(2) of CERCLA, 42 U.S.C. 9606, 9607 and 9613(g)(2), against Hamilton Sundstrand Corporation (''Settling Defendant'') for implementation of remedial action and recovery of response costs incurred and to be incurred by the United States and the State of Illinois at the Site.

Under the proposed Consent Decree, the Settling Defendant is obligated to implement the remedy selected by the U.S. Environmental Protection Agency (''EPA'') in the SERGWCS Site source control Record of Decision (''ROD'') for the Hamilton Sundstrand property portion of the Site, and to pay the United States' and the State of Illinois' Interim Response Costs and Future Response Costs related to that property portion, including costs of overseeing the implementation of the remedial action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of Illinois* v. *Hamilton Sundstrand Corporation,* Civil No. 08–CV–50129 (N.D. Ill.), and DOJ Reference No. 90–11–3–945/3.

The proposed Consent Decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, Rockford Division, 308 West State Street, Suite 300, Rockford, Illinois 61101, (815) 987–4444; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Tom Turner (312) 886–6613).

During the public comment period, the proposed Consent Decree may also be examined on the following U.S. Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $23.50 for the Consent Decree only (94 pages, at 25 cents per page reproduction costs), or in the amount of $267.50 for the Consent Decree and Appendices (1,070 pages), made payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–15645 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 002–2008]

Privacy Act of 1974; System of Records

AGENCY: Environment and Natural Resources Division, Department of Justice.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Environment and Natural Resources Division (ENRD), Department of Justice, proposes to establish a new system of records to store personnel locator information entitled, ''Personnel Locator System, JUSTICE/ENRD–002.'' The Personnel Locator System will include modules with locator information (including professional background held by particular staff) as well as emergency contact information.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 19, 2008.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, *Attn:* Kirsten J. Moncada, Director, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue, Suite 940, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Donna B. Whitaker, Director, Office of Information Management, Environment & Natural Resources Division, U.S. Department of Justice, P.O. Box 7754, Washington, DC 20044–7754, 202–616–3100.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the new system of records.

Dated: July 3, 2008.

Kenneth P. Mortensen,

Acting Chief Privacy and Civil Liberties Officer.

Department of Justice

Justice/ENRD–002

SYSTEM NAME:

Personnel Locator System, Environment and Natural Resources Division (ENRD–002).

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

U.S. Department of Justice, Environment and Natural Resources Division, 950 Pennsylvania Ave., NW., Washington, DC 20530, and other ENRD field offices throughout the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Student Aides, Law Clerks, Volunteers, Contractors and other personnel employed by or otherwise affiliated with the Environment and Natural Resources Division, U.S. Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The locator portion of the system will contain records filed by name of employee or affiliated personnel or individuals, including his or her position title; office location; office telephone and facsimile (fax) numbers; office address; professional electronic mail (e-mail) address(es); and optional voluntary photograph. Locator information will also include professional background records filed by name of employee or affiliated personnel, listing any voluntary, self-declared experience, skill or certification in the following areas: Law school name and year(s) of graduation; clerkships; bar memberships; advanced degrees earned; foreign language expertise; Notary Public commission. The emergency contact information module of the Personnel Locator System will contain comprehensive contact information from employees or affiliated personnel that may be used to contact the person named, or his/her authorized designee, in the event of an emergency during or outside of official duty hours. Information categories include home addresses and telephone numbers; cellular telephone numbers; pager numbers; other alternate telephone numbers where persons or their designees may be reached while away on travel, assigned work detail, or other extended absence from the office; electronic mail (e-mail) addresses; names, telephone numbers and e-mail addresses of family members or other emergency contacts; and other contact information persons may wish to provide. The system will also include audit information for emergency contact information to track changes that are updated by authorized emergency coordinators, managers and system administrators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to establish and maintain this system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Attorney General to create and maintain federal records of agency activities, and is further described in 28 CFR 0.65 and 28 CFR 0.135, which give the Environment and Natural Resources Division authority to create and maintain federal records.

PURPOSE(S):

Division personnel collaborate on cases and matters requiring specialized legal expertise and often require assistance from colleagues with particular background or skills. The ENRD staff desires a centralized, searchable directory of employee expertise with associated locator information to facilitate professional contacts. ENRD desires to maintain its emergency contact database in the same system of records to assist with the ease of data entry and information updates for or by employees, and to simplify system maintenance for the system administrators. Submission of information to the PLS database is voluntary and electing not to participate will have no adverse impact on the selection, promotion or retention status of the non-participant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(c) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(d) To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) Where a record, either alone or in conjunction with other information,

indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(f) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

(g) To appropriate officials and employees of a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(h) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(i) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information will be stored electronically in a database located on a server connected to the Division's intranet. In accordance with ENRD's emergency planning policies, ENRD databases also are copied offsite on a mirror system to which data are replicated every 24 hours.

RETRIEVABILITY:

Information is retrieved by the individual's name or by subject matter.

SAFEGUARDS:

Access to the Personnel Locator System is restricted to ENRD personnel, contractors and other affiliated persons with accounts on the Division's computer network because it is accessed via the Division's intranet. Information access will be governed by security safeguards as described below:

(1) General locator information: Data editors will be restricted to ENRD Executive Office personnel, contractors, and other affiliated staff. All ENRD personnel may view these records in read-only format.

(2) Professional background information: Each staff member may edit his or her own record to keep information accurate and current. Personnel may not edit records other than their own. System administrators will have full editing privileges over these records. Other ENRD personnel may view these records in read-only format.

(3) Emergency contact information: Each person will be able to view and edit his or her own emergency contact information record so that he or she may keep this information accurate and current. ENRD emergency coordinators and managers will have editing rights according to level of responsibility so that they may update these records on behalf of staff, if necessary, during emergencies or as needed at other times. System administrators will have full editing privileges over these records. Viewing privileges will be restricted to managers and certain other employees or contractors with a need to know.

Technical equipment for the Personnel Locator System database is maintained in buildings with restricted access and is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. The offsite mirror system servers are physically and electronically secure to top-level DOJ systems personnel and the ENRD senior systems engineer.

RETENTION AND DISPOSAL:

Records are retained during their useful life in accordance with records retention schedules approved by the National Archives and Records Administration. The records will be purged from the database when they no longer are needed for business purposes, or after 3 years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Information Management, Executive Office, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7754, Ben Franklin Station, Washington, DC 20044–7754.

NOTIFICATION PROCEDURE:

Address inquiries to the FOIA/Privacy Act Coordinator, Environment and Natural Resources Division, Law and Policy Section, P.O. Box 4390, Ben Franklin Station, Washington, DC 20044–4390.

RECORD ACCESS PROCEDURES:

Access to the Personnel Locator System is restricted to ENRD personnel, contractors and other affiliated persons with accounts on the Division's computer network because it is accessed via the Division's intranet.

(1) General locator information: All ENRD personnel may view these records in read-only format.

(2) Professional background information: Each staff member may access and edit his or her own record to keep information accurate and current. Personnel may not edit records other than their own. System administrators will have full editing privileges over these records. Other ENRD personnel may view these records in read-only format.

(3) Emergency contact information: Each person will be able to access and edit his or her own emergency contact information record so that he or she may keep this information accurate and current. ENRD emergency coordinators and managers will have editing rights according to level of responsibility so that they may update these records on behalf of staff, if necessary, during emergencies or as needed at other times. System administrators will have full editing privileges over these records. Viewing privileges will be restricted to managers and certain other employees or contractors with a need to know.

All other requests for access should be submitted in writing. Clearly mark the envelope and letter, ''Privacy Act Access Request.'' Include in the request your full name, date and place of birth, case caption, or other information which may assist in locating the records you seek. Also include your notarized signature, or a dated and signed statement under penalty of perjury, and a return address. Direct all access requests to the FOIA/Privacy Act

Coordinator; Environment and Natural Resources Division; Law and Policy Section; P.O. Box 4390, Ben Franklin Station; Washington, DC; 20044–4390.

CONTESTING RECORD PROCEDURES:

If staff members wish to amend information maintained in the system, they may amend their own personal and professional background records, or emergency contact information data as described above under ''Record Access Procedures.'' Requests to amend or update other general locator information or the personal photograph may be directed to system administrators.

You may also seek to amend or contest information maintained in the system, by directing a written request to the FOIA/PA Coordinator at the address above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information you seek.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are (1) the ENRD Executive Office, furnishing employee locator information, and (2) the ENRD employees, student aides, law clerks, and volunteers, contractors, and other associated personnel who furnish the remaining employee locator information; the professional background data; and the emergency contact data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–15672 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration (ETA)

Proposed Information Collection Request, Extension of Approved Collection With One Revision: ''Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, Business Confidential Data Request, Business Confidential Non-Production Questionnaire, and Business Confidential Customer Survey''

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension, with revisions, of data collections using the ETA Form 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance (1205–0342) and its Spanish translation ETA 9042A–1 (1205–0342); ETA 9043a, Business Confidential Data Request (1205–0342); ETA 8562a, Business Confidential Customer Survey (1205–0342). There is only one revision: ETA 9118 Business Confidential Non Production Questionnaire (currently approved under OMB Control Number 1205–0447) will be consolidated with the other forms listed above into one reporting requirement under OMB control number 1205–0342.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed below on or before September 8, 2008.

ADDRESSES: Susan Worden, U.S. Department of Labor, Employment and Training Administration, Room C–5428, 200 Constitution Avenue, NW., Washington, DC 20210. *Phone:* 202–693–3517, *Fax:* 202–693–3584, *E-mail: worden.susan@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, one-stop operators or one-stop partners. ETA Form 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, and its Spanish translation, ETA Form 9042A–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions.

Sections 222, 223 and 249 of the Trade Act of 1974, as amended, require the Secretary of Labor to issue a determination for groups of workers as to their eligibility to apply for Trade Adjustment Assistance (TAA). After reviewing all of the information obtained for each petition for Trade Adjustment Assistance filed with the Department, a determination is issued as to whether the statutory criteria for certification are met. The information collected in ETA Form 9043a, Business Confidential Data Request, ETA Form 9118, Business Confidential Non Production Questionnaire, and ETA Form 8562a, Business Confidential Customer Survey, will be used by the Secretary to determine to what extent, if any, increased imports or shifts in production have impacted the petitioning worker group.

II. Review Focus

ETA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension, with revision, of OMB approved information collection.

Agency: Employment and Training Administration.

Title: ''Petition For Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, Business Confidential Data Request, Business Confidential Non-Production Questionnaire, and Business Confidential Customer Survey: Investigative Data Collection

Requirements for the Trade Act of 1974 as amended by the Trade Act of 2002.''

OMB Number: 1205–0342.

Affected Public: Individuals or Households, Businesses, State, Local or Tribal Governments.

Cite/reference	Responses	Total respondents	Average time per response	Total requested burden (hours)
ETA 9042A & ETA 9042A–1	2,200	2,200	25 min	916
ETA 9043a	2,200	1056	3.5 hours	7,700
ETA 8562a	8,800	8,800	1.78 hours	15,664
ETA 9118	550	264	3.5 hours	1,925
Totals	13,750	12,320		26,205

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this Notice will be summarized for inclusion in the request for Office of Management and Budget approval of this information collection request and will become a matter of public record.

Dated: July 2, 2008.

Ralph Di Battista,

Deputy Administrator, Office of National Response, Employment and Training Administration.

[FR Doc. E8–15712 Filed 7–9–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Regulations 29 CFR Part 547, Requirements of a ''Bona Fide Thrift or Savings Plan'' and Regulations 29 CFR Part 549, Requirements of a ''Bona Fide Profit-Sharing Plan or Trust''. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 8, 2008.

ADDRESSES: Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

Background

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a ''bona fide'' thrift or savings plan, profit-sharing plan or trust. Regulations, 29 CFR Parts 547 and 549 set forth the requirements for what constitutes a ''bona fide'' thrift or savings plan, profit-sharing plan or trust. The maintenance of the records required by the regulations enables Department of Labor investigators to determine whether contributions to a given thrift or savings plan, profit-sharing plan or trust may be excluded in calculating the regular rate of pay for overtime purposes in compliance with section 7(e)(3)(b) of the FLSA. Without these records, such a determination could not be made. This information collection is currently approved for use through February 28, 2009.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this currently approved information collection in order to determine whether contributions to a given thrift or savings plan or profit-sharing plan or trust may be excluded in calculating the regular rate of pay for overtime purposes under section (7)(e)(3)(b) of the Fair Labor Standards Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR Part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR Part 549).

OMB Number: 1215–0119.

Affected Public: Business or not for-profit, Not-for-profit institution, Farms, and State, Local or Tribal Government.

Total Respondents: 844,000.

Total Annual Responses: 844,000.

Estimated Total Burden Hours (Recordkeeping): 4.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 3, 2008.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–15725 Filed 7–9–08; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 4, 2008, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on July 7, 2008 to: Wayne Z. Trivelpiece, Permit No. 2009–006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–15694 Filed 7–9–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; System of Records

AGENCY: Office of the General Counsel, National Science Foundation.

ACTION: Notice of a new Privacy Act System of Records NSF–73: NSF Alert.

System Name: NSF Alert.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the National Science Foundation (NSF) gives notice of a new Privacy Act system of records: NSF Alert. The purpose of NSF Alert is to collect and maintain emergency contact information for current Federal employees, Intergovernmental Personnel Act employees (IPAs), selected guests and contractors of the National Science Foundation. The emergency contact information may contain personally identifiable information.

DATES: *Effective Date:* This action shall be effective without further notice on August 10, 2008, unless comments are received during or before this period that would result in a contrary determination.

Comments Due Date: Submit comments on or before August 10, 2008.

ADDRESSES: Address all comments concerning this notice to Leslie Jensen, National Science Foundation, Office of the General Counsel, Room 1265, 4201 Wilson Boulevard, Arlington, Virginia 22230 or by sending electronic mail (e-mail) to *ljensen@nsf.gov*.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish a new system of records in the **Federal Register**.

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments sent in electronic E-mail with Subject Line: Comments on new system.

FOR FURTHER INFORMATION CONTACT: Leslie Jensen (703) 292–5065.

Dated: July 3, 2008.

Lawrence Rudolph,

General Counsel.

National Science Foundation

SYSTEM NAME:

NSF Alert (NSF–73).

SYSTEM LOCATION:

National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, IPAs, selected guests and agency contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, directorate/division, work and personal electronic mail addresses, work telephone number, home and cellular telephone numbers, work fax and Blackberry phone numbers, pager and any SMS device they want to provide.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 12656 of Nov. 18, 1988 on Assignment of Emergency Preparedness Responsibilities.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to maintain emergency contact information for current employees, IPAs, selected guests and contractors of the National Science Foundation. The system provides for high-speed message delivery that reaches all NSF personnel in response to threat alerts issued by the Department of Homeland Security, weather related emergencies, or other critical situations that disrupt the operations and accessibility of a worksite. The system also provides for personnel accountability during an emergency, through personnel sign-in and rapid alert and notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information from the system may be disclosed to any Federal government authority for the purpose of coordinating and reviewing agency continuity of operations plans or emergency contingency plans developed for responding to Department of Homeland Security threat alerts, weather related emergencies, or other critical situations.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties in pursuit of the purposes described above. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be merged with other computer files in order to carry out statistical studies or otherwise assist NSF with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. Disclosures are made only after scrutiny of research protocols and with appropriate controls. The results of such studies are statistical in nature and do not identify individuals.

5. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the

Freedom of Information Act or Privacy Act to the records.

6. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

7. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

8. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

9. Information from the system may be given to appropriate agencies, entities, and persons when (1) the NSF suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the NSF has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the NSF or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NSF's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computerized database.

RETRIEVABILITY:

Records may be retrieved by the individual's name and work e-mail.

SAFEGUARDS:

Records are safeguarded by restricted computer user ids and passwords. Access to the records is restricted to those who require the records in the performance of official duties related to the purposes for which the system is maintained.

RETENTION AND DISPOSAL:

Periodic purging and disposal of those records concerning individuals who are no longer employees, IPAs, guests or select contractors of the National Science Foundation. Otherwise, records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

National Science Foundation, Director, Division of Administrative Services, 4201 Wilson Blvd, Room 295, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Office of the General Counsel, 4201 Wilson Blvd, Arlington, VA 22230.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Office of the General Counsel, 4201 Wilson Blvd, Arlington, VA 22230.

CONTESTING RECORDS PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Information is provided by current employees, IPAs, guests and selected contractors of the National Science Foundation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–15693 Filed 7–9–08; 8:45 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 7, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Grant and Cooperative Agreement Provisions.

3. *Current OMB approval number:* 3150–0107.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Technical performance reports are submitted every six months, other information is submitted on occasion, as needed.

6. *Who will be required or asked to report:* Grantees and Cooperators.

7. *An estimate of the number of annual responses:* 458 (318 responses plus 140 recordkeepers).

8. *The estimated number of annual respondents:* 140.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,381 (3,153 reporting hours plus 228 recordkeeping hours).

10. *Abstract:* The Division of Contracts (DC) is responsible for awarding grants and cooperative agreements for the NRC. The DC collects information from grantees and cooperators in order to administer these programs. The DC uses provisions (required to obtain or retain a benefit in its awards and cooperative agreements) to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The

document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 11, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0107), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 2nd day of July, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–15678 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09068]

Notice of License Application of Lost Creek ISR, LLC, for a New In Situ Leach Uranium Recovery Facility at the Lost Creek Site, Sweetwater County, Wyoming, and Opportunity to Request a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application for a new uranium recovery facility, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7182; fax number: (301) 415–5369; e-mail: *stephen.cohen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated October 30, 2007, Lost Creek ISR, LLC (LCI) submitted a Source Materials License Application to the Nuclear Regulatory Commission (NRC) for a new *in situ* leach (ISL) uranium recovery facility at its Lost Creek site in Sweetwater County, Wyoming. The Lost Creek facility would involve the recovery of uranium by ISL extraction techniques. By letter dated February 29, 2008, LCI withdrew the application to revise its radiation protection program; the application was resubmitted on March 31, 2008. An NRC administrative review, documented in a letter dated June 10, 2008, found the application acceptable to begin a detailed technical and environmental review. Before approving the license application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report (SER) and a site-specific environmental review consistent with the provisions of 10 CFR Part 51.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a source materials license regarding LCI's proposal to construct and operate the Lost Creek ISL uranium recovery facility in Sweetwater County, Wyoming. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 **Federal Register** 49139 (August 28, 2007). The E-Filing rule 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/requester 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 identification (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/requester (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requester 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/requester has obtained a digital ID certificate, has a docket created, and downloaded the EIE viewer, the petitioner/requester can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format 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 website 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 social security 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.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by September 8, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial, or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and technical report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting technical (i.e., safety analysis) report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Technical Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the March 31, 2008, license application and its supporting documentation (i.e., Technical Report and Environmental Report), 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 ADAMS accession number for the documents related to this Notice is ML081060525 Lost Creek ISR, LLC, Submittal of Source Materials License Application to Construct and Operate the Lost Creek ISL uranium recovery facility in Sweetwater County, Wyoming. The ADAMS accession number for the NRC staff's administrative review letter, dated June 10, 2008, is ML081570711. 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.resource@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.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information. A suggested schedule is provided as Attachment 1 to this order.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov,* respectively.[1]

The request must include the following information:

a. A description of the licensing action with a citation to this Federal Register notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed, if the licensing action is taken;

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten (10) days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff after a determination on standing, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing, by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

[1] See footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

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

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI)

Day	Event
0	Publication of [Federal Register notice/other notice of proposed action and opportunity for hearing], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit. Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A+53 (Contention receipt +25)	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8–15695 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1198.

FOR FURTHER INFORMATION CONTACT: John Burke, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1529 or e-mail to *John.Burke@nrc.gov*.

SUPPLEMENTARY INFORMATION:

[4] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled ''Physical Models for Design and Operation of Hydraulic Structures and Systems for Nuclear Power Plants,'' is temporarily identified by its task number, DG–1198, which should be mentioned in all related correspondence.

This guide describes the desired coordination of an applicant with the staff of the NRC and the detail and documentation of data and studies that an applicant should include in the preliminary safety analysis report (PSAR) or final safety analysis report (FSAR) to support the use of physical hydraulic model testing for predicting the performance of hydraulic structures and systems for nuclear power plants. The regulatory position of this guide is applicable only to physical models used to predict the action or interaction of surface waters with features located outside of containment. The recommendations of this guide do not apply to internal plant systems or structures.

Title 10, Section 50.34(a)(3)(ii) of the Code of Federal Regulations (10 CFR 50.34(a)(3)(ii)) requires that the PSAR include information on the design bases of the facility and the relation of the design bases to the principal design criteria. In part, 10 CFR 50.34(a)(4) requires a preliminary analysis of the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

II. Further Information

The NRC staff is soliciting comments on DG–1198. Comments may be accompanied by relevant information or supporting data, and should mention DG–1198 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
2. *E-mail to: NRCREP@nrc.gov.*
3. *Hand-deliver to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.
4. *Fax to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1198 may be directed to John Burke at (301) 415–1529 or e-mail to *John.Burke@nrc.gov*.

Comments would be most helpful if received by September 5, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1198 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML081080301.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 2nd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15674 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19324]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 25–19852–01 for Unrestricted Release of Building 11 of the GlaxoSmithKline Biologicals-Hamilton Facility in Hamilton, MT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, Health Physicist, Nuclear Materials Safety Branch B, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 612 Lamar Drive, Suite 400, Arlington, Texas 76011; telephone: (817) 276–6552; fax number: (817) 860–8188; or by e-mail: *rachel.browder@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 25–19852–01. The license is held by GlaxoSmithKline Biologicals-Hamilton (the Licensee), for its Hamilton facility (the Facility), located at 553 Old Corvallis Road in Hamilton, Montana. Issuance of the amendment would authorize release of Building 11 of the Facility for unrestricted use. The Licensee requested this action in a letter dated December 21, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of title 10, Code of Federal Regulations (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's December 21, 2007 license amendment request, resulting in the release of the stand-alone Building 11 at the Facility for unrestricted use. NRC License No. 25–19852–01 was

issued on June 24, 1988, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorizes the Licensee to possess and use small quantities of byproduct material, in both sealed and unsealed form, for laboratory research in immunological and biochemical studies. Additionally, the license authorizes the Licensee to possess and use a self-shielded irradiator device and to possess and use sealed sources for the purposes of performing instrument calibration.

The Facility is situated on 35 acres (14 hectares) and consists of a main building comprised of office space and laboratories as well as several smaller buildings used for various purposes. The Facility is located in a mixed residential/commercial area. The Licensee's December 21, 2007, license amendment request specifically addressed the release of Building 11 at the Facility for unrestricted use. Building 11 was used as a storage building to store equipment, wood shavings (animal bedding for a vivarium), biomedical waste materials and low level radioactive waste. The building was originally designed as an overhead shelter. In 2004 walls were added to divide a potion of the structure into four rooms. The building was constructed with a concrete slab floor, wood framing and walls, and a sheet metal roof. There are no floor drains or other fixtures such as sinks with plumbing inside Building 11. The center east room within Building 11 is the only area licensed for storage and decay of low level radioactive materials. The floor dimensions of the center east room are approximately 8 feet (2.4 meters) by 20 feet (6.1 meters).

The Licensee removed the low-level radioactive materials from Building 11 and initiated a final status survey for the stand-alone building. The Licensee was not required to submit a decommissioning plan to the NRC. The Licensee conducted surveys of the center east room of Building 11 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 in the stand-alone Building 11 of the Facility and seeks the unrestricted use of Building 11.

Environmental Impacts of the Proposed Action

The low level wastes generated as a result of the licensed activities at the Facility consisted of the following radionuclides with half-lives greater than 120 days: hydrogen-3 (tritium), carbon-14, and calcium-45. The radioactive materials were in the form of dry-solids, sharps, scintillation vials, and bulk liquid in polypropylene carboys. The licensee stored the low level radioactive wastes in plastic lined UN 55 gallon steel drums and stored the drums in the center east room of Building 11. The drums were never opened while stored in Building 11. Prior to performing the final status survey, the Licensee removed the low level radioactive drums from Building 11.

The Licensee conducted a final status survey during November and December 2007. This survey covered the center east room of Building 11. The final status survey report was attached to the Licensee's amendment request dated December 21, 2007. NRC regulation 10 CFR 20.1402, *Radiological Criteria for Unrestricted Use*, states in part that a site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent not to exceed 25 millirems per year (0.25 milliSeiverts per year) to an average member of the critical group (the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances). The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted use as specified in 10 CFR 20.1402 by comparing the final status survey results to background radiation levels for the area. Since the Licensee's survey results did not identify any radioactive contamination in excess of background radiation levels for the area, then the results adequately met the criteria for unrestricted use. Accordingly, the Licensee's final status survey results were 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). Further, no incidents were recorded involving spills or releases of radioactive material in Building 11 of the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility.

The NRC staff finds that the proposed release of the portion of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. The NRC has found no other activities in the area that could result in cumulative environmental impacts. Based on its review, the staff considered the impact of the residual radioactivity at Building 11 of 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 simply deny 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. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this EA to the State of Montana Department of Public Health and Human Services for review on April 25, 2008. The State of Montana Department of Public Health and Human Services did not have any comments to the draft EA.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no 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 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, if applicable.

1. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination;''
2. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385);
3. NRC, ''Consolidated NMSS Decommissioning Guidance,'' NUREG–1757, Volume 1, Revision 1, September 2003 (ML053260027);
4. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
5. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
6. Poletti, Brian, GlaxoSmithKline Biologicals—Hamilton, License Amendment Request dated December 21, 2007 (ML080380101).

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.rosource@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 Arlington, Texas this 27th day of June 2008.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Safety Branch B, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E8–15675 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33658]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment Request to Byproduct Materials License 01–25316–01 for the Department of Defense, Defense Intelligence Agency, Redstone Arsenal, AL

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Thomas Thompson, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406. Telephone: (610) 337–5303; fax number: (610) 337–5269; e-mail: *TKT@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license renewal to Byproduct Materials License No. 01–25316–01. This license is held by the Department of Defense, Defense Intelligence Agency (the Licensee), for activities conducted at the Redstone Arsenal facility, located in Redstone Arsenal, Alabama. As part of its license renewal, the Licensee has requested an exemption from the requirement in 10 CFR 30.32(g) to list sealed sources by their manufacturer and model number as registered under the provisions of 10 CFR 32.210. The Licensee requested this exemption in a letter received on November 1, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The license renewal, including the approval of the exemption request, 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 renew License No. 01–25316–01, including approval of the Licensee's request for exemption received on November 1, 2005. License No. 01–25316–01 was issued on January 26, 1995, pursuant to 10 CFR Parts 30 and 70, and has been amended periodically since that time. This license authorized the Licensee to receive, store, use and/or transfer specified radioactive materials incident to research and development as defined in 10 CFR 30.4.

On December 29, 2004, the Licensee submitted its renewal application for License No. 01–25316–01. In a letter received on November 1, 2005, submitted in response to an inquiry from the NRC, the Licensee requested an exemption from the requirement in 10 CFR 30.32(g) to list sealed sources by their manufacturer and model number as registered under the provisions of 10 CFR 32.210. In requesting this exemption, the Licensee states that the sole purpose of possessing the sealed sources on this license ''is to be able to remove and store for disposal devices of foreign manufacture which may be contained on, or in, foreign military vehicles or conveyances.'' Furthermore, the Licensee states that it will not know in advance what sources or devices may be received at its facility and that, in the interest of national security and Department of Defense policy, the sources or origination of foreign equipment cannot be revealed. The Licensee states that it immediately surveys all such foreign vehicles for radioactive material and places them in storage for future disposal if radioactive contamination is found.

Need for the Proposed Action

The Licensee receives and takes possession of sealed sources and devices which have not been registered with the NRC under 10 CFR 32.210 or with an Agreement State. As these sources and devices are of foreign manufacture, the Licensee would not be able to continue this activity without this exemption.

Technical Analysis of the Proposed Action

10 CFR 30.11(a) states that the Commission may grant such exemptions from the requirements of the regulations as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. The NRC staff has analyzed the Licensee's request to be authorized to receive and take possession of sealed sources and devices which have not been registered with the NRC under 10 CFR 32.210 or with an Agreement State. The NRC staff considered that the Licensee is qualified by sufficient training and experience and has sufficient facilities and equipment to handle these sources and devices. Furthermore, NRC inspections have evaluated the Licensee's performance and determined that the Licensee has safely handled these unregistered sources for many years. Accordingly, the NRC staff has concluded that granting this exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

Environmental Impacts of the Proposed Action

The proposed action is largely administrative in nature. Approving this exemption will have no environmental impact.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Additionally, denying the exemption 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 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 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 exemption 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. Licensee renewal application dated December 29, 2004 [ML081780249]
2. Licensee letter received November 1, 2005 [ML081780216]

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.resource@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 Region I, 475 Allendale Road, King of Prussia, Pennsylvania this 26th day of June 2008.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–15673 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 10.6, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 10.6, ''Guide for the Preparation of Applications for an Industrial Radiography License,'' was issued with a temporary identification as Draft Regulatory Guide DG–0016. This guide directs the reader to the type of information needed by the NRC staff to evaluate an application for an industrial radiography (radiography) license. The term ''radiography'' as used in this guide means an examination of the structure of materials by nondestructive methods using ionizing radiation from gamma-emitting byproduct materials (radioisotopes) to produce radiographic images. This guide does not address the research and development of radiography devices or associated equipment, or the commercial aspects of manufacturing, distributing, and servicing such devices and equipment.

The regulatory framework that the NRC has established for radiography includes Title 10, Part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' of the *Code of Federal Regulations* (10 CFR part 30); 10 CFR part 34, ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations;'' and NRC Form 313, ''Application for Materials License.''

This regulatory guide endorses the methods and procedures contained in the current revision of NUREG–1556, Volume 2, ''Consolidated Guidance About Material Licenses: Program-Specific Guidance About Industrial

Radiography Licenses,'' as a process that the NRC staff finds acceptable for meeting the regulatory requirements and providing the criteria for evaluating a radiography license application.

II. Further Information

In January 2008, DG–0016 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 10.6, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov*.

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Dated at Rockville, Maryland, this 2nd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15677 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee; Notice of Meeting

The ACRS Subcommittee on Plant Operations & Fire Protection will hold a meeting on July 24, 2007, at the U.S. NRC Region III, 2443 Warrenville Road, Lisle, IL.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday July 24, 2008—8:30 a.m.–2:30 p.m.

The Subcommittee and Region III will discuss implementation of significant safety issues and programs.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maitri Banerjee (telephone 301–415–6973) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 2, 2008.

Christopher L. Brown,

Acting Branch Chief, ACRS.

[FR Doc. E8–15691 Filed 7–9–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2007 Agency Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventory of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental—i.e., inventories of commercial activities. The FAIR Act further requires OMB to review the inventories in consultation with the agencies and publish a notice of public availability in the **Federal Register** after the consultation process is completed. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of inventories from the agencies listed below. These inventories identify both commercial activities and activities that are inherently governmental.

This is the second and final release of the FAIR Act inventories for FY 2007. Interested parties who disagree with the agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may appeal to a higher level within the agency.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html*. This User's Guide will help interested parties review FY 2007 FAIR Act inventories.

Paul A. Denett,

Administrator.

SECOND FAIR ACT RELEASE FY 2007

African Development Foundation	Mr. Larry Bevan, (202) 673–3916 x113, *www.adf.gov*.
American Battle Monuments Commission	Mr. Alan Gregory, (703) 696–6868, *www.abmc.gov/other/fair.htm*.
Arlington National Cemetery	Mr. Rory Smith, (703) 607–8561, *www.arlingtoncemetery.org*.
Armed Forces Retirement Home	Mr. Steven G. McManus, (202) 730–3533, *www.afrh.gov*.
Broadcasting Board of Governors	Ms. Cathy Brown, (202) 203–4608, *www.bbg.gov*.
Consumer Product Safety Commission	Mr. Edward Quist, (301) 504–7655, *www.cpsc.gov*.
Court Services and Offender Supervision Agency for the District of Columbia.	Mr. James Williams, (202) 220–5707, *www.csosa.gov*.
Department of Defense	Ms. Monica Kelliher-Hamby, (703) 602–3666, *web.lmi.org/fairnet*.
Department of Defense (IG)	Mr. Stephen D. Wilson, (703) 604–8306, *www.dodig.mil*.
Department of Energy	Mr. Dennis O'Brien, (202) 586–1690, *www.mbe.doe.gov/me2-1/a76/csa76.htm*.
Department of Labor (IG)	Mr. David LeDoux, (202) 693–5138, *www.oig.dol.gov/2006fair_act.htm*.

SECOND FAIR ACT RELEASE FY 2007—Continued

Department of the Interior (IG)	Mr. Roy Kime, (202) 208–6232, *www.oig.doi.gov*.
Department of Transportation (IG)	Ms. Jacquelyn Weber, (202) 366–1495, *www.oig.dot.gov*.
Department of Veterans Affairs	Ms. Julie Plush, (202) 461–5810, *www.va.gov/op3/*.
Environmental Protection Agency (IG)	Mr. Michael J. Binder (202) 566–2617, *www.epa.gov/oig*.
Federal Mediation and Conciliation Service	Mr. Dan Ellerman, (202) 606–5460, *www.fmcs.gov/internet*.
Federal Election Commission	Ms. Tina VanBrakle, (202) 694–1006, *www.fec.gov/pages/fair.shtml*.
Federal Labor Relations Authority	Ms. Jill Crumpacker, (202) 218–7900, *www.flra.gov*.
Inter-American Foundation	Ms. Linda Kolko, (703) 306–4308, *www.iaf.gov*.
International Trade Commission	Mr. Stephen McLaughlin, (202) 205–3131, *www.usitc.gov*.
Merit Systems Protection Board	Mr. Wade Douglas, (202) 653–6772 x1118, *www.mspb.gov*.
National Endowment for the Humanities	Mr. Barry Maynes, (202) 606–8233, *www.neh.gov*.
National Gallery of Art	Mr. William W. McClure, (202) 312–2760, *www.nga.gov*.
National Labor Relations Board	Ms. Demetria Gregory, (202) 273–0054, *www.nlrb.gov*.
National Labor Relations Board (IG)	Mr. Lester Heltzer, (202) 273–1067, *www.nlrb.gov*.
National Science Foundation	Mr. Joseph Burt, (703) 292–8108, *www.nsf.gov/publications*.
National Transportation Safety Board	Ms. Carol Belovitch, (202) 314–6232, *www.ntsb.gov/info/fair_act_2007.htm*.
Nuclear Regulatory Commission	Ms. Mary Lynn Scott, (301) 415–7305, *www.nrc.gov*.
Nuclear Regulatory Commission OIG	Mr. David Lee, (301) 415–5930, *www.nrc.gov/insp-gen/fairact-inventory.html*.
Office of Management and Budget	Ms. Lauren Wright, (202) 395–3970, *www.whitehouse.gov/omb/procurement/fair/notices_avail.html*.
Office of National Drug Control Policy	Mr. Daniel Petersen, (202) 395–6745, *www.whitehousedrugpolicy.gov*.
Office of the U.S. Trade Representative	Ms. Susan Buck, (202) 395–9412, *www.ustr.gov*.
Peace Corps	Ms. Caroline Allen, (202) 962–1096, *www.peacecorps.gov/index.cfm?shell=pchq.policies.docs*.
Railroad Retirement Board (IG)	Mr. William Tebbe, (312) 751–4350, *www.rrb.gov/mep/oig.asp*.
Securities and Exchange Commission	Mr. Jeffrey Risinger, (202) 551–7446, *www.sec.gov*.
Selective Service System	Mr. Calvin Montgomery, (703) 605–4038, *www.sss.gov*.
Small Business Administration (IG)	Mr. Robert Fisher, (202) 205–6583, *www.sba.gov/ig/OIG_Fair.html*.
U.S. Agency for International Development	Ms. Deborah Lewis, (202) 712–0936, *www.usaid.gov/business/regulations/fair/*.
U.S. Agency for International Development (IG)	Mr. Robert Ross, (202) 712–1331, *www.usaid.gov/oig/public/public1.htm*.
U.S. Patent and Trademark Office	Ms. Delores Padgett, (571) 272–6738, *www.uspto.gov*.
U.S. Trade Development Agency	Ms. Carolyn Hum, (703) 875–4357, *www.tda.gov*.

[FR Doc. E8–15737 Filed 7–9–08; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
"Investor Form" SEC File No. 270–485; OMB Control No. 3235–0547.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC") has submitted to the Office of Management and Budget a request to approve the collection of information discussed below.

Investors who submit complaints, ask questions, or provide tips to the SEC do so voluntarily. To make it easier for the public to contact the agency electronically, the SEC created a series of investor complaint and question web forms. Investors can access these forms through the SEC Center for Complaints and Enforcement Tips at *http://www.sec.gov/complaint.shtml.* The SEC is now going to consolidate those forms into one form (the Investor Form) which will ask for the same information, but also provide several drop down options to choose from in order to categorize the investor's complaint, and possibly provide the investor with information about that issue. The investor will have the same opportunity to describe their complaint, and they will be free to submit it without their name or contact information.

Although the Investor Form provides a structured format for incoming investor correspondence, the SEC does not require that investors use any particular form or format when contacting the agency. To the contrary, investors may submit complaints, questions, and tips through a variety of other means, including telephone, letter, facsimile, or e-mail. Approximately 20,000 investors each year voluntarily choose to use the complaint and question forms.

Investors who choose not to use the Investor Form receive the same level of service as those who do. The dual purpose of the form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of the SEC staff who handle those contacts.

The SEC has used—and will continue to use—the information that investors supply on the complaint and question forms, and the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

As with the previous forms, the Investor Form will ask investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they

can provide, and what, if any, actions they have taken.

Use of the Investor Form is strictly voluntary. Moreover, the SEC does not require investors to submit complaints, questions, tips, or other feedback. Absent the forms, the public still has several ways to contact the agency, including telephone, facsimile, letters, and e-mail. Nevertheless, the SEC created these forms to make it easier for the public to contact the agency with complaints, questions, or tips. The forms further streamline the workflow of SEC staff who record, process, and respond to investor contacts.

The staff of the SEC estimates that the total reporting burden for using the complaint and question forms is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid Office of Management and Budget control number is displayed.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Alexander_T._Hunt@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director and Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to *PRA_mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15640 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ab2–1, Form CA–1; SEC File No. 270–203; OMB Control No. 3235–0195.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ab2–1 and Form CA–1: Registration of Clearing Agencies (17 CFR 240.17Ab2–1).

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) Determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 (''Exchange Act''), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently approximately six operational clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $18,000.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 2, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15641 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–3(b); SEC File No. 270–424; OMB Control No. 3235–0473.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–3(b) (17 CFR 240.17Ad–3(b)).

Rule 17Ad–3(b) requires registered transfer agents that for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to

process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards, then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions for 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 2, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15642 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–7; SEC File No. 270–470; OMB Control No. 3235–0529.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17f–7 (17 CFR 270.17f–7) permits funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[1] Rule 17f–7 contains some ''collection of information'' requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the funds obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that each of approximately 828 investment advisers[2] would make an average of 7 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response would take 5.5 hours, requiring a total of approximately 38.5 hours for each adviser. The total annual burden associated with these requirements of the rule would be approximately 31,878 hours (828 advisers × 38.5 hours per adviser). The staff further estimates that during each year, each of approximately 15 global custodians would make an average of 4 responses to analyze custody risks and

[1] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23815 (April 29, 1999) (64 FR 24489 (May 6, 1999)).

[2] At the start of 2008, there were more than 9300 open-end (including ETFs) portfolios and closed-end funds. These entities were managed or sponsored by more 828 investment advisers.

provide notice of any material changes to custody risk under the rule. The staff estimates that each response would take 250.25 hours, requiring approximately 1001 hours annually per custodian.[3] The total annual burden associated with these requirements of the new rule would be approximately 15,015 hours (15 custodians × 1001 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 46,893 hours (31,878 + 15,015). The total annual cost of burden hours is estimated to be $10,081,302 (31,878 × $239 for a portfolio manager, plus 15,015 hours × $164/hour for a trust administrator's time).[4] The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

[3] These estimates are based on conversations with representatives of the fund industry and global custodians.

[4] The salaries for a portfolio manager and a trust administrator are from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Dated: July 2, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15643 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 10A–1; SEC File No. 270–425; OMB Control No. 3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10A–1 (17 CFR 240.10A–1) implements the reporting requirements in Section 10A of the Exchange Act (15 U.S.C. 78j–1), which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67, 109 Stat 737. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*).

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15676 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–2(d); SEC File No. 270–36; OMB Control No. 3235–0028.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 17f–2(d) (17 CFR 240.17f–2(d)).

Rule 17f–2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the

rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') be maintained, (ii) permits the designated examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purpose for Rule 17f–2 is: (i) To identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprints are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 5,984 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 62 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of approximately 2 hours per respondent or a total annual burden of approximately 11,968 hours on all respondents, collectively. All records subject to the rule must be retained for the term of employment plus 3 years.

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. Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 7, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15683 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58083; File No. SR–Amex–2008–57]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot Program

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one year, through July 10, 2009, its pilot program allowing the listing and trading of options series that expire at the close of business on the last business day of a calendar quarter (the ''Pilot Program''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the Pilot Program from July 10, 2008, through and including July 10, 2009.

The Pilot Program was originally approved by the Commission in July 2006,[5] and subsequently extended in July 2007.[6] The Pilot Program permits the Amex to accommodate the listing and trading of options series that expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series''). The Exchange as well as the other options exchanges recently amended the Pilot Program to permit the listing of additional Quarterly Options Series relating to exchange-traded fund (''ETF'') shares.[7]

The Exchange submits that Quarterly Options Series are beneficial to the marketplace and provide investors an additional risk management tool. Amex Rules 900(b)(45) and 900C(c)(26) define ''Quarterly Options Series'' as a series of an options class or an index options class, respectively, that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter. Quarterly Options Series are limited to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54137 (July 12, 2006), 71 FR 41283 (July 20, 2006) (SR–Amex–2006–67).

[6] *See* Securities Exchange Act Release No. 56032 (July 9, 2007), 72 FR 38634 (July 13, 2007) (SR–Amex–2007–66).

[7] *See* Securities Exchange Act Release No. 57581 (March 31, 2008), 73 FR 18593 (April 4, 2008) (SR–Amex–2008–31) (''Pilot Expansion''). The Pilot Expansion permits the listing of additional series and establishes a delisting policy for outlying series with no open interest.

options classes that are either stock index options or options on ETF shares and can be opened on a business day (''Quarterly Options Opening Date''). Commentary .09 to Amex Rule 903 and Amex Rule 903C(a)(iv) set forth the requirements for listing such options on the Exchange. Specifically, the Exchange lists series that expire at the end of the next four consecutive calendar quarters, as well as the fourth quarter of the next calendar year.

The Exchange has submitted a report (''Report'') providing data regarding the Pilot Program as required in the original approval of the Pilot Program [8] as amended by the Pilot Expansion.[9] Under the terms of the Pilot Program, the Exchange selected (5) option classes on which Quarterly Options Series may be opened on any Quarterly Options Opening Date. Also under the terms of the Pilot Program, the Exchange may list those Quarterly Options Series on any option class that is selected by another securities exchange with a similar Pilot Program under its rules.

As noted in the Report, the Exchange has not selected any additional ETF or stock index options for the Pilot at this time. As the data in the Report indicate, the Amex volume trends in Quarterly Options Series as compared to all options in the Pilot securities show higher utilization rates throughout the year. Specifically, an examination of monthly volume in Quarterly Options Series as compared to all options in the Pilot Program securities shows a monthly average of 7.5% or 335,383 contracts per month. Notable are the higher utilization rates seen in the calendar quarters of December 2007 and May 2008 that were 12.94% and 21.53%, respectively. The Exchange believes that the December 2007 figures demonstrate that Quarterly Options Series increasingly are used by participants looking to hedge exposures through the end of a given calendar quarter. With respect to the large increase in utilization of Quarterly Options Series during May 2008, the data indicate that the primary reason is due to trading in Select Energy SPDR options (XLE). The Exchange submits that based on greater volatility and price increases in recent months in the energy commodities sectors, XLE has concurrently shown increased interest and trading by investors.

In connection with open interest, the Report reveals that, on average, Quarterly Options Series account for 15% of total open interest in Pilot Program securities. The open interest in Quarterly Options Series has generally trended higher during the time period evaluated. The December 2007 and March 2008 open interest in Quarterly Options Series were markedly higher, at 18.2% and 18.1% of total options open interest, respectively.

Accordingly, the Exchange believes that an extension of the Pilot Program for one year, through July 10, 2009, is warranted in order to satisfy the institutional demand for such options and provide additional flexibility as well as an additional risk management tool to investors.

The Exchange notes that it possesses the adequate systems capacity to support the trading of Quarterly Options Series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of Act [10] in general and furthers the objectives of Section 6(b)(5) of the Act [11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange further believes that an extension of the Quarterly Options Series Pilot Program will benefit the marketplace and continue to provide investors additional risk management tools.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow the Exchange to continue the existing Quarterly Options Series Pilot Program without interruption.[14] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the

[8] The Report submitted to the Commission is required to include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity on the Amex, OPRA and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed such problems; (5) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

[9] In connection with the Pilot Expansion (*see supra* note 7), the Commission required that the Report also include an analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually de-listed during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain Quarterly Options Series strikes that were otherwise eligible for delisting.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–57. 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–Amex–2008–57 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15636 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58084; File No. SR–Amex–2008–55]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Option Series Pilot Program

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the period for its Short Term Option Series pilot program (the ''Pilot Program'') for an additional year, through July 12, 2009. The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005, the Commission initially approved the Pilot Program.[5] On July 11, 2007, the Pilot Program was extended through July 12, 2008.[6] The Exchange now proposes to extend the Pilot Program for an additional year, through July 12, 2009. The Pilot Program allows the Amex to list and trade options series that expire one week after the date on which the series is opened (''Short Term Option Series'').

The Exchange believes that Short Term Option Series may provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, however, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices.

In its original proposal to establish the Pilot Program, the Exchange stated that if it were to propose an extension of the program, the Amex would submit a Pilot Program report (''Report'') that would provide analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. Because the Exchange has yet to list any Short Term Option Series during the Pilot Program, there is no data available to prepare the Report at this time, and accordingly, the Exchange has not submitted a Report with this proposal to extend the Pilot Program.

The Exchange notes that it possesses the adequate systems capacity to trade

[5] *See* Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR–Amex–2005–035).

[6] *See* Securities Exchange Act Release No. 56046 (July 11, 2007), 72 FR 39105 (July 17, 2007) (SR–Amex–2007–62).

any Short Term Options Series, should any be listed in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general and furthers the objectives of Section 6(b)(5) of the Act[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that continuing the Pilot Program for Short Term Option Series can stimulate customer interest in options and provide a flexible and valuable tool to manage risk exposure, minimize capital outlays and be more responsive to the timing of events affecting the securities that underlie option contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow Amex to continue the existing Pilot Program without interruption.[11] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–55. 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–Amex–2008–55 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15637 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58086; File No. SR–Amex–2008–52]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Linkage Fee Pilot Program

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2008, the American Stock Exchange, LLC (''Amex'' 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 substantially by the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 extend for one (1) year through July 31, 2009, the current pilot program (''Pilot Program'') regarding transaction fees for trades executed through the intermarket options linkage (''Linkage''). The text of the proposed rule change is available at *www.amex.com*, the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to extend for one (1) year through July 31, 2009, the current Pilot Program establishing Exchange fees for Principal Orders (''P Orders'') and Principal Acting As Agent Orders (''P/A Orders'') submitted through the Linkage. This proposal does not make any substantive changes to the existing Pilot Program, other than to extend its operation through July 31, 2009. The fees in connection with the Pilot Program are scheduled to expire on July 31, 2008.[3]

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) $0.10 per contract side options transaction fee for equity options, exchange traded fund share (''ETF'') options and trust issued receipt (HOLDR) options, (ii) $0.21 per contract side options transaction fee for index options, (iii) $0.05 per contract side options comparison fee, (iv) $0.05 per contract side options floor brokerage fee, and (v) an options licensing fee for certain ETF and index option products ranging from $0.16 per contract side to $0.05 per contract side depending on the particular ETF or index option.[4] These are the same fees charged to specialists and registered option traders (''ROTs'') for transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through the Linkage.

The Options Fee Schedule also provides that automatically executed Linkage Orders (except Satisfaction Orders) are subject to the ''BD Auto-Ex Fee'' set forth in Section VII of the Fee Schedule.[5] As a result, the Linkage Orders (except Satisfaction Orders) received by the Exchange from a non-member market maker (*i.e.* an away market maker) that are automatically executed are charged (i) a $0.50 per contract side options transaction fee, (ii) a $0.05 per contract side options comparison fee and (iii) a $0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee for Linkage Orders received by a non-member market maker that is automatically executed is $0.60 per contract side.[6]

As was the case in the original Pilot Program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to Linkage executions resulting from P/A and P Orders.

Based on experience to date, the Exchange believes that an extension of the Pilot Program for one (1) year through July 31, 2009 is appropriate.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act[7] regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities. The Exchange believes that an extension of the existing Linkage fee Pilot Program is consistent with Section 6(b)(4) and equitably allocates fees to those non-member market makers executing orders on the Exchange through the Linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because: (i) It does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.[10]

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–Amex–2008–52 on the subject line.

[3] *See* Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR–Amex–2007–64).

[4] *See* the Options Licensing Fee section of the Amex Options Fee Schedule available at *www.amex.com.*

[5] The BD Auto-Ex Fee provides that broker-dealer orders that are automatically executed on the Exchange are subject to (i) a $0.50 per contract side options transaction fee for equity options, ETF share options, trust issued receipt (HOLDR) options and index options, (ii) $0.05 per contract side options comparison fee and (iii) $0.05 per contract side options floor brokerage fee.

[6] *See* Securities Exchange Act Release No. 57589 (April 1, 2008), 73 FR 18827 (April 7, 2008) (SR–Amex–2008–09).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Exchange satisfied this pre-filing requirement.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–52. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–52 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15638 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58082; File No. SRVBSE–2008–35]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Current Pilot Program for Linkage Fees on the Boston Options Exchange Facility

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2008, the Boston Stock Exchange, Inc. (''BSE'' 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Fee Schedule of the Boston Options Exchange (''BOX''), the options trading facility of the BSE, to extend until July 31, 2009, the current pilot program applicable to the options intermarket linkage (''Linkage'') fees. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.bse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fees for Principal (''P'') and Principal Acting as Agent (''P/A'') Orders[3] executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2008.[4] The Exchange proposes to extend the current pilot program for such Linkage fees through July 31, 2009. The Exchange is not proposing any changes other than changing the date. Because all Linkage orders received by BOX are for the account of a market maker on another exchange, Linkage fees that are applicable to P and P/A orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any other BOX trade. Consistent with the Linkage Plan, no fees will be charged to a party sending a Satisfaction Order to BOX. Rather, a fee will be charged to the BOX Participant that was responsible for the trade-through that caused the Satisfaction Order to be sent.

The Exchange believes that extending the Linkage fee pilot program until July 31, 2009 will give the Exchange and the Commission additional time and opportunity to evaluate the appropriateness of Linkage fees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the

[3] Under Section 1(j) of Chapter XII of the BOX Rules, a ''Linkage Order'' means an Immediate or Cancel order routed through Linkage. There are three types of Linkage Orders:

(i) ''P/A Order,'' which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;

(ii) ''P Order,'' which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade Through.

[4] *See* Securities Exchange Act Release No. 56167 (July 30, 2007), 72 FR 43302 (August 3, 2007) (SR–BSE–2007–33). *See also* Securities Exchange Act Release No. 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR–BSE 2006–26); Securities Exchange Act Release No. 52147 (July 28, 2005) 70 FR 44706 (August 3, 2005) (SR–BSE 2005–28).

[5] 15 U.S.C. 78f(b).

Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change will preserve the status quo of the pilot program without interruption as the Commission further reviews the area of Linkage fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[7] and Rule 19b–4(f)(6) thereunder.[8] This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Exchange Act.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Exchange has satisfied this pre-filing requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2008–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–35. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–35 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15625 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58088; File No. SR–CBOE–2008–16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Reduce Certain Order Exposure Times From Three Seconds to One Second

July 2, 2008.

I. Introduction

On May 16, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce certain order exposure times from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on May 30, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to reduce the order handling and exposure periods contained in Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, 6.74A, *Automated Improvement Mechanism (''AIM'')*, and 6.74B, *Solicitation Auction Mechanism*, from three seconds to one second.

Rules 6.45A and 6.45B provide that an order entry firm may not execute an order it represents as agent with a facilitation or solicited order (referred to herein as ''crossing orders'') using the Hybrid Trading System (''Hybrid'') unless it first complies with the three-second exposure requirement. Specifically, order entry firms may not execute a facilitation cross unless: (i)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57849 (May 22, 2008), 73 FR 31167 (May 30, 2008).

The agency order is first exposed on Hybrid for at least three seconds; (ii) the order entry firm has been bidding or offering for at least three seconds prior to receiving the agency order that is executable against such bid or offer; or (iii) the order entry firm proceeds in accordance with the floor-based open outcry crossing rules contained in CBOE Rule 6.74, *Crossing Orders*. Similarly, order entry firms may not execute an order they represent as agent against orders solicited from members and non-member broker-dealers unless the agency order is first exposed on Hybrid for at least three seconds. During this three-second exposure period for crossing orders, other members may enter orders to trade against the exposed order. CBOE proposes to reduce these exposure periods to one second.

Rule 6.74A provides that orders entered into AIM must be exposed for a random time period that is not less than three seconds and not more than five seconds, to provide an opportunity for additional trading interest to be entered before the orders are automatically executed. Rule 6.74B provides that orders entered into the Solicitation Auction Mechanism (the ''SAM Auction'') must be exposed for a three second period, also to provide an opportunity for additional trading interest to be entered before the orders are automatically executed. CBOE proposes to reduce the exposure period for AIM and the exposure period for the SAM Auction to one second.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with section 6(b)(8) of the Act,[6] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, in the electronic environment of Hybrid, reducing each of the exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide participants in Hybrid with an opportunity to compete for exposed bids and offers. According to the Exchange, numerous CBOE market participants have the capability to and do opt to respond within a one-second exposure period on its Hybrid trading platform. Specifically, the Exchange noted that the exposure and allocation timers for the Exchange's Hybrid Agency Liaison (''HAL'') mechanism, which employs the same type of mechanical messaging as the AIM and SAM Auction mechanisms, are currently both set at 0.300 seconds and numerous market participants can and do opt to respond to HAL exposure messages within this time frame. The Exchange also noted that market participants receive mechanically messaged information about book updates, and are able to and do opt to automatically submit orders and quotes in response to those book updates on the Hybrid trading system, in substantially the same manner as they would respond to a HAL message. Accordingly, the Commission believes that it is consistent with the Act for these order exposure times to be reduced from three seconds to one second.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2008–16) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15628 Filed 7–9–08; 8:45 am]

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[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58076; File No. SR–CBOE–2008–66]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Appointment Cost of RVX and VXN Options

July 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2008, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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 amend CBOE rules relating to the appointment cost for options on the CBOE Russell 2000 Volatility Index (RVX) and options on the CBOE Nasdaq 100 Volatility Index (VXN). 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, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below,

[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).

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

The purpose of this proposed rule change is to amend CBOE Rule 8.3 relating to the appointment cost for options on the CBOE Russell 2000 Volatility Index (RVX) and options on the CBOE Nasdaq 100 Volatility Index (VXN). Presently, RVX and VXN each have an appointment cost of .25. CBOE proposes to reduce the appointment cost of RVX and VXN such that they would fall within one of the six tiers according to trading volume, and be subject to the quarterly rebalancing of the tiers that CBOE conducts. It is currently anticipated that each would be placed in Tier F and have an appointment cost of .001. CBOE is proposing to lower the appointment cost in these two option classes in light of their trading volume, which CBOE does not believe justifies a weighting of .25. Also, CBOE believes it would be appropriate for these two classes to be subject to the quarterly rebalancing of the tiers.

Members then could utilize the excess membership capacity to hold an appointment and quote electronically in an appropriate number of Hybrid 2.0 option classes, which promotes competition and efficiency.

2. Statutory Basis

The Exchange 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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[6] 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. Lowering the appointment cost for RVX and VXN options promotes competition and efficiency by allowing Market-Makers to utilize their excess membership capacity to trade other option classes.

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 rule 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of 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 No. SR–CBOE–2008–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–66. 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 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–2008–66 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon

Acting Secretary.

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BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange satisfied this pre-filing requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58087; File No. SR–CHX–2008–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified By Amendment No. 1 Thereto, Relating to Equity-Linked Debt Securities

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2008, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. On June 25, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 26 under Article 22 of the CHX Rules (''Rule 26'') to clarify that the trading of equity-linked debt securities (''ELDS'') is pursuant to Rule 19b–4(e) under the Act.[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.chx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CHX 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

CHX proposes to amend Rule 26 to clarify that the trading of ELDS is pursuant to Rule 19b–4(e) under the Act. Rule 26 currently provides for the trading of ELDS whether by listing or pursuant to unlisted trading privileges. This rule change would further clarify that the trading of ELDS is pursuant to Rule 19b–4(e) under the Act. Through this filing, the Exchange would change its rules to reflect this clarification.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by allowing CHX to amend its rules to clarify that the listing and trading of ELDS is pursuant to Rule 19b–4(e) under the Act and to conform CHX's rules to those of other exchanges.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. 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–CHX–2008–11 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–CHX–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2008–11 and should be submitted on or before July 31, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register** . The proposal seeks to clarify that the Exchange's listing and trading of ELDS under Rule 26 is subject to Rule 19b–4(e) under the Act. The Commission does not believe that this clarification raises any novel regulatory issues. Therefore, the Commission believes that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See e.g.*, Chicago Board Options Exchange Rule 31.5(I); Paragraph 703.21 of the New York Stock Exchange Listed Company Manual; Nasdaq Rule 4420(g); and Philadelphia Stock Exchange Rule 803(h).

[7] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

accelerating approval of this proposal is appropriate and would ensure that the Exchange's rules clearly reflect the standards for listing and trading of ELDS and conform CHX's rules to those of other exchanges without delay.[9]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as modified (SR–CHX–2008–11), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15639 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[9] *See supra,* note 6.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58095; File No. SR–FINRA–2008–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade), 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and 2290 (Fairness Opinions) as FINRA rules in the consolidated FINRA rulebook without material change and to delete Incorporated NYSE Rule 401(a) (Business Conduct), Incorporated NYSE Rule 435 (Miscellaneous Prohibitions), with the exception of paragraph (5), and NYSE Rule Interpretations 401/01 and 401/02. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rules 2110, 2120, and 2290 as FINRA Rules 2010, 2020, and 5150, respectively, in the Consolidated FINRA Rulebook. The rules would be adopted without change, with the exception of renumbering the rules to reflect the new organizational structure of the Consolidated FINRA Rulebook.[4] The proposed rule change would also delete Incorporated NYSE Rule 401(a) (including two accompanying Interpretations to the rule) and certain provisions of Incorporated NYSE Rule 435 from the Transitional Rulebook.

a. FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)

The proposed rule change would transfer NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010. Incorporated NYSE Rule 401 (including two accompanying Interpretations to the rule) would be deleted from the Transitional Rulebook.

Section 15A(b)(6) of the Act requires that FINRA design its rules to ''promote just and equitable principles of trade.''[5] The Act's mandate is reflected in NASD Rule 2110, which requires that members, in the conduct of their business, observe high standards of commercial honor and just and equitable principles of trade. This general ethical standard articulated in NASD Rule 2110 is broader and provides more flexibility than prescriptive regulations and legal requirements. NASD Rule 2110 protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. NASD Rule 2110 has proven effective through nearly 70 years of regulatory experience.

The Incorporated NYSE Rules also include general ethical rules and associated rule interpretations that correspond to NASD Rule 2110 and other provisions in the FINRA rulebook. Specifically:

- *Good Business Practice:* Using somewhat different language than NASD Rule 2110, Incorporated NYSE Rule 401(a) requires members at all times to adhere to the principles of good business practice in the conduct of their business affairs.[6] This overarching

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] This proposal does not address the Interpretive Materials (''IMs'') to NASD Rule 2110, which FINRA advises will be considered in a later phase of the rulebook consolidation process. Consequently, the IMs would remain in the Transitional Rulebook. Telephone conference between Brant Brown, Associate General Counsel, FINRA, Mia Zur, Senior Special Counsel, and Linda Jeng-Braun, Attorney, Commission, on June 27, 2007.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] In addition to the general good business practice requirement in Incorporated NYSE Rule 401(a), paragraph (b) of the rule requires that members maintain written policies and procedures, administered pursuant to the internal control requirements of Incorporated NYSE Rule 342.23, with respect to transmittals of funds or securities, customer changes of address, and customer changes of investment objectives. These provisions duplicate requirements under NASD Rule 3012(a)(2)(B), for which FINRA has requested comments on proposals to relocate them to the supervision rule in the Consolidated FINRA Rulebook. *See Regulatory Notice* 08–24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) (''*Supervision Notice*'').

ethical requirement is subsumed under NASD Rule 2110.

• *Firm/Personal Trading:* Incorporated NYSE Rule Interpretation 401/01 addresses ethical considerations in connection with transactions by a member or its personnel shortly before or after the member issues a purchase or sale recommendation. These considerations are subsumed under NASD Rules 2110 and 2120.[7]

• *Private Sales:* Incorporated NYSE Rule Interpretation 401/02 broadly addresses the obligation of members to monitor the activities of associated personnel with respect to their marketing of securities through private sales. These obligations are addressed by the requirements in NASD Rule 3040 and Incorporated NYSE Rules 407(b) and 407.11.[8]

For the reasons discussed above, FINRA is proposing to transfer NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 with no changes. In addition, FINRA is proposing to delete from the Transitional Rulebook Incorporated NYSE Rule 401(a) and Incorporated NYSE Rule Interpretations 401/01 and 401/02.[9]

b. FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

The proposed rule change would transfer NASD Rule 2120, which is FINRA's general antifraud provision, into the Consolidated FINRA Rulebook as FINRA Rule 2020 with no changes to the rule text. The proposed rule change would also delete Incorporated NYSE Rule 435 (with the exception of paragraph (5)) from the Transitional Rulebook.

NASD Rule 2120, which has remained unchanged for nearly 70 years, states in its entirety that ''[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance.'' FINRA has used this broad antifraud rule to address a wide variety of manipulative, deceptive, and fraudulent misconduct, including market manipulation,[10] excessive trading,[11] insider trading,[12] and fraudulent misrepresentation.[13] Given the rule's broad reach and substantial history, FINRA believes the rule should be transferred unchanged into the Consolidated FINRA Rulebook as FINRA Rule 2020.

Although there is no identical NYSE rule equivalent to NASD Rule 2120, Incorporated NYSE Rule 435 includes three provisions that prohibit specific manipulative and fraudulent misconduct that would generally also violate NASD Rules 2110 or 2120. In addition, these provisions of Incorporated NYSE Rule 435 are duplicative of provisions in NASD Rule 5120.[14]

• Incorporated NYSE Rule 435(1) prohibits excessive trading by a member for accounts in which the member is directly or indirectly interested if the trading is ''excessive in view of his or its financial resources or in view of the market for such security.''

• Incorporated NYSE Rule 435(3)[15] prohibits buying or selling a security at successively higher or lower prices, respectively, for the purpose of improperly influencing the market price of the security or ''making a price which does not reflect the true state of the market in such security.''

• Incorporated NYSE Rule 435(4) prohibits: (1) Direct or indirect participation in a manipulative operation, (2) having any interest in the profits of a manipulative operation, and (3) managing or financing a manipulative operation.

Because these three provisions are duplicative of existing NASD rules that FINRA is proposing to transfer into the Consolidated FINRA Rulebook, the proposed rule change would delete these three provisions from the Transitional Rulebook.[16]

For the reasons discussed above, FINRA is proposing to transfer NASD Rule 2120 into the Consolidated FINRA Rulebook as FINRA Rule 2020 with no changes. In addition, FINRA is proposing to delete Incorporated NYSE Rule 435 (with the exception of paragraph (5) and its related Interpretation) from the Transitional Rulebook.

c. FINRA Rule 5150 (Fairness Opinions)

The proposed rule change would transfer NASD Rule 2290 into the Consolidated FINRA Rulebook as FINRA Rule 5150 with no changes to the rule text.

NASD Rule 2290 requires specific disclosures and procedures addressing the conflicts of interest that arise when a broker-dealer provides a fairness opinion in a change of control transaction, such as a merger or sale or purchase of assets. The disclosures required by the rule are aimed at informing investor shareholders of potential conflicts, such as whether a member has acted as a financial advisor to any party to the transaction that is the subject of the fairness opinion, and if so, whether it will receive compensation contingent on the successful completion

[7] In addition, Incorporated NYSE Rule Interpretation 401/01 includes an unrelated, obsolete template relating to the identification of counterfeit stock certificates and a cross-reference provision reminding firms of the personal trading restrictions for research analysts under Incorporated NYSE Rule 472(e).

[8] FINRA has requested comment on a proposal for the provisions concerning private securities transactions in NASD Rule 3040 and Incorporated NYSE Rules 407(b) and 407.11 to be rewritten and relocated to the supervision rule in the Consolidated FINRA Rulebook. *See Supervision Notice.*

[9] In addition to Incorporated Rule Interpretations 401/01 and 401/02, discussed above, there are two other interpretations under Incorporated NYSE Rule 401. Incorporated NYSE Rule Interpretations 401/03 and 401/04 address member notification requirements in the event of certain organizational or operational changes, such as mergers with or acquisitions of other broker-dealers, or certain conditions that a member organization reasonably believes could lead to capital, liquidity or similar problems. FINRA will be considering the requirements of these remaining two interpretations as part of a later phase of the rulebook consolidation process. Consequently, the proposed rule change would not delete these two interpretations from the Transitional Rulebook.

[10] *See, e.g.,* Terrance Yoshikawa, Securities Exchange Act Release No. 53731 (April 26, 2006), 87 SEC Docket 2924 (finding that the Applicant, by engaging in a repeated and intentional pattern of market manipulation, had violated Section 10(b) of the Act and Rule 10b–5 thereunder, as well as NASD Rule 2120).

[11] *See, e.g.,* Michael T. Studer and Castle Securities Corp., 84 S.E.C. 911 (2004) (affirming NASD's decision that the Applicants violated NASD Rules 2510, 2120, and 2110 by churning a customer's account).

[12] *See, e.g.,* Sidney C. Eng, 67 S.E.C. 2175 (1998) (finding that a preponderance of the record evidence established that, as found by the NASD, the Applicant purchased stock on the basis of material, non-public information and, thus, violated Article III, Sections 1 and 18 (which have been renumbered as NASD Rules 2110 and 2120)).

[13] *See, e.g., Dane S. Faber,* 82 S.E.C. 530 (2004) (affirming NASD's finding that the Applicant violated Section 10(b) of the Act and Rule 10b–5 thereunder, and NASD Rules 2110 and 2120 by making misrepresentations and omitting material facts).

[14] *See* NASD Rule 5120(a), (c), and (d). FINRA has proposed transferring NASD Rule 5120 into the Consolidated FINRA Rulebook as FINRA Rule 6140. See SR–FINRA–2008–021. Paragraph (5) of Incorporated NYSE Rule 435 concerning the circulation of rumors has no precise equivalent in NASD Rule 5120; however, NASD Rule 5120(e) is similar in nature. The proposed rule change does not address Incorporated NYSE Rule 435(5) or its related Interpretation, which FINRA advises will be considered during a later phase of the rulebook consolidation process.

[15] NYSE deleted paragraph (2) of NYSE Rule 435 in 1968 and left the paragraph reserved; thus, there is no rule text for Incorporated NYSE Rule 435(2).

[16] Incorporated NYSE Rule 435 also includes two other miscellaneous provisions directed at specific issues: (1) A provision in paragraph (6) preventing the reopening of certain contracts for improper purposes, and (2) a provision in paragraph (7) preventing certain types of loans. FINRA believes that these two provisions are obsolete, and the proposed rule change would also delete these provisions from the Transitional Rulebook. The provisions of the Federal Reserve Board's Regulation T, which governs credit by broker-dealers, would continue to apply to broker-dealers.

of the transaction. The rule also requires disclosure by a member of other significant contingent payments; material relationships with any parties to the transaction; whether information used by the member has been independently verified; whether the opinion expresses an opinion about the fairness of the compensation to officers, directors or employees, relating to that received by public shareholders; and whether the opinion was approved or issued by a fairness committee.

Additionally, NASD Rule 2290 requires that any member issuing a fairness opinion must have written procedures for approval of a fairness opinion. The procedures must address the types of transactions and the circumstances in which the firm will use a fairness committee to approve or issue a fairness opinion, and in those transactions in which it uses a fairness committee: (1) The process for selecting personnel to be on the fairness committee; (2) the necessary qualifications of persons serving on the fairness committee; and (3) the process to promote a balanced review by the fairness committee, which shall include the review and approval by persons who do not serve on the deal team to the transaction. Members are also required to have a process to determine whether the valuation analyses used in the fairness opinion are appropriate.

NASD Rule 2290 was approved by the Commission in October 2007, and was the product of extensive notice and comment rulemaking over a period of several years.[17] FINRA solicited comment on proposed NASD Rule 2290 in a Notice to Members issued in 2004.[18] FINRA modified the proposed rule based upon the comments received, and the Commission published the proposal for comment in the **Federal Register** in 2006.[19] The final rule reflects additional changes based upon the comments received by the Commission.[20] Consequently, the proposed rule filing would transfer NASD Rule 2290 into the Consolidated FINRA Rulebook as FINRA Rule 5150.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to transfer the rule requiring adherence to just and equitable principles of trade and the rule prohibiting fraudulent and manipulative acts and practices is necessary so that FINRA can continue to enforce these overarching provisions that express FINRA's core regulatory objectives and allow FINRA to effectively protect investors and the public interest. FINRA also believes that the provisions of NASD Rule 2290 benefit investors and the public interest by requiring the disclosure of conflicts of interest in connection with fairness opinions and procedures designed to mitigate those conflicts.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–028 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–FINRA–2008–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–028 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15696 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* Securities Exchange Act Release No. 56645 (October 11, 2007), 72 FR 59317 (October 19, 2007) (SR–NASD–2005–080).

[18] *See* NASD Notice to Members 04–83 (November 2004).

[19] *See* Securities Exchange Act Release No. 53598 (April 4, 2006), 71 FR 18395 (April 11, 2006) (SR–NASD–2005–080).

[20] *See* Securities Exchange Act Release No. 56645 (October 11, 2007), 72 FR 59317 (October 19, 2007) (SR–NASD–2005–080).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58091; File No. SR–ISE–2008–55]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Fee Changes

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2008, International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. ISE filed the proposal pursuant to Section 19(b)(3)(A) of the Act[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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees related to options market maker transaction fees. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its transaction fees applicable to options market makers on the ISE and options market makers on other options exchanges. With respect to ISE market makers, the Exchange proposes to adopt a per contract transaction fee that is based on the number of contracts the ISE market maker trades in a month as follows:

- First 1,000,000 contracts in a month—$0.18 per contract.
- 1,000,001 to 3,000,000 contracts in a month—$0.16 per contract.
- 3,000,001 to 5,000,000 contracts in a month—$0.13 per contract.
- 5,000,001 to 10,000,000 contracts in a month—$0.03 per contract.
- Above 10,000,000 contracts in a month—$0.01 per contract.

The sliding scale applies to all ISE market makers for transactions in all products, is calculated on a member firm basis,[5] and applies to non-discounted volume only; that is, it does not apply to orders previously discounted by other pricing incentives that currently appear on the Exchange's Schedule of Fees. Previously, the Exchange had applied a sliding scale that was based upon the Exchange's overall averaged daily volume (''ADV''). The ADV-based method reduced the ISE market maker transaction fee for all members, regardless of the volume executed by any individual member. Under this proposal, ISE market maker fees are reduced on the member firm level as a volume discount.

The Exchange also proposes to increase the transaction fee charged to members to execute orders for the account of options market makers on other exchanges. Under this proposal, the ''non-ISE market maker fee,'' previously set at $0.40 per contract, has been increased to $0.45 cents per contract.[6] These changes became operative on July 1, 2008.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement of Section 6(b)(4)[7] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that it has not solicited, and does not intend to solicit, comments on this proposed rule change. Additionally, the Exchange states that it has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee, or other charge imposed on members by ISE. Accordingly, the proposal is effective upon filing with the Commission. 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–ISE–2008–55 on the subject line.

[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).

[5] If a member firm operates more than one market maker membership, all of the member firm's market maker volume will be aggregated for purposes of the market maker transaction fee.

[6] ISE's non-ISE market maker fee is currently $0.37 cents plus a $0.03 comparison fee. *See* Securities Exchange Act Release No. 55897 (June 12, 2007), 72 FR 33546 (June 18, 2007) (SR–ISE–2007–41). The Exchange consolidated these two fees in SR–ISE–2008–54, so that the total non-ISE market maker fee is represented as $0.40 on the Exchange's schedule of fees.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

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–ISE–2008–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–55 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15650 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58081; File No. SR–NASDAQ–2008–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Fees for Members Using the NASDAQ Options Market

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act[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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 7050 governing pricing for Nasdaq members using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. Nasdaq will implement the proposed rule change on July 1, 2008. The text of the proposed rule change is available at *http://www.complinet.com/nasdaq*, the principal offices of the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to modify the fees assessed for execution of options orders entered into NOM but routed to away markets. Nasdaq currently assesses a routing fee based upon an approximation of the cost to Nasdaq of executing such orders at those markets. In order to reflect Nasdaq's cost of execution at away markets, the fees are separated by type of option (penny pilot, equity/non-penny pilot, ETF or HLDS/non-penny pilot, and Index) and vary depending upon whether the order is being routed for a customer, a member firm, or a registered market maker. In addition, Nasdaq passes through surcharges that are assessed by other markets for the execution of specific options orders on specific underlying instruments.

Nasdaq has determined that the superior approach is to pass through to exchange members the actual fees assessed by away markets plus the clearing fees for the execution of orders routed from Nasdaq. Nasdaq has collected and organized in chart format the fees to be assessed for routing to each destination exchange. These fees include both the execution fees charged by the individual exchanges and also the clearing fees associated with each execution. Nasdaq believes that these routing fees are inherently competitive, fair and reasonable, and non-discriminatory in that they replicate the fees assessed by away markets executing orders routed from Nasdaq. As with all fees, Nasdaq may adjust these routing fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls.

Nasdaq is one of seven options markets in the national market system for standardized options. Joining

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

Nasdaq and electing to trade options is entirely voluntary. Under these circumstances, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. The various exchanges have filed these fees with the Commission and it is reasonable for Nasdaq to pass those fees through to its members. As such, Nasdaq believes that its fees are fair and reasonable and consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–058. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2008–058 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15624 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58093; File No. SR–NASDAQ–2008–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to NASDAQ Rules Governing Options Trading

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to make minor and technical corrections to its rules for the NASDAQ Options Market (''NOM'').[5] The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://www.complinet.com/nasdaq*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and 2007–080).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2008, the Commission approved SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, proposals to create NOM. Nasdaq has identified six minor and technical modifications to the rules governing NOM.

(1) Nasdaq is proposing to modify the Table of Contents for the options rules to conform it to the titles of the previously approved rules.

(2) Nasdaq is proposing to modify Chapter IV, Section 3(i) to eliminate the limitation of underlying Fund Shares securities to those based on ''broad based'' indexes. Nasdaq is proposing to conform its rule to the rules of other options exchanges that permit them to trade Fund Shares (including exchange traded funds) based on any index.[6] The four conditions for listing underlying Fund Shares set forth in Section 3(i) will remain unchanged. Nasdaq represents that it has the necessary systems capacity to support the additional trading of Fund Shares that could potentially be listed pursuant to this provision. In addition, Nasdaq believes that the capacity required is well within the projections that Nasdaq has provided to the Options Price Reporting Authority (''OPRA'') and for which OPRA has provisioned.

To the extent that Nasdaq has incorporated by reference the rules of the Chicago Board Options Exchange, Incorporated pertaining to margin, position limits, and exercise limits, this proposal is not designed to change the application of those requirements. Members should be cognizant of the need to comply with those requirements and any amendments thereto as applied to different options classes (including options on Fund Shares).

(3) Nasdaq is proposing to modify Chapter IV, Section 6, Commentary.01 and Commentary.02, which describe the ''$1 Strikes'' Pilot Program, to conform these provisions to the rules of other options exchanges. Specifically, Nasdaq proposes to expand and make permanent the $1 Strikes Pilot Program to allow it to select a total of 10, instead of the current 5, individual stocks on which option series may be listed at $1 strike price intervals. Additionally, Nasdaq proposes to expand the price range on which it may list $1 strikes to $3–$50, instead of the current $3–$20. The proposed expanded and permanent $1 Strikes Price Program would be known as the ''$1 Strike Price Program.'' The existing restrictions on listing $1 strikes would continue to apply (i.e., no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day or that would result in strike prices being $0.50 apart).

This proposal is designed to respond to the requests of market participants for broader participation in the $1 Strikes Price Program on Nasdaq. Nasdaq represents that it has the necessary systems capacity to support the potential additional trading that might arise from the proposed modification of the $1 Strikes Price Program. In addition, Nasdaq believes that the capacity required is well within the projections that Nasdaq has provided to OPRA and for which OPRA has provisioned.

(4) Nasdaq is proposing to modify Chapter V, Section 1(b)(vi) to eliminate cross-references to non-existent rule provisions. The cross-references were improperly included because Nasdaq modeled its rules upon the rules of another exchange but did not copy the specific rules that were cross-referenced in Section 1(b)(vi). The specific provisions that were cited are not included in the Nasdaq rule manual because they pertain to a price improvement mechanism that exists on another market that does not exist on Nasdaq. Nasdaq is proposing instead to cross-reference approved Nasdaq rules proscribing similar fraudulent misconduct that could occur on NOM.

(5) Nasdaq is proposing to modify Chapter XI, Sections 23 (Brokers' Blanket Bond) and 25 (Telephone Solicitation) to cross-reference existing Nasdaq member conduct rules rather than maintain two separate rules governing the same conduct. Specifically, Nasdaq proposes to replace Section 23 by instead cross-referencing to NASDAQ Rule 3020, which currently requires Nasdaq members to post Fidelity Bonds. Nasdaq also proposes to replace Section 25 by cross-referencing current NASDAQ Rule 2212 which prescribes members' conduct for telephone solicitation.

(6) Finally, Nasdaq is proposing to modify Chapter XIV, Section 10 to clarify that when a halt involving an index option is lifted, trading resumes as specified in Chapter V, Section 4 (Resumption of Trading After A Halt) rather than as specified in Chapter VI, Section 8. When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a ''Halt Cross,'' which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross and to make clear that trading after a halt would ''resume'' rather than ''open.'' The cross-reference to the Halt Cross in Chapter XIV, Section 10 should have been removed, but was overlooked.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

The proposed changes are either technical in nature or are designed to conform the rules of Nasdaq's options market to the rules of other options markets or to conform Nasdaq's rules for options trading to its rules for equities trading. None of the proposed changes will impact the manner in which executions occur on NOM.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)

[6] *See, e.g.*, Philadelphia Stock Exchange Rule 1009.06.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

thereunder[10] because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[11] The Commission expects Nasdaq to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that Nasdaq will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of Nasdaq's, OPRA's, and vendors' automated systems.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–057 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–NASDAQ–2008–057. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–057 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15651 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 240.19b–4(f)(6).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied the five-day pre-filing requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58104; File No. SR–NSCC–2008–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees for Certain NSCC Services

July 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 26, 2008, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise NSCC's fee schedule to lower fees for certain NSCC services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to lower fees for certain services provided by NSCC to align them with the costs of delivering the services. These changes are:[3]

(1) A decrease in the unit-based equity trade recording fee from $.001436 per side to $.000402 per side.

(2) A decrease in the unit-based equity netting fee from $.000916 per side to $.000256 per side.

(3) A decrease in both the trade comparison fee and the trade recording fee for corporate bonds, municipal bonds, and unit investment trusts from $1.00 per side to $0.65 per side.

The effective date for these fee adjustments was July 1, 2008.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[4] and the rules and regulations thereunder applicable to NSCC because it provides for the equitable allocation of reasonable dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The specific changes to NSCC's fee schedule are attached as an exhibit to the filing.

[4] 15 U.S.C. 78q–1.

impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a participant. At any time within sixty 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–NSCC–2008–05 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–NSCC–2008–05. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/legal/rule_filings/nscc/2008.php*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NSCC–2008–05 and should be submitted on or before July 31, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15706 Filed 7–9–08; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58100; File No. SR–NSCC–2006–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 To Reorganize Membership Rules and Procedures

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 13, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 31, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to reorganize its Rules and Procedures (''Rules'') related to membership standards and membership requirements to conform them to current practice and to harmonize them with similar rules of NSCC's affiliate, the Fixed Income Clearing Corporation (''FICC'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Over the years, NSCC has created a variety of membership classes, each with different initial and continuing membership requirements. These requirements are currently scattered throughout NSCC's Rules. With the objective of promoting greater transparency, NSCC proposes to reorganize and restructure its Rules related to member types, the membership application process, and the ongoing requirements of NSCC members in a form that it believes will make them more readily located and understood by applicants and members alike.

To accomplish this, NSCC proposes to revise and restructure Rule 2 (currently called ''Members'' but would be renamed ''Members and Limited Members'') to create a new Rule 2A (to be called ''Initial Membership Requirements'') and to create a new Rule 2B (to be called ''Ongoing Membership Requirements and Monitoring''). Current provisions and

[1] 15 U.S.C. 78s(b)(1).

[2] Both NSCC and FICC's Government Securities Division (''GSD'') share a number of common participants, and both act as central counterparties with respect to certain transactions submitted by participants. Harmonization of NSCC and FICC Rules is an ongoing process, and additional NSCC and FICC rule filings will follow.

[3] The Commission has modified the text of the summaries prepared by NSCC.

rule text will be moved from existing rules and addenda and will be relocated within these newly structured rules. Certain provisions will be modified where necessary and, where possible, harmonized with analogous provisions of GSD's rules. Additionally, NSCC proposes to add certain descriptive text to its Rules with regard to the current membership application process and with regard to the voluntary membership retirement process (*i.e.*, NSCC text which codifies the current process of evaluating applicants and the current process by which an existing member may voluntarily retire from participation in NSCC's services).

1. Membership Types—Members and Limited Members

NSCC's Rule 2 (currently titled ''Members'') provides that an applicant may apply to become a member that uses all of NSCC's services or a member that uses certain limited services.

In restructuring and revising Rule 2, NSCC seeks to clearly, concisely, and in one location, set forth each membership type differentiating between members that may generally, unless otherwise limited by NSCC, access all services made available by NSCC, (often referred to as ''full service Members'') and those member types that may utilize NSCC's systems and services only on a limited basis (''Limited Members''). Limited Members would include the following: Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, Mutual Fund/Insurance Services Members, Data Services Only Members, Non-Clearing Members (which would be renamed ''Commission Billing Members''), Settling Bank Only Members, and Third Party Administrator Members. This change is intended to be cosmetic only, and other than logically grouping member types, would not alter in any way each member's existing rights and obligations.

Additionally, NSCC would add text to Rule 2 making it clear that no full service Member or Limited Member may submit or confirm any transaction, charge, request, instruction, or transmission through NSCC's services, or otherwise utilize NSCC's services, in contravention of any law, rule, regulation, or statute.

2. Consolidation of Membership Standards and Requirements Within the Rules

The membership qualifications, financial standards, and operational requirements for each member type are currently set forth in separate rules and addenda, which are spread throughout NSCC's Rules.[4]

To consolidate this information, NSCC proposes to create two new rules which would contain the content moved from membership Rules 3, 31, 51, 54, 56, and 60. Proposed Rule 2A (to be called ''Initial Membership Requirements'') would provide information regarding initial membership eligibility requirements for all member types and would address the membership application and evaluation process. Proposed Rule 2B (to be called ''Ongoing Membership Requirements and Monitoring'') would contain provisions regarding the continuing requirements of members. For ease of reference, NSCC also proposes to relocate and consolidate the detailed membership qualifications, financial standards, and operational requirements for all membership types into Addendum B (to be renamed ''Qualifications and Standards of Financial Responsibility, Operational Capability and Business History''). The content NSCC is seeking to reorganize into Addendum B is currently spread throughout Addenda B, I, Q, and R.

Accordingly, NSCC would delete current membership related Rules 3 (specifically, Sections 2, 5, and 6), 31, 51, 54, 56, and 60. In addition, NSCC would delete Addenda I, Q, and R.

3. Use of the Terms ''Members'' and ''Settling Members'' Throughout the Rules

Currently, an applicant that agrees to limit its use of NSCC's services to those specified by NSCC (*i.e.*, Mutual Fund Services and/or Insurance and Retirement Services) is called a ''Mutual Fund/Insurance Services Member.'' Thus when the term ''Member'' is used within NSCC's Rules, it may apply to a full service Member (which may generally use all NSCC services), a Mutual Fund/Insurance Services Member (which may only utilize the Mutual Fund and Insurance and Retirement Processing Services), or to both, depending upon the context. Additionally, NSCC's Rules make reference to ''Settling Members,'' which may apply to a full service Member, a Mutual Fund/Insurance Services Member, a Non-Clearing Member, or all three member types. It is only in further understanding the Rules or in the context of a term's use that one may determine to which member type a Rule may apply.[5] Accordingly, NSCC proposes to modify all references to ''Settling Member'' and to ''Member'' within each NSCC Rule to clearly indicate to which member type a rule is applicable. Definitions associated with these terms (contained in Rule 1) would be modified and the term ''Settling Member'' would be deleted from NSCC's Rules.

4. Rule 15 (''Financial Responsibility and Operational Capability'')

Rule 15 contains, among other things, the continuing requirements of members with regard to reports to be timely filed on an ongoing basis (*e.g.*, annual audited financial statements, Financial and Operational Combined Uniform Single (''FOCUS'') Reports, etc.) and notifications that members are required to timely make to NSCC regarding any failure to maintain their membership qualifications and standards, including notifications of certain material changes in business, ownership, or control. NSCC proposes to move these ongoing reporting requirements into proposed Rule 2B. Rule 15 would then be renamed ''Assurances of Financial Responsibility and Operational Capability.''

In Section 2.A. (''Reports and Information'') of proposed Rule 2B, NSCC seeks to add text clarifying that unless specifically set forth within the Rule, the time periods established for remitting reports and data to NSCC are set forth in the form of notices posted on NSCC's Web site and that each member is required to retrieve all notices from NSCC's Web site daily.

In Section 2.B. (''Notification of Changes in Condition'') of proposed Rule 2B, NSCC seeks to change the

[4] ''Members'' qualifications, standards, and requirements are located in Rule 2 and in Addendum B. ''Mutual Fund/Insurance Services Members,'' also defined to be ''Members,'' qualifications, standards, and requirements are located in Rule 2 and in Addendum B. ''Fund Members'' qualifications, standards, and requirements are located in Rule 51 and Addendum I. ''Insurance Carrier/Retirement Services Members'' qualifications, standards, and requirements are located in Rule 56 and in Addendum Q. ''Third Party Administrator Members'' qualifications, standards, and requirements are located in Rule 60 and in Addendum R. ''Data Services Only Members'' qualifications, standards, and requirements are located in Rule 31. ''Municipal Comparison Only Members'' qualifications, standards, and requirements are located in Rule 3, Section 2. ''Non-Clearing Members'' qualifications, standards, and requirements are located in Rule 3, Section 2. ''Settling Bank Only Members'' qualifications, standards, and requirements are located in Rule 54.

[5] For example, as a Mutual Fund/Insurance Services Member may not participate in the Continuous Net Settlement Service (''CNS''), any reference to ''Members'' within Rule 11 (''CNS'') would not apply to Mutual Fund/Insurance Services Members. Any reference to ''Settling Member'' within Rule 17 (''Fine Payments'') would apply to all full service Members, Mutual Fund/Insurance Services Members, and Non-Clearing Members (which NSCC proposes to rename ''Commission Billing Members'').

reporting requirements of certain member types with respect to providing NSCC with written notice of events that would effect a change in control of the member or that could have a material impact on the member's business and/or financial condition. Historically, this provision applied to full service Members (*i.e.*, those Members for which certain activity is guaranteed at a fixed point in the clearance and settlement process) as well as Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members (*i.e.*, those member types whose activity is limited to use of non-guaranteed services). NSCC has determined that this notification provision should apply solely to full service Members.

Additionally, NSCC seeks to delete the current requirement that a Non-Clearing Member (to be renamed ''Commission Billing Member'') provide NSCC with written and oral notice if it is no longer in compliance with any of the relevant qualifications and standards for membership. Non-Clearing Members participate in NSCC solely for the purpose of paying and receiving broker commissions and file transmissions related to the service are sent to NSCC directly from either the New York Stock Exchange or the American Stock Exchange. As there are no NSCC financial or operational requirements applicable to this member type and the participation of the member is coordinated between NSCC and the member's Exchange, the current requirement is not necessary.

5. Rule 1 (''Definitions and Descriptions'')

NSCC proposes the following with respect to terms defined within Rule 1:

Board of Directors

The current definition would be modified to make clear that the term ''Board of Directors'' means the Board of Directors of NSCC, or a committee thereof, acting on delegated authority.

Commission Billing Member

NSCC proposes to rename Non-Clearing Members ''Commission Billing Members'' to better reflect the nature of their participation in NSCC's services. Non-Clearing Members utilize NSCC's Commission Settlement Service solely for the payment and collection of commissions.

Limited Member

The proposed term ''Limited Member'' would mean a Person whose use of NSCC's services is limited to those services specified by NSCC.

Person

The proposed term ''Person'' would mean a partnership, corporation, limited liability corporation, or other organization, entity, or individual.

Registered Broker-Dealer

The term ''Registered Broker-Dealer'' (currently defined in Rule 2 as ''a broker or dealer registered under the Securities Exchange Act of 1934, as amended'') would be moved to Rule 1.

Settling Member

The term ''Settling Member'' would be deleted from NSCC's Rules. Each member type encompassed by this term would be specifically named within NSCC's Rules.

Other conforming technical changes to Rule 1 are being proposed to accommodate the restructuring of the Rules.

6. Rule 2A (''Initial Membership Requirements'') Applicant Operational Testing Requirements

Under NSCC's Rules, certain applicants as determined by NSCC must demonstrate that they will be able to satisfactorily communicate with NSCC. These applicants conduct system/operational tests with NSCC. NSCC proposes to add new text to its rules (Rule 2A, Section 1.C. (''Application Documents'')) to make clear NSCC's current requirement with regard to applicant testing.

Member's Agreement

NSCC's Rules currently provide that members sign and deliver to NSCC a member's agreement. The applicable provisions of each type of member's agreement have historically been set forth in the Rule that applies to that member type (*e.g.*, a Fund Member's agreement provisions are contained in Rule 51, a full service Member's provisions are contained in Rule 2, a Third Party Administrator Member's provisions are contained in Rule 60). Regardless of member type, each member agreement has certain standard provisions that generally apply to all members (*e.g.*, the only services the member may use are those that are permitted by NSCC, that the member will abide by NSCC's Rules and be bound by all provisions of the Rules, etc.) and certain other provisions that are unique to particular member types (*e.g.*, Fund Members have a unique provision with regard to NSCC's inspection of their books and records).

NSCC proposes Rule 2A, Section 1.E. (''Membership and Other Agreements'') that would contain the main member agreement provisions for all member types, as well as address the requirements with regard to any other agreements.

Third Party Administrator (''TPA'') ACH Agreements

NSCC's Rules currently state that TPA Members (non-settling members) must provide NSCC with an agreement for preauthorized payments (an ''ACH'' agreement) so that NSCC may collect monthly charges pursuant to Rule 26 (''Bills Rendered''). To accommodate payment methods other than ACH (*i.e.*, ''e-payment'' using a credit card or bank account), NSCC proposes to replace the specific TPA ACH requirement within its Rules with more generic text.

7. Rule 2B (''Ongoing Membership Requirements and Monitoring'') Reports and Information

Annual Audited Financial Statements

NSCC's Rules currently state that a member whose membership is contingent upon a guarantee of a third party must provide a copy of the annual audited financial statements of the guarantor. If such statements for the member or its guarantor are not available, NSCC may accept at its sole discretion consolidated financial statements prepared at the level of the parent of the member or guarantor. NSCC is modifying this text to make clear that it may accept consolidated financial statements or financial information prepared at the level of the parent of such entity.[6]

Call Reports

NSCC is proposing Rule 2B, Section 2.A.(c) with regard to Call Reports filed with NSCC by members that are banks or trust companies. To the extent that such information is not contained within the Call Report or the member is a bank or trust company that is not required to file a Call Report, such member would be required to provide NSCC with information containing each of its capital levels and ratios.

Supplemental and Quarterly Financial Statements Filed With The National Association of Insurance Commissioners (''NAIC'')

NSCC proposes to delete the current Rule 15 requirement that Insurance Companies provide NSCC with copies of their supplemental and quarterly financial statements filed with the NAIC or the Insurance Company's regulatory authority. Currently, NSCC receives annual audited financial statements and

[6] NSCC also seeks to correct a typographical error in Rule 2B, Section 2.A.(a) in that ''each'' guarantor should read ''such'' guarantor.

annual regulatory reports from these members in order to monitor adherence to membership requirements. The proposed change would conform the Rules to current practice.

Securities Exchange Act Rule 15c3–1 Notification

NSCC is proposing to add Rule 2B, Section 2.A.(g) to its Rules, which would require that a member that has provided to the Commission notice pursuant to paragraph (e) of Securities Exchange Act Rule 15c3–1 (''Notice Provisions Relating to Limitations on the Withdrawal of Equity Capital'') shall notify NSCC and provide NSCC with a copy of such notice by close of business on the day such notice is provided to the Commission.

Operational Testing

NSCC requires that certain ''top tier'' members participate in periodic connectivity testing with NSCC for business recovery purposes. NSCC now proposes to add Rule 2B, Section 3 (''Operational Testing'') to its Rules to specifically set forth NSCC's operational testing requirements.

Ongoing Monitoring—Surveillance Status

Currently, the provision relating to NSCC's ongoing monitoring of full service Members (NSCC's ''credit risk matrix'') appears in Addendum B. NSCC proposes to move this provision into new Rule 2B. Additionally, NSCC would replace the term ''Settling Member'' with ''Member'' as the credit risk matrix only applies to full service ''Members.''

Voluntary Retirement

NSCC proposes to add Rule 2B, Section 5 (''Voluntary Retirement'') to its Rules, which is the current process by which an active participant may voluntarily retire its NSCC membership.

8. Addendum B (''Qualifications and Standards of Financial Responsibility, Operational Capability and Business History'')

Immediate Placement on Surveillance by NSCC

Currently, NSCC's Rules provide that applicants to become a Member, Mutual Fund/Insurance Services Member, Fund Member, or Insurance Carrier/Retirement Services Member may not be known to be subject to any other action or condition the existence of which would require it to be placed on surveillance by NSCC. In addition, the financial requirements for certain members (full service Members and Mutual Fund/Insurance Services Members) state that the member must have a capital ratio or percentage that would not require the applicant to be placed on immediate surveillance by NSCC. All applicants must meet their minimum financial requirements, as applicable to their member type. NSCC now seeks to delete these provisions.

When the NSCC membership standards were developed, the NSCC credit risk matrix was not in place. As a result of the implementation of the credit risk matrix, it is possible that once an applicant is approved for membership, it may be placed directly on NSCC's Watch List (*i.e.*, surveillance status). As sufficient discretion to deny membership based on financial, operational, or character issues exists in other sections of NSCC's rules, elimination of these provisions will not diminish NSCC's authority under its Rules to deny an applicant membership.

Fund Member Applicants Subject to Securities Exchange Act Rule 17a–11 Reporting

NSCC proposes to delete Addendum I (''Standards of Financial Responsibility and Operational Capability for Fund Members''), which includes a requirement that a broker-dealer Fund Member applicant not be subject to reporting under Securities Exchange Act Rule 17a–11 (''Notification Provisions for Broker and Dealers''). As a Fund Member, an applicant must meet NSCC's minimum financial requirements for membership (and, as stated above, NSCC retains sufficient discretion to deny membership based on financial, operational, or character issues in other sections of NSCC's Rules). Thus, NSCC has determined that this requirement is duplicative and that its elimination will not diminish NSCC's authority under its Rules to deny an applicant membership if it does not meet the applicable financial standards.

Financial Responsibility—Entities That Qualify for Membership Under the Category of ''Other'' Entity Types

In certain instances in NSCC's membership Rules, an applicant that does not qualify for membership under one of the specifically defined qualification criteria established for its membership type, may apply for membership if it has demonstrated to NSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services. NSCC's financial requirements for such an applicant require that it meet financial stability standards as are applied to the industry in which the applicant is associated. As industry standards are not always well-defined and as there may not be consensus among market participants as to what such standards should be, NSCC is proposing to modify the financial requirements for ''other'' applicants by requiring that such applicants be required to satisfy such minimum standards of financial responsibility deemed appropriate by NSCC.

Business History

NSCC's Rules currently provide that Insurance Carrier/Retirement Services applicants and Third Party Administrator applicants (both non-guaranteed service members) must have an established business history of a minimum of three years or personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct such a business. The business history requirement for full service Members, as well as Mutual Fund/Insurance Services Members and Fund Members (both non-guaranteed service members) is six months, or the member must have personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct such a business.

NSCC has determined that the business history requirement of Insurance Carrier/Retirement Services and Third Party Administrator applicants need not be any more stringent that those applied to Fund Members and Mutual Fund/Insurance Services Members. Therefore, NSCC proposes to change the three year requirement to six months.

Fund Members That Are Insurance Companies

Under NSCC's Rules, an Insurance Company may apply to become a Fund Member, however, the financial requirements for Insurance Companies is not specifically set forth in Addendum I. Addendum I states that all ''other'' applicants shall be required to meet financial stability and operational capability standards as are applicable to the industry in which the applicant is associated. Historically, NSCC looked to its Insurance Carrier/Retirement Services Member financial standards set forth in Rule 57. NSCC proposes to clearly state Insurance Company financial standards under its Fund Member financial requirements in Addendum B, Section 3.

9. Rule 3 (''Lists To Be Maintained'')

In consolidating NSCC's membership standards, NSCC proposes to move to Rule 2 the portions of Rule 3 (specifically, Sections 2, 5, and 6) that

pertain to Municipal Comparison Only Members, Non-Clearing Members, and/or Data Services Only Members. For purposes of clarity, the remaining information within Rule 3 would be reorganized and reordered.

10. Addendum D (''Statement of Policy Envelope Settlement Service'')

To more accurately reflect the scope of the information contained within Addendum D, NSCC proposes to rename it ''Statement of Policy Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing Service and Other Services Offered by the Corporation.''

11. Rule 38 (''Captions'')

Mirroring FICC's Rules, NSCC proposes to add language to Rule 38 to make clear that NSCC's Rules are governed by New York substantive law. This language currently exists in NSCC's membership agreements only. Rule 38 would be renamed ''Governing Law and Captions.''

12. Technical Corrections

In 2006, NSCC submitted for immediate effectiveness proposed rule change SR–NSCC–2006–07 which made clarifying and technical changes to NSCC's Rules related to funds which are eligible for processing on Fund/Serv.[7] At that time, the membership qualifications contained within Section 1.(viii) of Rule 31 (''Data Services Only Member'') should have been modified to reflect the definitional change made within Rule 1 with respect to ''TPA.'' Accordingly, NSCC is correcting the text within its rules to eliminate the reference to ''defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended,'' and refer instead, to ''a retirement or other benefit plan.''

In 2006, NSCC submitted for immediate effectiveness proposed rule change SR–NSCC–2006–14 which, among other things, deleted references to the Product Repository service as NSCC had determined not to offer the service.[8] At that time, any references within NSCC to ''Repository Data'' should have been deleted. Accordingly, NSCC is seeking to delete such references.

In 2005, the Commission approved NSCC proposed rule change SR–NSCC–2005–01 which clarified that the operational capability that is ordinarily focused upon by NSCC during the application process is the ability of an applicant to appropriately communicate with NSCC, that is, the ability to input to NSCC and to receive output from NSCC on a timely and accurate basis.[9] The rule change removed certain provisions that might be interpreted to impose upon NSCC an obligation to make determinations with respect to particular aspects of operational capability. Instead, NSCC relies upon the requirement that the applicant in fact be able to satisfactorily communicate with NSCC as generally stated in the operational capability requirements currently set forth for members in NSCC's Rules. At the time of the filing, the provision within Rule 60 with respect to approval of TPA Member applicants based upon an alternative operational standard should have been deleted. Accordingly, NSCC now seeks to delete this provision from its Rules. NSCC would continue to retain the right to examine any aspect of an applicant's or member's business pursuant to the provisions of Rule 15.

In 2005, the Commission approved NSCC proposed rule change SR–NSCC–2005–14 which added Rule 64 (''DTCC Shareholders Agreement'') requiring that full service Members of NSCC purchase shares of the common stock of the Depository Trust & Clearing Corporation (''DTCC''), NSCC's parent corporation, and that certain Limited Member types could voluntarily purchase such shares.[10] Section 5 of Rule 64 made incorrect references to ''Members'' and should have referenced all member types specified in Section 2 (''Members'') and Section 3 (''Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, and Mutual Fund/Insurance Services Members'') of Rule 64. Accordingly, NSCC now seeks to correct such references.

In 2004, the Commission approved NSCC proposed rule change SR–NSCC–2003–05 which modified NSCC's Rules to provide that notices to members posted by NSCC via electronic format (*i.e.*, posted on NSCC's Web site) meet NSCC's notification obligations.[11] At that time, Section 7 of Rule 45 (''Notices'') was added to NSCC's Rules with an incorrect reference to Section 3. NSCC is seeking to remove this incorrect reference.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder applicable to NSCC because it should assure the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible by assisting NSCC applicants and members in understanding, and thereby complying with, NSCC's membership standards and requirements thereby protecting NSCC and its members from undue risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited and none have been received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2006–17 on the subject line.

[7] Securities Exchange Act Release No. 54366 (August 25, 2006), 71 FR 52199.

[8] Securities Exchange Act Release No. 54921 (December 12, 2006), 71 FR 76415.

[9] Securities Exchange Act Release No. 51600 (April 22, 2005), 70 FR 22167.

[10] Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070.

[11] Securities Exchange Act Release No. 50085 (July 26, 2004), 69 FR 45872.

[12] 15 U.S.C. 78q–1.

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–NSCC–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2006/nscc/2006-17.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2006–17 and should be submitted on or before July 31, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15707 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58096; File No. SR–NYSE–2008–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operative Date of the NYSE Rule 2 Requirement That NYSE-Only Member Organizations Apply for and Be Approved as Members of the Financial Industry Regulatory Authority, Inc.

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a change concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend to December 31, 2008, the operative date of the NYSE Rule 2 requirement that NYSE-only member organizations apply for and be approved as members of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com*.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend to December 31, 2008, the grace period for NYSE-only member organizations to apply for and be approved as FINRA members, as required by NYSE Rule 2.

In connection with the consolidation of NASD and NYSE Regulation, Inc. member firm regulation operations into FINRA, which closed on July 30, 2007, the Exchange amended NYSE Rule 2 to require NYSE member organizations to also be FINRA members.[5] In connection with that rule change, the Commission approved a 60-day grace period within which NYSE-only member organizations must apply for and be approved for FINRA membership. In that rule filing, NYSE-only member organizations were defined as those member organizations that were not NASD members as of the date of the closing of the FINRA transaction. This grace period began on October 12, 2007, the date of Commission approval of the Exchange's rule filing. In furtherance of the consolidation, FINRA adopted NASD IM–1013–1 to enable eligible NYSE member organizations to become FINRA members though an expedited process (the ''FINRA Waive-in application process'').[6]

At the close of the 60-day grace period, all but two of the former NYSE-only member organizations had applied for and been approved as FINRA members. On December 12, 2007, the Exchange filed for an extension of the grace period to June 30, 2008 for those two firms.[7] In that filing, the Exchange noted that those two firms had unique member qualification issues and were ineligible to participate in the FINRA Waive-in application process. As of June 30, 2008, these two firms have not yet been approved as FINRA firms, but are being considered for FINRA membership. Accordingly, the NYSE proposes to extend the grace period to December 31, 2008 for these two firms,

[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)(3).

[5] *See* Securities Exchange Act Release No. 34–56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR–NYSE–2007–67).

[6] *See* Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (SR–NASD–2007–56).

[7] *See* Securities Exchange Act Release No. 56953 (December 12, 2007), 72 FR 71990 (December 19, 2007) (SR–NYSE–2007–115).

to provide time for those issues to be resolved, including time for the firms to apply for and be approved as FINRA members through FINRA's regular member approval process.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is concerned solely with the administration of the Exchange, it is effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(3)[10] 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–NYSE–2008–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–54. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number. SR–NYSE–2008–54 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15697 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58089; File No. SR–NYSEArca–2008–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enable the Exchange To Conduct Market Order and Closing Auctions in NYSE-Listed Securities Subject to a Sub-Penny Trading Condition

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. NYSE Arca has designated the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 7.35 in order to add the ability to conduct a Market Order and Closing Auction in securities listed on the New York Stock Exchange LLC (''NYSE'') subject to a sub-penny trading condition.[5] The text of the proposed rule change is available at *http://www.nyse.com,* the principal office of the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] A sub-penny trading condition is defined by NYSE Rule 123D and applies to securities that are trading at a price of $1.05 or less.

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

NYSE Arca Equities Rule 7.35 establishes rules for auctions that are conducted at different times during the trading day and in different eligible securities. NYSE Arca Equities Rule 7.35(b) states that the Opening Auction will be conducted at 4 a.m. (ET) and will include all eligible securities traded on the Exchange. NYSE Arca Equities Rule 7.35(c) states that the Exchange will conduct a Market Order Auction at 9:29 a.m. (ET) for: (1) Exchange-listed securities for which the Exchange is the primary market; and (2) all exchange-listed exchange traded funds (''ETFs''). All other securities are routed to the primary market until after the first opening print. Similarly, NYSE Arca Equities Rule 7.35(e) states that the Exchange will conduct a Closing Auction at 4 p.m. (ET) for: (1) Exchange-listed securities for which NYSE Arca is the primary market and; (2) all exchange-listed ETFs. All other securities are routed to the primary market.

NYSE Rule 123D establishes a ''sub-penny trading condition'' that requires NYSE to place a non-regulatory trading halt on a security that is, or is immediately likely to be, trading at a price of less than $1.00. Specifically, NYSE Rule 123D states, ''[w]henever a security trading on the Exchange is reported on the Consolidated Tape during normal trading hours as having traded at a price of $1.05 or less, or if a security would open on the Exchange at a price of $1.05 or less, trading in the security on the Exchange shall be immediately halted because of a '[s]ub-penny trading' condition.'' The rule further states that, ''[a]ny orders received by the NYSE in a security subject to a '[s]ub-penny trading' condition will be routed to NYSE Arca, Inc. ('NYSE Arca') where they will be handled in accordance with the rules governing that market.''

The non-regulatory trading halt for securities with a sub-penny trading condition was added to NYSE Rule 123D in March 2007.[6] This rule filing resulted from the combination of Rule 612 of Regulation NMS[7] requiring securities priced at less than $1.00 be quoted in increments no smaller than $0.0001, and the fact that NYSE's trading system is not able to accommodate sub-penny trading, nor can it recognize a quote disseminated by another market center if such quote has a sub-penny component. NYSE determined that it would not be cost-effective to make the changes that would allow its trading system to fully accommodate sub-penny trading and, therefore, introduced the non-regulatory trading halt described above. Later in March 2007, NYSE again changed Rule 123D, this time adding language to establish that any orders received by NYSE in a security subject to a sub-penny trading condition will be routed to NYSE Arca.[8] The Exchange's ability to quote in sub-pennies allows for continued trading in securities that otherwise may have been halted, and brings continuity to the marketplace by preventing potentially harmful trading interruptions.

The purpose of this rule filing is to add new language to Rule 7.35 that will give the Exchange the ability to conduct a Market Order and Closing Auction in NYSE-listed securities subject to a sub-penny trading condition when NYSE directs orders to NYSE Arca for execution.

Currently, NYSE Arca rules do not permit the Exchange to conduct a Market Order and/or Closing Auction in securities for which it is not the primary market. This restriction applies when NYSE has placed a non-regulatory trading halt on a security due to a sub-penny trading condition and NYSE orders are routed to NYSE Arca for execution. The Exchange believes that in those circumstances NYSE Arca must have the ability to conduct a Market Order Auction and Closing Auction for NYSE-listed securities subject to a sub-penny trading condition in order to facilitate a fair and orderly market and give customers the ability to interact with the market when not otherwise permitted to participate at NYSE. Accordingly, the Exchange proposes to amend Rule 7.35(c) and (e) to permit the Exchange to conduct a Market Order and Closing Auction in: (1) Exchange-listed securities for which the Exchange is the primary market; (2) all exchange-listed ETFs; and (3) NYSE-listed securities subject to a sub-penny trading condition.

The Exchange believes that the proposed rule change offers the Exchange the ability to conduct a Market Order Auction and a Closing Auction in those instances where NYSE is prevented from trading in a security due to a sub-penny trading condition, but where NYSE Arca is permitted to conduct transactions. In that scenario, it is appropriate for the Exchange to conduct a Market Order Auction and a Closing Auction in order to best facilitate a fair and orderly market by providing the maximum number of matched orders at the best available price. This is particularly important because it will allow customers to interact with the market when not otherwise permitted to participate at NYSE.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and, in general, to protect investors and the public interest. Specifically, the Exchange's ability to quote in sub-pennies allows for continued trading in securities that otherwise may have been halted and brings continuity to the marketplace by preventing potentially harmful trading interruptions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] because the foregoing proposed rule: (1) Does not significantly

[6] *See* Securities Exchange Act Release No. 55398 (March 5, 2007), 72 FR 11072 (March 12, 2007) (SR–NYSE–2007–25).

[7] 17 CFR 242.612.

[8] *See* Securities Exchange Act Release No. 55537 (March 27, 2007), 72 FR 15749 (April 2, 2007) (SR–NYSE–2007–30).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[12]

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission hereby grants the Exchange's request and believes that such action is consistent with the protection of investors and the public interest. This action will permit without further delay more continuous trading of certain securities that are subject to a non-regulatory halt on their primary market, NYSE.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–71. 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 publicly available. All submissions should refer to File Number SR–NYSEArca2008–71 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15621 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

[12] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has satisfied this requirement.

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58085; File No. SR–NYSEArca–2008–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the One Week Option Series Pilot Program Through July 12, 2009

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its rules to extend the One Week Option Series pilot program (''Pilot Program'') for an additional year, through July 12, 2009. The text of the proposed rule change is available on the Exchange's Web site at (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005 the Commission approved the Pilot Program[5] permitting NYSE Arca to list and trade One Week Option Series. Under the terms of the Pilot Program, the Exchange can select up to five options classes on which One Week Option Series may be opened on any One Week Option Opening Date. The Exchange also may list One Week Option Series on any options class that is selected by other securities exchanges

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR–PCX–2005–32).

that employ a similar Pilot Program under their respective rules.

The purpose of this proposal is to extend the Pilot Program for one year, through July 12, 2009. The current Pilot Program expires on July 12, 2008.[6] The Exchange believes that One Week Term Option Series can provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. Although NYSE Arca has not listed any One Week Option Series during the Pilot Program, there has been investor interest in trading short-term options at the Chicago Board Options Exchange. In order to have the ability to respond to customer interest if warranted, the Exchange proposes to continue the Pilot Program at NYSE Arca.

In the original proposal to establish the Pilot Program the Exchange stated that if it were to propose an extension or an expansion of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a Pilot Program report (''Report''). The Report would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. Since the Exchange did not have any One Week Option Series listed during the first year of the Pilot Program, there are no data available to compile such a report at this time. Therefore there is no Report associated with the program included with this proposal to extend the Pilot Program.

NYSE Arca represents that it has the necessary system capacity to support the addition of any new options series added as part of the One Week Option Series Pilot Program.

2. Statutory Basis

The Exchange believes that One Week Option Series can stimulate customer interest in options and provide a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder 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) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow NYSE Arca to continue the existing Pilot Program without interruption.[11] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2008–68 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–NYSEArca–2008–68. 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

[6] *See* Securities Exchange Act Release No. 56048 (July 11, 2007), 72 FR 39653 (July 19, 2007) (SR–NYSEArca–2007–62) (Pilot Program extension).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2008–68 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15649 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58099; File No. SR–Phlx–2008–50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Complex Orders

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Phlx. 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 Phlx proposes to add Commentary .08 to Phlx Rule 1080 to establish an automated process for handling complex options orders on the Phlx's electronic trading platform for options, Phlx XL.[3]

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.com.*

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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to more efficiently handle complex orders on the Exchange by establishing rules and systems that would enable the Exchange to handle such orders electronically.

Definitions

The proposed rule change would establish specific definitions relevant to the automated handling of complex orders.

Order Types

Proposed Phlx Rule 1080, Commentary .08(i) would define ''Complex Order'' to mean any of the following: a spread order;[4] a straddle order;[5] a combination order;[6] a ratio order;[7] or a collar order (risk reversal).[8]

Complex Order Strategy

The term ''Complex Order Strategy'' means any Complex Order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). The Exchange will calculate both a bid price and an offer price for each Complex Order Strategy based on the current PBBO (as defined below) for each component of the Complex Order and the bid/ask differential for each component.

For example, a Complex Order Strategy might be ''buy one XYZ January 20 call, sell one XYZ January 20 put.''

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (order approving File No. SR–Phlx–2003–59).

[4] A spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts in a different series of the same option and may be bid for or offered on a total net debit or credit basis. *See* Phlx Rule 1066(f)(1).

[5] A straddle order is an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date (*e.g.*, an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted stock option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. *See* Phlx Rule 1066(f)(2).

[6] A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option. *See* Phlx Rule 1066(f)(3).

[7] For purposes of this rule, a ''ratio order'' would be defined as a spread, straddle or combination order that may consist of legs that have a different number of contracts. While a ratio order under this proposed rule may consist of legs that have a different number of contracts, in order to establish priority pursuant to Phlx Rules 1033(d) and (g), the number of contracts must differ only by a permissible ratio. A permissible ratio for purposes of priority is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

[8] A collar order (risk reversal) is defined as an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and the same expiration date as, the sold (purchased) call (put) option.

The system would assign this Complex Order Strategy a specific identification number or code that would be used in the system to identify this Complex Order Strategy. Hypothetically, the identification number for this particular Complex Order Strategy could be ''Complex Order Strategy #12345.'' Complex Order Strategy #12345 would have a bid price and an offer price, as stated above, based on the PBBO and the bid/ask differential for each component. If an investor wishes to purchase or sell, for example, 10 Complex Order Strategy 12345, such an investor would be bidding for or offering to buy 10 XYZ January 20 calls and sell 10 XYZ January 20 puts.

Other Definitions

PBBO

The term ''PBBO'' means the Phlx Best Bid and/or Offer for individual option series.

cPBBO

The term ''cPBBO'' means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual components of such Complex Order Strategy.

NBBO

The term ''NBBO'' means the National Best Bid and/or Offer for individual option series.

cNBBO

The term ''cNBBO'' means the best net debit or credit price for a Complex Order Strategy based on the NBBO for the individual components of a Complex Order Strategy.

Phlx XL Participant

The term ''Phlx XL participant'' includes Streaming Quote Traders (''SQTs''), Remote Streaming Quote Traders (''RSQTs''), non-SQT Registered Options Traders (''ROTs''), specialists or non-Phlx market makers on another exchange; non-broker-dealer customers and non-market-maker off-floor broker-dealers; and Floor Brokers using the Options Floor Broker Management System.

Order Entry

Under the proposal, Complex Orders would be eligible to be entered in increments of $0.01. Non-broker-dealer customers and non-market-maker off-floor broker-dealers would be permitted to enter Complex Orders as Day, Good Till Cancelled (''GTC'') or Immediate or Cancel (''IOC''). Exchange SQTs,[9] RSQTs,[10] non-SQT ROTs,[11] specialists and non-Phlx market makers on another exchange would be permitted to enter Complex Orders as IOC only. Floor Brokers using the Options Floor Broker Management System [12] may enter Complex Orders as Day, GTC, or IOC on behalf of non-broker-dealer customers and non-market maker off-floor broker-dealers, and as IOC only on behalf of broker-dealers or affiliates of broker-dealers.

Eligible Complex Orders

A Complex Order would be eligible to trade on Phlx XL only when each component of the Complex Order is open for trading on the Exchange. Complex Orders may be executed against the Complex Order Book (''CBOOK'') or placed on the CBOOK. Certain Complex Orders will be entered into a Complex Order Live Auction (''COLA'') either following a Complex Order Opening Process (''COOP'') or when a Complex Order improves the cPBBO. Complex Orders would not trade on Phlx XL when: (i) The Complex Order is received prior to the opening on the Exchange for each component of the Complex Order; (ii) during an opening rotation for any component of the Complex Order; (iii) during a trading halt for any component of the Complex Order; (iv) when the Exchange's automated execution system is disengaged for any component of the Complex Order; (v) when the Exchange's Risk Monitor Mechanism [13] is engaged for any component of the Complex Order pursuant to Phlx Rule 1093 that represents all or a portion of the PBBO; or (vi) when the Exchange's market for any component of the Complex Order is disseminated pursuant to Phlx Rule 1082(a)(ii)(B).[14]

The Phlx XL system will begin a COOP upon the termination of most of the above conditions, except that the Phlx XL system will not engage the COOP Timer upon re-opening Complex Order trading when either: (a) The Exchange's automated execution system was disengaged and subsequently re-engaged, or (b) the Phlx XL Risk Monitor Mechanism was engaged and subsequently disengaged for a quote of any component of the Complex Order that represents the PBBO. In either event, the Phlx XL system will immediately begin the COOP Evaluation (defined below) and will not initiate the COOP Timer (defined below).

COOP

The Phlx XL system will accept pre-opening Complex Orders, and will accept Complex Orders prior to re-opening following a halt in trading on the Exchange. Complex Orders received prior to the opening or during a trading halt will reside on the CBOOK. Once trading in each component of a Complex Order has opened (or re-opened following a trading halt), the Phlx XL system will initiate a COOP, provided that a COOP will only be conducted for any Complex Order Strategy that has a Complex Order pending at the opening or re-opening following a trading halt. The COOP will be conducted in two

[9] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Phlx Rule 1014(b)(ii)(A).

[10] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[11] A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. *See* Phlx Rule 1014(b)(ii)(C).

[12] The Options Floor Broker Management System is a component of the Exchange's electronic options trading system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Phlx Rule 1080, Commentary .06.

[13] The Risk Monitor Mechanism automatically removes a Phlx XL participant's quotations from the Exchange's disseminated quotation in all series of a particular option once such Phlx XL participant executes a maximum volume threshold within a specific time period. In the event that the specialist's quote is removed by the Risk Monitor Mechanism and there are no other Phlx XL participants quoting in the particular option, the system will automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation. *See* Phlx Rule 1093(d).

[14] If an SQT's or RSQT's (other than a Directed SQT or RSQT) quotation size in a particular series in a Streaming Quote Option is exhausted or removed by the Risk Monitor Mechanism, such SQT's or RSQT's quotation shall be deleted from the Exchange's disseminated quotation until the time the SQT or RSQT revises his/her quotation. If the Exchange's disseminated size in a particular series in a Streaming Quote Option is exhausted at that particular price level, and no specialist, SQT, or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange shall automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract. *See* Phlx Rule 1082(a)(ii)(B).

phases, the ''COOP Timer'' and the ''COOP Evaluation.''

COOP Timer

A COOP Timer will begin counting a number of seconds during which bids and/or offers for a Complex Order Strategy can be received but during which Complex Orders may not be traded. The COOP Timer would be configurable to a period ranging from 0 to 600 seconds as determined by the Exchange and communicated to the Exchange membership via Exchange Circular. The purpose of the COOP Timer is to allow a time period for the markets trading the components of the Complex Order to conduct openings for the components and to establish prices on such markets after the opening. The Exchange believes that the COOP Timer should thus contribute to fair and orderly markets in Complex Orders on the Exchange at the opening or re-opening following a trading halt.

Multiple Complex Orders that represent the same Complex Order Strategy would participate in the COOP Timer. The Exchange will establish a maximum number of Complex Order Strategies that can be subject to a COOP Timer at any given time. Such maximum number will be communicated to the membership by Exchange Circular. The purpose of the ''maximum number'' proposal is to enable the Exchange to better manage system capacity relating to Complex Order Strategies subject to a COOP Timer. The system would ''stagger'' COOP Timers when the Phlx XL system has received the maximum number of Complex Order Strategies (*i.e.*, begin another round of COOP Timers that would include Complex Order Strategies that have not yet been the subject of a COOP Timer).

Complex Orders received during the COOP Timer and COOP Evaluation will reside on the CBOOK. Complex Orders will be visible to Phlx XL participants during the COOP Timer and COOP Evaluation.

The Phlx XL system will not engage the COOP Timer upon re-opening Complex Order trading when: (a) The Exchange's automated execution system was disengaged and subsequently re-engaged, or (b) the Phlx XL Risk Monitor Mechanism was engaged and subsequently disengaged. In either event, the Phlx XL system will immediately begin the COOP Evaluation.

COOP Evaluation

Upon expiration of the COOP Timer, the Phlx XL system will conduct a COOP Evaluation to determine which Complex Order, if any, on the CBOOK will be the ''COLA-eligible order'' (as defined below) subject to a COLA. The Phlx XL system will establish one single COLA-eligible order [15] for each COLA, against which Phlx XL participants may submit bids and offers. The COLA-eligible order, if any, will be identified by the Phlx XL system among the following Complex Orders: Market and marketable limit Complex Orders (including Complex Orders that cross the cPBBO), and Complex Orders that improve the cPBBO.

The purpose of the COOP Evaluation is to enable the system to determine, based on a ''snap shot'' of all Complex Orders on the CBOOK, the manner in which orders received during that time period will be handled. For example, if at the end of the COOP Timer the Phlx XL system determines that no market or marketable limit Complex Orders, Complex Orders that improve the cPBBO, and/or Complex Orders that cross the cPBBO exist on the CBOOK, Complex Orders that were received during the COOP Timer will remain on the CBOOK.

COLA-Eligible Order

On the other hand, if at the expiration of the COOP Timer, the Phlx XL system determines that there are market or marketable limit Complex Orders (including Complex Orders that cross the cPBBO) and/or Complex Orders that improve the cPBBO in the Phlx XL system, the Phlx XL system will conduct a COOP Evaluation to determine which of those orders will be placed in a COLA as the single ''COLA-eligible order'' for each particular Complex Order Strategy, against which Phlx XL participants may enter bids and offers. A ''COLA-eligible order'' means a Complex Order identified by way of a COOP or that improves the cPBBO respecting the specific Complex Order Strategy that is the subject of the Complex Order.

- If a single Complex Order exists in the Phlx XL system that improves the cPBBO on one side of the market, that order will be the COLA-eligible order.
- If multiple Complex Orders exist in the Phlx XL system that improve the cPBBO on one side of the market, the Complex Order at the best price will be the COLA-eligible order. If there are multiple Complex Orders at the best price, the Phlx XL system will treat the aggregate size at that price as a single COLA-eligible order. Such orders will be executed in the order in which they were received.
- If market and/or marketable limit Complex Orders exist in the Phlx XL system on both sides of the market, the Complex Order on the side of the market with the larger marketable size will be the COLA-eligible order. If the market and/or marketable limit Complex Orders have the same size on both sides of the market, the market and/or marketable limit Complex Orders that represent the larger size associated with market orders will be the COLA-eligible order. If the size associated with market Complex Orders is the same on both sides of the market, the side of the market with the first Complex Order establishing the best price will be the COLA-eligible order. The size associated with multiple market and marketable limit Complex Orders at the same price will be aggregated and treated as one COLA-eligible order at the best price by the system. Such orders will be executed in the order in which they were received.
- If Complex Orders on opposite sides of the market that cross through the mid-point of the cPBBO exist in the Phlx XL system, the side of the market that is priced at the greater amount through the mid-point of the cPBBO will be the COLA-eligible order. If both sides of the market are priced at an equal amount through the mid-point of the cPBBO, or are priced at the cPBBO, the side of the market with the greater size will be the COLA-eligible order. If both sides of the market have the same size, the side of the market that was first to submit the best price will be a COLA-eligible order.
- Orders that are not determined to be the COLA-eligible order may participate in the COLA pursuant to proposed Phlx Rule 1080, Commentary .08(e)(iii), as described below.
- If Complex Orders on opposite sides of the market exist in the Phlx XL system that improve the cPBBO but do not cross the mid-point of the cPBBO, there will be no COLA-eligible order.

The purpose of these scenarios is to provide a methodology for determining which order in the Phlx XL system would qualify as the COLA-eligible order; the methodology is intended to reward the participant whose COLA-eligible order was either submitted first in time or whose COLA-eligible order would create the narrowest spread in the cPBBO. The Exchange believes that once a COLA has begun, the person submitting the initial COLA-eligible order should be the one to benefit from the auction relating to his or her particular COLA-eligible order during the COLA. Other Complex Orders

[15] A single COLA-eligible order would also include multiple orders at the same (best) price that are aggregated and treated by the system as one COLA-eligible order pursuant to proposed Phlx Rule 1080, Commentary .08(d)(ii)(B)(2)(b).

representing the same Complex Order Strategy on the same side of the market as the COLA-eligible order under the scenarios listed above, regardless of price, would be entitled to executions only after the COLA-eligible order has been executed in full.

An order that would otherwise be the COLA-eligible order that is received in the Phlx XL system during the final ten seconds of any trading session would not be the COLA-eligible order.

COLA

Complex Orders on the CBOOK may be subject to an automated COLA process. A COLA may take place (1) following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO.

If the Phlx XL system identifies the existence of a single COLA-eligible order following a COOP or by way of receipt during normal trading of a Complex Order that improves the cPBBO, such COLA-eligible order will initiate a COLA, during which Phlx XL participants may bid and offer against the COLA-eligible order pursuant to this rule. COLA-eligible orders will be executed without consideration of any prices that might be available on other exchanges trading the same options contracts, unless the Phlx XL participant submitting the COLA-eligible order designates the COLA-eligible order as ineligible for execution during the COLA at a price that is inferior to the NBBO for the individual components of the Complex Order Strategy that is the subject of the COLA-eligible order. The purpose of this provision is to provide a method for Phlx XL participants, upon request, to protect each component of their Complex Order from trading through the NBBO. However, an otherwise ''NBBO protected'' COLA-eligible order may not be so designated once placed onto the CBOOK.

Upon the identification of the COLA-eligible order by the Phlx XL system, the Exchange will send a broadcast message to Phlx XL participants indicating that a COLA has been initiated. The broadcast message will identify the Complex Order Strategy, the size of the COLA-eligible order, and any contingencies, if applicable (*e.g.*, All-or-None), but will not identify the side of the market or the price of the COLA-eligible order. The purpose of this provision is to maintain a fair and orderly market for Complex Orders on the Exchange by ensuring a ''blind'' auction in the COLA.

COLA Timer

Once the Phlx XL system has identified a COLA-eligible order (either through price-improvement or by way of a COOP), the COLA will begin with a timing mechanism (a ''COLA Timer''), which is a configurable counting period not to exceed five seconds, during which Phlx XL participants may submit bids or offers that improve on the cPBBO for the particular Complex Order Strategy. In order to be consistent and to avoid confusion, the COLA Timer will be set for the same number of seconds for all options trading on the Exchange as determined by the Exchange and communicated to the membership via Exchange Circular. Complex Orders may be cancelled at any time prior to the commencement of a COLA. To ensure the uninterrupted continuity of the COLA, the proposed rule would provide that no Complex Order(s) in a particular Complex Order Strategy may be cancelled during the COLA for that Complex Order Strategy. Such Complex Orders may be cancelled following the completion of the COLA for that Complex Order Strategy.

Bidding and Offering in Response to a COLA

Phlx XL participants may bid and/or offer on either or both side(s) of the market during the COLA Timer by submitting one or more electronic bids or offers that improve the cPBBO, known as a ''COLA Sweep.'' Phlx XL participants may also bid and/or offer electronically using limit orders. Such orders would be handled as described below.

A single Phlx XL participant may submit multiple COLA Sweeps at different prices in increments of $0.01 in response to a COLA broadcast, regardless of the minimum trading increment applicable to the specific series. A COLA Sweep may be for a size that is less than the size of the COLA-eligible order, and multiple COLA Sweeps submitted by the same Phlx XL participant may be for different sizes at different price levels.

Phlx XL participants may change the size of a previously submitted COLA Sweep at the previously submitted COLA price during the COLA Timer. In the event that a Phlx XL participant submits multiple COLA Sweeps in a particular Complex Order Strategy, the system will use the Phlx XL participant's most recently submitted COLA Sweep at each price level as that participant's response at that price. The Phlx XL participant's most recently submitted COLA Sweep will be included in the allocation algorithm described below, unless the newly submitted COLA Sweep has a size of zero. A COLA Sweep with a size of zero will remove a Phlx XL participant's previously submitted COLA Sweep from the COLA at that price level. The purpose of this provision is to reward Phlx XL participants that are first to bid or offer during the COLA Timer without penalizing them simply because the Phlx XL participant changes the size of his/her COLA Sweep. COLA Sweeps will not be visible to any participant and will not be disseminated by the Exchange. This is to ensure a fair auction during the COLA Timer, such that all participants would submit COLA Sweeps at their best price.

The Exchange's rules regarding exposure of Solicited Transactions and orders submitted by Order Entry Firms [16] acting as agent who wish to trade as principal against such orders will apply to complex orders trading on Phlx XL.[17]

Execution of COLA-Eligible Orders

Upon the expiration of the COLA Timer, COLA Sweeps and/or any Complex Orders received during the COLA Timer that improve the cPBBO may be executed against the COLA-eligible order (unless the cPBBO is inferior to the cNBBO and the Phlx XL participant submitting the COLA-eligible order has designated the components of the COLA-eligible order as ineligible for execution at a price that is inferior to the cNBBO). The COLA-eligible order will receive the best price or prices available for the Complex Order Strategy represented by the COLA-eligible order. The components of a COLA-eligible order may be executed in one cent increments, regardless of the minimum quoting increments otherwise appropriate to the individual legs of the order. Executions in the COLA will comply with the requirements of Phlx Rule 1033(d).[18]

[16] The term ''Order Entry Firm'' means a member organization of the Exchange that is able to route orders to AUTOM. *See* Phlx Rule 1080(c)(ii)(A)(1).

[17] Under Exchange rules, Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on the limit order book for at least three seconds, (b) the Order Entry Firm has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such order, or (c) the Order Entry Firm proceeds in accordance with the crossing rules contained in Phlx Rule 1064. *See* Phlx Rule 1080(c)(ii)(C)(1). Order Entry Firms must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. *See* Phlx Rule 1080(c)(ii)(C)(2).

[18] Phlx Rule 1033(d), ''Spread Type Priority,'' states that when a member holding a hedge order,

Trade Allocation and Priority

As stated above, COLA-eligible orders, COLA Sweeps, and responsive Complex Orders will trade first based on the best price or prices available at the end of the COLA Timer. If no COLA Sweeps or responsive Complex Orders for the same Complex Order Strategy as the COLA-eligible order that improve the initial cPBBO were received during the COLA Timer, each component of the COLA-eligible order may trade at the PBBO with existing quotes and/or limit orders on the limit order book for the individual components of the Complex Order, provided that each component is executed such that the components comprise the Complex Order Strategy with the correct ratio for the desired net debit or credit. Trades pursuant to this paragraph will be allocated in accordance with Phlx Rule 1014(g)(vii), and an SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders.

If the markets for the individual components of a Complex Order Strategy independently improve during the COLA Timer and match the best price of COLA Sweep(s) and/or responsive Complex Order(s), the Phlx XL system will execute such COLA Sweep(s) and/or responsive Complex Orders before executing the individual components of the Complex Order Strategy. A non-broker-dealer customer Complex Order will have priority over specialists, SQTs, RSQTs, and off-floor broker-dealers bidding for and/or offering any component(s) of the Complex Order Strategy at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order Strategy at the same price. The purpose of this provision is to encourage Phlx XL participants to participate in the Complex Order auction process, in which the Phlx XL system will create opportunities for price improvement of the COLA-eligible order, rather than doing so with individual orders. The Exchange believes that the systemic approach using Complex Orders in the auction process will foster fair and orderly automated markets for Complex Orders, with the potential for price improvement each time the automated auction process is engaged.

If multiple customer Complex Orders, COLA Sweeps, Phlx XL participant Complex Orders and/or off-floor broker-dealer Complex Orders are eligible for execution against the COLA-eligible order at the same net price, the trade will be allocated, subject to the size of the COLA-eligible order:

- First, to customer marketable Complex Orders on the CBOOK (as defined below) in the order in which they were received;
- Second, to COLA Sweeps on a size pro-rata basis;
- Third, to SQTs, RSQTs, and non-SQT ROTs who have submitted IOC Complex Orders that are marketable against the COLA-eligible order, on a size pro-rata basis; and
- Fourth, to non-market maker off-floor broker-dealers on a size pro-rata basis.

Executions in the COLA will comply with the requirements of Phlx Rule 1033(d), as described above. For allocation purposes, the size of a COLA Sweep or responsive Complex Order received during the COLA Timer would be limited to the size of the COLA-eligible order. For example, if the size of a COLA-eligible order is 100 contracts, and a COLA Sweep is received for 500 contracts, the system will calculate the algorithm using a size of 100 contracts for the COLA Sweep. The purpose of this provision is to prevent artificially inflated COLA Sweep and Complex Order sizes intended to increase the size pro rata entitlement applicable to the Phlx XL participant submitting the COLA Sweep or Complex Order.

If a COLA-eligible order cannot be filled in its entirety, any remaining balance would be placed on the CBOOK unless the COLA-eligible order has been submitted with other instructions (*i.e.*, cancel).

Enhanced Specialist Participation

In the situation where the specialist submits a COLA Sweep during the COLA Timer at the same price as other COLA Sweeps that are eligible for execution against the COLA-eligible order, after customer marketable Complex Orders have been executed against the COLA-eligible order, the specialist would be entitled to receive the greater of the proportion of the aggregate size at the cPBBO associated with such specialist's COLA Sweep, SQT, and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the CBOOK (*i.e.*, size pro rata); or 40% of the remainder of the order. The specialist is not entitled to receive an allocation that would exceed the size of the specialist's COLA Sweep.

Firm Quote Requirement for COLA-Eligible Orders

COLA Sweeps in response to a COLA broadcast would represent non-firm interest that can be modified at any time prior to the end of the COLA Timer. At the end of the COLA Timer, a COLA Sweep would be firm only with respect to the COLA-eligible order for which it is submitted, provided that COLA Sweeps that have size remaining after the COLA-eligible order is exhausted are also eligible to trade with other incoming COLA-eligible orders in the auction queue that are received during the COLA Timer after the initial COLA-eligible order has been executed in its entirety. Any COLA Sweeps not accepted in whole or in a permissible ratio will expire at the end of the COLA Timer.

Complex Orders Resting on the CBOOK

The proposed rule describes the handling of Complex Orders resting on the CBOOK, and incoming electronic Complex Orders that are received prior to the expiration of the COLA Timer (collectively, for purposes of this rule, ''incoming Complex Orders'') representing the same Complex Order Strategy as a COLA-eligible order. At the end of the COLA Timer, the Phlx XL system will determine the price and size of COLA Sweeps and any orders that were received during the COLA Timer that are unrelated to the COLA but nonetheless are eligible to participate in the COLA as set forth below.

Same Side of the Market as COLA-Eligible Order

Incoming Complex Orders that were received during the COLA Timer for the same Complex Order Strategy as the COLA-eligible order that are on the same side of the market will join the COLA. The original COLA-eligible order has priority at all price points (*i.e.*, multiple COLA Sweep Prices) over the incoming Complex Order(s), regardless of the price of the incoming Complex Order. Therefore, the incoming Complex Order would not be eligible for execution until the COLA-eligible order is executed in its entirety. The purpose of this provision is to provide incentive for, and to reward, customers who submit initial COLA-eligible orders by systemically completing the COLA for such an order. In this manner, the entire order may benefit from COLA Sweeps

as defined in Phlx Rule 1066, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a hedge order at the total credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that the member executes at least one option leg at a better price than the established bid or offer for that option contract AND no option leg is executed at a price outside of the established bid or offer for that option contract.

and price-improving orders on the opposite side of the market. The Exchange further believes that affording priority to the initial COLA-eligible order at all price points submitted for the same Complex Order Strategy fosters a fair and orderly marketplace, is more technologically sound, and will eliminate the potentially disruptive effect of other market participants bidding or offering in penny increments for the purpose of taking advantage of COLA Sweeps and price-improving orders submitted for execution against the original COLA-eligible order without having submitted an initial Complex Order that improves the cPBBO (and thus becomes a COLA-eligible order).

Incoming Complex Orders on the same side of the market as a COLA-eligible order are eligible for execution once the entire COLA-eligible order has been executed. Once the COLA-eligible order has been executed in its entirety, additional Complex Orders on the same side of the market as the COLA-eligible order will be executed (if at all) at each price level in the order in which they were received. If such incoming Complex Orders are not executed in their entirety, any remaining contracts will not be considered a COLA-eligible order and the Phlx XL system will place such remaining bids or offers on the CBOOK, subject to other instructions. If the incoming Complex Order is not executed in its entirety, the system will not initiate a new COLA. Any remaining contracts will be placed on the CBOOK, subject to other instructions.

If no COLA Sweeps or Complex Orders for the same Complex Order Strategy as the COLA-eligible order were received during the COLA Timer, each component of the COLA-eligible order may trade at the PBBO with existing quotes and/or limit orders on the limit order book for the individual components of the Complex Order, provided that each component is executed such that the components comprise the Complex Order Strategy with the correct ratio for the desired net debit or credit.

Trades involving the individual components of a Complex Order would be allocated in accordance with Exchange Rule 1014(g)(vii).[19] An SQT or RSQT quoting all components of the Complex Order would have priority over SQTs and RSQTs quoting a single component, but not over customer orders.

[19] Phlx Rule 1014(g)(vii) is the allocation algorithm applicable to trades executed on Phlx XL.

Customer Complex Orders—Opposite Side of the Market

Incoming customer Complex Orders that are received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price equal to or better than the best COLA Sweep Price will be executed against the COLA-eligible order (which will be executed in its entirety first as described in sub-paragraph (B) above) as follows:

- If such incoming customer Complex Order is a limit order at the same price as the best COLA Sweep Price, the incoming Complex Order will be executed at the Sweep Price.
- If such incoming Complex Order is a limit order that improved the best COLA Sweep Price, the incoming customer Complex Order will be executed at the mid-point of the best COLA Sweep Price and the limit order price, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.
- If such incoming customer Complex Order is a market order or a limit order that crosses the cPBBO, the incoming Complex Order will be executed at the mid-point of the cPBBO on the same side of the market as the COLA-eligible order and the best Sweep Price, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.
- If multiple customer Complex Orders are received on the opposite side of the market from the COLA-eligible order, such orders will be executed in the order in which they were received at each price level.
- If the COLA-eligible order is executed in its entirety and there are remaining bids or offers from the incoming Complex Order(s), the Phlx XL system will place such bids or offers onto the CBOOK, subject to other instructions.

Non-Customer Complex Orders—Opposite Side of the Market

Incoming non-customer Complex Orders that are received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price equal to or better than the best COLA Sweep Price will be executed against the COLA-eligible order as follows:

- If such incoming non-customer Complex Order is a limit order at the same price as the best COLA Sweep Price, the incoming non-customer Complex Order will be executed at the Sweep Price.
- If such incoming non-customer Complex Order is a limit order that improved the best COLA Sweep Price, the incoming non-customer Complex Order will be executed at the limit order price.
- If such incoming non-customer Complex Order is a market order or a limit order that crosses the cPBBO, the incoming non-customer Complex Order will be executed at a price of $0.01 better than the cPBBO on the same side of the market as the COLA-eligible order.
- If multiple non-customer Complex Orders are received on the opposite side of the market from the COLA-eligible order, such orders will be executed in the order in which they were received at each price level.
- If the COLA-eligible order is executed in its entirety and there are remaining bids or offers from the incoming non-customer Complex Order(s), the Phlx XL system will place such bids or offers onto the CBOOK, subject to other instructions.

Incoming Complex Orders that were received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price inferior to any other COLA Sweep Price(s) will be executed against the COLA-eligible order after all interest at the better COLA Sweep Price(s) has/have been executed. The system will treat any unexecuted remaining contracts in the incoming Complex Order as a new Complex Order, and will not initiate a new COLA. Such unexecuted remaining contracts will be placed on the CBOOK, subject to other instructions.

CBOOK

Non-broker-dealer customer Complex Orders and non-market marker broker-dealer orders are eligible for entry into the CBOOK and may be designated as Day or GTC. Complex Orders may be entered onto the CBOOK in increments of $0.01. The individual components of a Complex Order may be executed in minimum increments of $0.01, regardless of the minimum increments applicable to such components. Such orders will be placed on the CBOOK by the system when the following conditions exist:

- The Complex Order does not price-improve upon the cPBBO;
- The order is received before the expiration of the COOP;
- When the Complex Order is received during a trading halt on the Exchange for any component of the Complex Order;
- When the Complex Order is received while the Exchange's automated execution system is

disengaged for any component of such Complex Order;

- When any component of the Complex Order is a pre-opening order; or
- When the Complex Order is received during the final 10 seconds of the trading session.

A COLA-eligible order designated as ineligible for execution in the COLA at a price that is inferior to the NBBO at the time of execution for the individual components of the Complex Order Strategy that is the subject of the COLA-eligible order may not be so designated once placed onto the CBOOK. Therefore, any Complex Order initially so designated would lose this designation once placed onto the CBOOK.

Execution of Complex Orders in the CBOOK

Complex Orders will be automatically executed against orders on the CBOOK in price priority and in time priority at the same price. A Complex Order resting on the CBOOK will execute automatically against: (i) Quotes or orders on the limit order book for the individual components of the order, provided that the Complex Order can be executed in full or in a permissible ratio by such quotes or orders (allocated in accordance with Phlx Rule 1014(g)(vii), and an SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders); or (ii) an incoming marketable Complex Order(s) that do(es) not trigger a COLA Timer, whichever arrives first.

An incoming marketable Complex Order that does not trigger a COLA Timer will execute in the following order:

- First, against quotes or orders on the limit order book for the individual components of the order (provided that the Complex Order can be executed in full or in a permissible ratio by such quotes or orders). Trades executed pursuant to this provision will be allocated in accordance with current Phlx Rule 1014(g)(vii), which sets forth the allocation algorithm for electronic trades. An SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders.
- Second, against non-broker-dealer customer Complex Orders and non-market maker broker-dealer Complex Orders resting in the CBOOK in price priority and, at the same price, against (i) non-broker-dealer customer Complex Orders in the order in which they were received; and (ii) non-market-maker broker-dealer Complex Orders on a size pro rata basis, provided that any execution pursuant to paragraph (f)(iii)(B)(2) complies with the requirements of Phlx Rule 1033(d).[20]

A non-broker-dealer customer Complex Order will have priority over specialists, SQTs, and RSQTs and off-floor broker-dealers bidding for and/or offering any component(s) of the Complex Order Strategy at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order Strategy at the same price.

Open Outcry

Phlx members and Phlx XL participants quoting and trading in open outcry would not be eligible to participate in the electronic Complex Order system. In order to participate, such members and Phlx XL participants must submit COLA Sweeps and/or responsive Complex Orders electronically.

Phlx XL Strategy Price Protection

The Exchange recognizes two Complex Order Strategies that could cause undue risk to market participants. In order to address these strategies, the Exchange has developed a program in the Phlx XL system known as Phlx XL Strategy Price Protection (''SPP''). SPP is a feature of Phlx XL that prevents certain Complex Order Strategies from trading at prices outside of pre-set standard limits. SPP will apply only to Vertical Spreads and Time Spreads, as defined below. Vertical Spreads have a quantifiable minimum and maximum value. Time Spreads have a quantifiable minimum value. SPP ensures that neither of these strategies will trade outside of these quantifiable values by more than a pre-set amount, as described below.

Vertical Spread

A Vertical Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. The SPP will calculate the maximum possible value of a Vertical Spread by subtracting the value of the lower strike price from the value of the higher strike price as between the two components. For example, a Vertical Spread consisting of the purchase of one January 30 call and the sale of one January 35 call would have a maximum value of $5.00. The minimum possible value of a Vertical Spread is always zero.

The SPP will ensure that a Vertical Spread will not trade at a net price of less than the minimum possible value (minus a pre-set value setting an acceptable range) or greater than the maximum possible value (plus a pre-set value setting an acceptable range). The pre-set value and acceptable range will be uniform for all options traded on the Exchange as determined by the Exchange and communicated to the membership by Exchange Circular.

Time Spread

A Time Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. The maximum possible value of a Time Spread is unlimited. The minimum possible value of a Time Spread is zero. The SPP will ensure that a Time Spread will not trade at a price of less than zero, minus a pre-set value setting an acceptable range.

If the limits set forth above would be violated by an execution, the system will place the Complex Order on the CBOOK.

2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing a system and rules that permit the automated handling of Complex Orders, and providing a price improving auction for Complex Orders that is fair, orderly, and results in customers receiving timely and quality executions on the Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[20] *See* note 18, *supra.*

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–50 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–Phlx–2008–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–50 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15698 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58098; File No. SR–NASDAQ–2008–035]

Self-Regulatory Organizations; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Filed by The NASDAQ Stock Market LLC

July 3, 2008.

On April 21, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the by-laws (''NASDAQ OMX By-Laws'') of its parent corporation, NASDAQ OMX. The NASDAQ OMX By-Law Proposal was published for comment in the **Federal Register** on May 8, 2008.[3] On June 10, 2008, Nasdaq filed an extension of time for Commission action extending the action date until July 3, 2008.

Section 19(b)(2) of the Act[4] provides that within thirty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding the Commission shall either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal, which relates to the acquisition of the Boston Stock Exchange, Inc. and the Boston Stock Exchange Clearing Corporation by NASDAQ OMX.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 6, 2008, as the date by which the Commission should either approve or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15627 Filed 7–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: VMT Scientific, Inc.; Order of Suspension of Trading

July 8, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VMT Scientific, Inc. (''VMT Scientific'') because of questions regarding the accuracy of assertions in press releases concerning, among other things: (1) The legal status of VMT Scientific; (2) VMT Scientific's business combinations; (3) VMT Scientific's current financial condition; and (4) VMT Scientific's assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, July 8, 2008 through 11:59 p.m. EDT, on July 21, 2008.

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57761 (May 1, 2008), 73 FR 26182 (SR–NASDAQ–2008–035).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. 08–1428 Filed 7–8–08; 11:32 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11313 and #11314]

Massachusetts Disaster #MA–00017

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 07/03/2008.

Incident: Apartment Fire.

Incident Period: 06/14/2008.

DATES: *Effective Date:* 07/03/2008.

Physical Loan Application Deadline Date: 09/02/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 04/03/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's 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:

Norfolk.

Contiguous Counties:

Massachusetts: Bristol, Middlesex, Plymouth, Suffolk, Worcester.

Rhode Island: Providence.

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 11313 5 and for economic injury is 11314 0.

The States which received an EIDL Declaration # are Massachusetts, Rhode Island.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 3, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–15750 Filed 7–9–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0064]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4161; or e-mail: *joe.strassburg@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. MARAD reviews the information and makes a determination regarding agency liability and payments.

Need and Use of the Information: The information will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed and settled, payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of the officers or crew members.

Annual Responses: 60 responses.

Annual Burden: 750 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: July 3, 2008.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E8–15654 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0063]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRIME TIME.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0063 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 11, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0063. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIME TIME is:

Intended Use: ''Passenger and charter fishing excursions.''

Geographic Region: ''Great Lakes and their tributiaries, including the states of Wisconsin, Minnesota, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York.''

Privacy Act

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

Dated: July 1, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–15655 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0061]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel APACHE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0061, *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 11, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0061, Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel APACHE is:

Intended Use: ''Charter in U.S. waters.''

Geographic Region: ''Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, and the Caribbean.''

Privacy Act

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

Dated: July 1, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–15657 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0062]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CANNON TEN.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–XXXX at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 11, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008-XXXX. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CANNON TEN is:

Intended Use: ''Charter for hire for 12 passengers or less.''

Geographic Region: ''Marina Del Rey, California.''

Privacy Act

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

Dated: July 1, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–15658 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0012; Notice 2]

Chrysler, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

Chrysler, LLC (Chrysler) has determined that certain vehicles that it manufactured during the period of October 1, 2003 through August 28, 2007, do not fully comply with either paragraph S4.3.3 of 49 CFR 571.110 (Federal Motor Vehicle Safety Standards (FMVSS) No. 110, *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 Pounds) or Less)*, or paragraph S5.3 of 49 CFR 571.120 (FMVSS No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars)*—depending on when the vehicle was manufactured. On November 6, 2007, Chrysler filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* identifying approximately 154,000 model year 2005–2008 Dodge Magnum multipurpose passenger vehicles (MPV), and approximately 103,000 model year 2007–2008 Jeep Compass and Jeep Patriot MPVs that do not comply with the paragraphs of FMVSS Nos. 110 and 120 cited above.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Chrysler has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on January 29, 2008 in the **Federal Register** (73 FR 5262). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2008–0012.''

For further information on this decision, contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0645, facsimile (202) 366–7097.

Paragraphs S4.3.3 of 49 CFR 571.110 and S5.3 of 49 CFR 571.120 require that:

4.3.3 of 49 CFR 571.110

Additional labeling information for vehicles other than passenger cars. Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by Sec. 567.4 or Sec. 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

Truck Example—Suitable Tire-Rim Choice

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.0 rims at 248 kPa (36 psi) cold single.

GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.00 rims, at 248 kPa (36 psi) cold single.

S5.3 Label information of 49 CFR 571.120

Each vehicle shall show the information specified in S5.3.1 and S5.3.2 and, in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this section. This information shall appear either—

(a) After each GAWR listed on the certification label required by Sec. 567.4 or Sec. 567.5 of this chapter; or, at the option of the manufacturer,

(b) On the tire information label affixed to the vehicle in the manner, location and form described in Sec. 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.1 Tires. The size designation (not necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires' load carrying capacity at the specified pressure is reduced by dividing by 1.10, in the case of a tire subject to FMVSS No. 109) is appropriate for the GAWR as calculated in accordance with S5.1.2.

S5.3.2. Rims. The size designation and, if applicable, the type designation of Rims (not necessarily those on the vehicle) appropriate for those tires.

Truck Example—Suitable Tire-Rim Choice

GVWR: 7,840 KG (17,289 LB)

GAWR: FRONT—2,850 KG (6,280 LB) WITH 7.50–20(D) TIRES, 20 x 6.00 RIMS AT 520 KPA (75 PSI) COLD SINGLE

GAWR: REAR—4,990 KG (11,000 LB) WITH 7.50–20(D) TIRES, 20 x 6.00 RIMS, AT 450 KPA (65 PSI) COLD DUAL

GVWR: 13,280 KG (29,279 LB)

GAWR: FRONT—4,826 KG (10,640 LB) WITH 10.00–20(F) TIRES, 20 x 7.50 RIMS, AT 620 KPA (90 PSI) COLD SINGLE

GAWR: REAR—8,454 KG (18,639 LB) WITH 10.00–20(F) TIRES, 20 x 2.70 RIMS, AT 550 KPA (80 PSI) COLD DUAL

S5.3.3 The non-pneumatic tire identification code, with which that assembly is labeled pursuant to S4.3(a) of Sec. 571.129.

Chrysler described the noncompliance as the omission of required tire and rim information on the certification labels.

Chrysler explained that S4.3.3 of FMVSS No. 110, which applies only to vehicles other than passenger cars with a GVWR of 10,000 pounds or less, and which went into effect on September 1, 2005, provides as follows: ''Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR [Gross Axle Weight Rating] listed on the certification label required by § 567.4 or § 567.5 of this chapter * * *'' Prior to September 1, 2005, similar requirements set out in S5.3 of FMVSS No. 120 applied to all non-passenger cars, regardless of their GVWR. Approximately 94,718 Dodge Magnums manufactured prior to September 1, 2005 failed to meet the requirements of FMVSS No. 120 and the remainder of the subject vehicles failed to meet the requirements of FMVSS No. 110.

Chrysler further explained that although the certification labels on the vehicles in question do not contain the appropriate tire and rim information after the specified GAWRs, the rim size and type are marked on the rims themselves. And, the size designation for the tires on each vehicle, which also reflects the size of the rims on the vehicle, is included on the tire placard affixed to the B-pillar on each vehicle, as required by S4.3(d) of FMVSS No. 110 for vehicles manufactured after September 1, 2005. Additionally, Magnums manufactured prior to September 1, 2005 had a Tire and Loading Information Label containing the relevant tire and rim size affixed to the B-pillar. Thus, the relevant rim information is clearly available to each vehicle owner and operator.

Chrysler also stated that it has not received any consumer complaints regarding the absence of rim size information on the subject certification label.

In addition, Chrysler stated that it has corrected the problem that caused these errors so that they will not be repeated in future production and that it believes that because the noncompliance is inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA Decision

NHTSA agrees with Chrysler that this noncompliance will not have an adverse effect on vehicle safety. Since rim size and type information are marked on the wheels of the vehicles, and the rim diameter can be determined from the tire size on the placard attached to some of the vehicles, the information needed to ensure that the vehicles are equipped with the proper rims and compatible tires is readily available to potential users.

In consideration of the foregoing, NHTSA has decided that Chrysler has met its burden of persuasion that the labeling noncompliances described are inconsequential to motor vehicle safety. Accordingly, Chrysler's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–15662 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–27181 (Notice No. 08–6)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of information collection approval.

SUMMARY: This notice announces Office of Management and Budget (OMB) approval and extension until March 28, 2011 for an information collection request entitled ''Hazardous Materials Public Sector Training and Planning Grants,'' under OMB Control No. 2137–0586. This ICR was revised to implement a statutory provision authorizing PHMSA to request information from states concerning fees related to the transportation of hazardous materials. We are reserving these questions for use in a pilot project we are currently developing. In addition, this ICR was revised to include more detailed information from grantees to enable us to more accurately evaluate the effectiveness of the grant

program in meeting emergency response planning and training needs. These questions are to be answered during the close-out procedures conducted and submitted at the end of the application cycle.

DATES: The expiration date for this information collection is March 28, 2011.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590, 202–366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590, 202–366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, PHMSA has received OMB approval for renewal of the following ICR:

OMB Control Number: 2137–0586.

Title: ''Hazardous Materials Public Sector Training and Planning Grants.''

Expiration Date: March 28, 2011.

Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection PHMSA submitted to OMB for revision under OMB Control Number 2137–0586. This collection is contained in 49 CFR Part 110, Hazardous Materials Public Sector Training and Planning Grants. We are revising the information collection to implement a statutory provision authorizing PHMSA to request information from states concerning fees related to the transportation of hazardous materials. We are reserving these questions for use in a pilot project we are currently developing. In addition, we are revising the current information collection to include more detailed information from grantees to enable us to more accurately evaluate the effectiveness of the grant program in meeting emergency response planning and training needs. These questions are to be answered during the close-out procedures conducted and submitted at the end of the application cycle.

State and Tribal Hazardous Materials Fees

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) specifies that Hazardous Materials Emergency Preparedness (HMEP) grant funds are to be allocated based on the needs of states and Indian tribes for emergency response planning and training, considering a number of factors including whether the state or tribe imposes and collects a fee on the transportation of hazardous materials and whether the fee is used only to carry out a purpose related to the transportation of hazardous materials. 40 U.S.C. 5116(b)(4). Accordingly, the HMEP grant application procedures in Part 110 require applicants to submit a statement explaining whether the applicant assesses and collects fees for the transportation of hazardous materials and whether those fees are used solely to carry out purposes related to the transportation of hazardous materials.

Section 5125(f) of the Federal hazmat law permits a state, political subdivision of a state, or Indian tribe to impose a fee related to the transportation of hazardous materials only if the fee is fair and used for a purpose related to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response. In accordance with section 5125, the Department of Transportation may require a state, political subdivision of a state, or Indian tribe to report on the fees it collects, including: (1) The basis on which the fee is levied; (2) the purposes for which the revenues from the fee are used; and (3) the total amount of annual revenues collected from the fee. Until now, we have not proposed asking states, political subdivisions, or Indian tribes to report this information.

I. Background

In response to our February 26, 2007 Notice [72 FR 8421] concerning the three-year renewal of the OMB approval of the information collection required of applicants for HMEP grants, we received one comment from the Interested Parties for Hazardous Materials Transportation urging us to require grant applicants to report on the hazardous materials information fees they collect in accordance with section 5125(f) of the Federal hazmat law. The commenter stated that such information is important for both the agency and the regulated community to determine if states are in compliance with applicable provisions of the Federal hazmat law.

We agreed that we should ask states and Indian tribes to provide more detailed information about hazardous materials fees they collect in order to increase the transparency of the programs funded by HMEP grants and to enable us to more accurately evaluate the effectiveness of the HMEP program in meeting emergency response planning and training needs. Therefore, we published a **Federal Register** Notice on July 5, 2007 with a 60-day comment period soliciting comments on revisions to the instructions for submitting an HMEP grant application to request that applicants expand on the currently required statement explaining whether the state or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such fees are used solely for purposes related to the transportation of hazardous materials. In the 60-day notice, we indicated that, beginning with the application for FY 2008 funds, applicants will be asked to respond to an additional set of questions pertaining to state fees, specific information regarding planning and training grants, and an overall program evaluation in their performance reports.

The comment period for the 60-day notice closed on September 4, 2007. PHMSA received comments from the following companies, organizations, and individuals: The American Trucking Association (ATA); Colorado Emergency Planning Commission; Kevin Crawford; Robert E. Dopp; Delaware Emergency Management Agency; the Institute of Makers of Explosives (IME); Lyle Milby; Timothy Gablehouse; Steven Goza; Donald K. Hall; the National Tank Truck Carriers (NTTC); the Nuclear Energy Institute (NEI); Oklahoma Hazardous Materials Emergency Response Commission; James J. Plum; Daniel Roe; and the State of Wisconsin\Department of Military Affairs Wisconsin Emergency Management.

Commenters generally agree that additional information from grantees will assist in PHMSA's evaluation of the emergency response funding needs of states and Indian tribes, and will promote a more effective use of HMEP grant funds. However, many commenters express concern that

funding may be reduced or eliminated as a result of responses by the applicants to the additional questions; the additional questions were an excessive burden on applicants without a measurable benefit or a specific use of the information; and the rationale and motivation of the petitioner were questionable.

In response to these comments, we published a **Federal Register** Notice on November 21, 2007 [72 FR 65638] with a 30-day comment period to address the concerns of the commenters. We also revised the more burdensome of the proposed questions and provided an abbreviated version of the questions in a less time-consuming and more user-friendly format. In addition, we also recalculated the information collection burden based on the revisions to the proposed questions. The revised questions outlined in the November 21, 2007 notice were as follows:

1. Does your state or tribe assess a fee or fees in connection with the transportation of hazardous materials? Yes or No

2. If the answer to question 1 is ''yes,''

a. What state agency administers the fee?

b. What is the amount of the fee and the basis on which the fee is assessed? Examples of the bases on which fees may be assessed include: (1) An annual fee for each company which transports hazardous materials within your state or tribal territory; (2) a fee for each truck or vehicle used to transport hazardous materials within your state or tribal territory; (3) a fee for certain commodities or quantities of hazardous materials transported in your state or tribal territory; or (4) a fee for each hazardous materials shipment transiting your state or tribal territory.

c. For what purpose(s) is the revenue from the fee used? For example, is the revenue used to support hazardous materials transportation enforcement programs? Is the fee used to support planning, developing, and maintaining an emergency response capability?

d. What is the total annual amount of the revenue collected for the last fiscal year or 12-month accounting period?

Planning Grants

1. Did you complete or update assessments of commodity flow patterns in your jurisdiction? Yes or No. If so, how many? Please describe in one or two sentences the results of each assessment

2. Did you complete or update assessments of the emergency response capabilities in your jurisdiction? Yes or No. If yes, what factors did you consider to complete such assessments? How many assessments were completed? Please describe in one or two sentences the results of those assessments.

3. Did you or local emergency planning committees develop or improve emergency plans in your state? If so, how many plans were either developed or updated? Briefly describe the outcome of this effort.

4. Did you or local emergency planning committees in your state conduct emergency response drills or exercises in support of their emergency plans? Yes or No. How many exercises or drills did you conduct? Briefly describe the drill or exercise (tabletop, computer simulation, real-world simulation, or other drill or exercise), the number and types of participants, including shipper or carrier participants, and lessons learned.

5. How many Local Emergency Planning Committees (LEPCs) are located in your jurisdiction? How many LEPCs were assisted using Hazardous Materials Emergency Preparedness (HMEP) funds?

Training Grants

1. Did you complete an assessment of the training needs of the emergency response personnel in your jurisdiction? Yes or No. What factors did you consider to complete the assessment? What was the result of that assessment?

2. Provide details concerning the number of individuals trained in whole or in part using HMEP training grant funds on the following chart:

	Funded in part**	Funded fully
a. Fire	_____	_____
b. Police	_____	_____
c. Emergency Medical Services (EMS)	_____	_____
d. Refresher	_____	_____
e. Other*	_____	_____
Total	_____	_____

Please indicate the hazmat training level for the persons trained in the above chart by the following training levels:

Awareness	_____
Operations	_____
Technician	_____
Refresher	_____
Incident Command System (ICS)	_____
Site Specialist	_____

3. Did you develop new training using HMEP training grant funds in whole or in part, such as training in handling specific types of incidents of specific types of materials? Yes or No. If so, briefly describe the new programs. Was the program qualified using the HMEP Curriculum Guidelines process? Yes or No.

4. Do you have a system in place for measuring the effectiveness of emergency response to hazardous materials incidents in your jurisdiction? Yes or No. How many state and local response teams are located in your jurisdiction? What is the estimated coverage of these teams (e.g., the percent of state jurisdictions covered)?

Overall Program Evaluation

1. Given the amount of assistance available, using a scale of 1–5 (with 5 being excellent and 1 being poor), how well has the HMEP grant program met your need for preparing hazmat emergency responders?

2. Given projected increases, using a scale of 1–5 (with 5 being excellent and 1 being poor), how well do you think the HMEP grant program will meet your future needs?

3. What areas of the HMEP grant program would you recommend for enhancement?

The comment period for the 30-Day Notice closed on December 21, 2007. PHMSA received comments from the following companies, organizations, and individuals: The American Samoa Government; Cathy Canty; Don Cary; Cleveland County Local Emergency Planning Committee; Jack Cobb; Colorado Emergency Planning Commission; Eddy D. Cooke; Montressa Jo Elder; Stephen T. Grayson; Glenn K. Grove; Senator James M. Imhofe (R–Oklahoma); Monty Matlock; Lyle Milby; Greg Moser; Randall J. McConnell; National Association of SARA Title III Program Officials (NASTTPO); Pueblo Local Emergency Planning Committee; Daniel Roe; Keith Shadden; Greg

Stasinos; LaRiea Thompson; Amanda Vargas; Pete Weaver; and Tim Zaremba.

Many of the commenters share PHMSA's goal of more accurately evaluating the effectiveness of the grant program in meeting emergency response planning and training needs. However, most of the commenters oppose the revisions and cite many of the same reasons enumerated in response to the 60-day notice, i.e.; the additional questions are an excessive burden on applicants without a measurable benefit or a specific use of the information. Other commenters warn that excessive burden generated by additional questions will have far-reaching ramifications on the grantees. For instance, Tim Zaremba, coordinator for the Navajo County, Arizona LEPC states that he ''strongly concurs with the comments that seek to avoid increased burdens on grassroots communities that are already doing our level best to meet existing requirements and be successful in our activities,'' and that PHMSA ''should realize that any increase in information seeking will ultimately filter down to where the data exists, namely at the local level.'' In its comments in a letter dated February 27, 2008, NASTTPO, an organization whose membership includes many HMEP grantees, indicates that there is a shared ''goal of providing a measure of the success of the program relative to the preparedness continuum.'' In the letter, NASTTPO objects to the burden PHMSA's proposed questions would place on grantees and suggests alternative questions which are less burdensome. PHMSA reviewed the NASTTPO recommendation along with other comments received to the docket, and while our objective of program accountability does not change, we believe an approach that incorporates comments and addresses concerns of all interested parties is possible. Such an information collection package would reduce and clarify the information collection requirements, change when information needs to be reported, include a simplified method to report accounting information, and incorporate information already provided by grantees. We believe this will assist us in evaluating the effectiveness of the grant program while reducing the burden on grantees to collect and report the information. Therefore, we revised the list of questions from the December 21, 2007, 30-day notice into three sections, re-calculated the information collection, and provided an alternative list of questions to OMB as an amendment to the information collection submitted to OMB for review on December 4, 2007. The amended information collection was subsequently approved by OMB with an expiration date of March 28, 2011. The sections are identified below along with an explanation of the relationship to questions and comments in the docket.

- Part I—State or Tribe Assessment of Hazardous Materials Transportation Fees. PHMSA reduced the information collected on hazardous materials transportation fees to only those areas reflected in the Federal hazardous materials transportation law, 49 U.S.C. 5125(f). This revision eliminates two questions: one pertains to the agency that collects the fee; the other pertains to whether company size was considered in the assessment. We intended this information be collected at the end of the grant period as part of the close-out report to alleviate the concerns of several commenters that grant funding may be reduced or eliminated as a result of responses to this information. However, we have decided to reserve these questions for use in a pilot project we are currently developing. The pilot program will collect information on hazardous materials fees from a small number of states. The pilot approach will allow us to ''test'' the questions with a limited number of states and establish a process that might allow for full implementation of the questions at a later date.
- Part II—Reporting of Authorized Expenditures. To reduce the burden on grantees and to ensure more consistent reporting of expenditures, PHMSA developed a spreadsheet to be used to report total amounts and percentages of HMEP grant funds used. The spreadsheet provides a standardized format to assist grantees to report authorized expenditures as specified in 49 CFR 110.40(a) through (b)(4), and was derived from questions previously listed in the 30-day notice. The authorized activities should total 100% of the grant funds used, and should provide PHMSA with an appropriate level of accountability.
- Part III—Report of HMEP Grantee Accomplishments. Based on comments and alternative questions submitted to the docket by NASTTPO, PHMSA developed a list of questions to be used by grantees to report the accomplishments and successes the HMEP grant program has achieved through the year. These questions address both the planning and training categories of the grant program. PHMSA believes these questions will provide the information we are seeking, while posing less of a burden on grantees. The questions are presented in a narrative format for easier and more precise understanding. In addition, to provide clarification and to further ease the burden on grantees, we also provide examples of the types of information requested.

The questions in the information collection were approved by OMB with an expiration date of March 28, 2011, and are as follows:

Part I—State or Tribe Assessment of Hazardous Material Transportation Fees

Please answer the questions as part of the grant close-out report.

1. Does your state or tribe assess a fee or fees in connection with the transportation of hazardous materials?

2. If the answer to question 1 is ''yes,''

a. What is the amount of the fee and the basis on which the fee is assessed? Examples of the basis on which fees may be assessed include: (1) An annual fee for each company which transports hazardous materials within your state or tribal territory; (2) a fee for each truck or vehicle used to transport hazardous materials within your state or tribal territory; (3) a fee for certain commodities or quantities of hazardous materials transported in your state or tribal territory; or (4) a fee for each hazardous materials shipment transiting your state or tribal territory.

b. For what purpose(s) is the revenue from the fee used? For example, is the revenue used to support hazardous materials transportation enforcement programs? Is the fee used to support planning, developing, and maintaining an emergency response capability?

c. What is the total annual amount of the revenue collected for the last fiscal year or 12-month accounting period?

Part II—Reporting of Authorized Expenditures

Please complete the table on the funds spent on planning and training grants. The totals should account for 100 percent of the funds granted to a State, Territory, or Tribal government.

ACCOUNTING OF HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS (HMEP) GRANT FUNDS EXPENDED IN THE REPORTED GRANT YEAR

Section of 49 CFR	Authorized activity	Expenditures (dollars)	Percent of Total Grant
§ 110.40(a)	Planning		
§ 110.40(a)(1)	Provide total dollar amount expended to develop, improve, and implement emergency plans, as well as exercises which test the plan and enhancements to the plan to include hazard analysis & response procedures to hazmat transportation.		
§ 110.40(a)(2)	Provide total dollar amount expended to assess flow patterns of hazardous materials within a state and between states.		
§ 110.40(a)(3)	Provide total dollar amount expended to assess the need for regional hazardous materials emergency response teams.		
§ 110.40(a)(4)	Provide total dollar amount expended to assess local response capabilities.		
§ 110.40(a)(5)	Provide total dollar amount expended to conduct emergency response drills and exercises.		
§ 110.40(a)(6)	Provide total dollar expended for the use of technical staff to support the planning effort.		
§ 110.40(a)(7)	Provide total dollar amount expended for additional activities the Associate Administrator deems appropriate to implement the scope of work for the proposed project and approved in the grant.		
	Provide the total dollar amount expended by grantees to administer the HMEP planning grant to include improvement to emergency response planning; update or complete assessments; conduct exercises; and other authorized planning activities by the grantee to include other authorized expenditures allowed under the law.	.....	.....
	SubTotal Planning Expenditures		
§ 110.40(b)	Training		
§ 110.40(b)(1)	Provide total dollar amount expended to assess the number of public sector employees who need proposed training in accordance with the local emergency response plan.		
§ 110.40(b)(2)	Provide total dollar amount expended on delivery of preparedness and response training to include tuition, travel expenses, room & board.		
§ 110.40(b)(3)	Provide total dollar amount expended for emergency response drills and exercises, course of study, tests and evaluations of emergency response plans.		
§ 110.40(b)(4)	Provide total dollar amount expended for expenses associated with giving training and monitoring training to include, but not limited to examinations, critiques and instructor evaluations.		
§ 110.40(b)(5)	Provide total dollar amount expended for staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.		
§ 110.40(b)(6)	Provide total dollar amount expended for additional activities the Associate Administrator deems appropriate to implement the scope of work for the proposed project and approved in the grant.		
	SubTotal Training Expenditures		
	Total Planning and Training Expenditures	.....	100

Part III—Report of Hazardous Materials Emergency Preparedness (HMEP) Grant Accomplishments

The questions below are to be used by grantees to report the accomplishments and successes the HMEP grant program has achieved through the year. These questions address both the planning and training categories of the grant program. Please answer each question to the best of your ability.

Questions Pertaining to Planning

1. Provide the total number of Local Emergency Planning Committees (LEPC's) and break out the total number of active and inactive LEPC's. Provide the number of LEPCs that received funding and the amount received by each.

2. Provide the number of LEPCs that have identified or further evaluated risks in their communities. Provide a brief description of the methods used by the LEPCs to identify these risks, such as: Community meetings; review of Tier 2 reports; commodity flow study; written or windshield surveys; hazard analysis; and vulnerability assessment as part of the emergency operations plan (EOP) process. Provide the number of commodity flow studies and hazard risk analyses accomplished.

3. Provide the methods used to update the emergency plan such as: LEPC meetings; types of infrastructure update information; point of contact lists; location of vulnerable populations; updates of maps; and response capabilities. Provide the number of LEPCs that have updated or written their emergency plan in the past year to be consistent with the changing conditions of the community and the identified risks.

4. Provide the number of LEPCs that exercised their emergency operations plan in the past year. Explain the type and total number of exercises conducted, for example: Table top, real world simulation, or multiple jurisdictional drills; the agencies involved; and the number of people who participated. Provide information on whether the exercise involved a fixed facility, a mode of transportation, or a combination of both. If a mode of transportation was involved, indicate whether it was rail, water, road, or air; and whether a hazardous material(s) was used as part of the exercise scenario. If a hazardous material(s) was

used, indicate the type(s) of material exercised. How many total exercises were accomplished?

5. Were lessons learned from the exercise incorporated into response planning and the community emergency plan?

6. Provide the number of LEPC members who attend meetings, conferences, or other opportunities for preparedness and response education.

7. Provide the number of LEPCs with the different types of preparedness projects and outreach initiatives they conducted to improve community awareness and safety.

8. For those LEPCs that retained HMEP funding, describe the type of projects that were funded and the cost associated with each along with a description of the process used to award the project (risk analysis, needs assessment, etc.).

9. Provide the total number of hazardous materials response teams located in each of the states/tribe/territory to include industry teams.

Questions Pertaining to Training

10. Did state grantees provide training directly? Did they go through an outside contracted organization to provide training, or a combination of both?

11. If state grantees provided training, how many people (fire, police, emergency medical services (EMS), other*) received hazmat training in the past year in accordance with Occupational Safety and Health Administration (OSHA) 1910.120; and to what level of training did they receive: Awareness, Operation, Specialist, Technician and refresher training of these levels. Was the training fully funded or funded in part** by HMEP grant funds?

12. Did people receive Incident Command System (ICS) or other types of response related training? Examples of other type of training events would be Transportation Community Awareness and Emergency Response (TRANSCAER), regional or national hazmat training conferences etc.

13. Were there classes offered other than those in accordance with National Fire Protection Association (NFPA) or OSHA standards? If so, how was the offering of the course determined, the number of people trained, and the type of training conducted?

14. For those states that provided funding to LEPCs for training, provide the number of LEPCs to receive funding for training with the amount received for each. Provide the number of people (fire, police, EMS, other) in each level who received hazmat training in the past year in accordance with OSHA 1910.120. Break down the number of people trained in each hazmat level: Awareness, Operation, Specialist, Technician, and annual refresher training by level in accordance with OSHA 1910.120. Provide information on who provided the training, the number trained for each, and the type of training delivered. Was the training fully funded or funded in part** by HMEP grant funds?

15. For those states that provided funding to LEPCs, were classes offered other than those in accordance with NFPA or OSHA standards? If so, how was the offering of the course determined, the number of people trained, and the type of training conducted?

16. Was the training provided based on a change in the emergency plan or lessons learned through exercises? If so, explain.

*''Other'' may include Public Works, Emergency Operations Center (EOC), emergency support functions, liaison officer, safety officer personnel, etc.

**If HMEP funds are used in any way, it counts as in part (e.g., books, prerequisite training, training equipment, etc.).

II. Implementation of Additional Questions

PHMSA acknowledges that the revision of the list of questions from the December 21, 2007, 30-day notice into three sections as outlined above may continue to represent a source of concern to grantees already faced with limited resources. We base this belief on comments received by PHMSA in response to both the 60-day and 30-day notice. Therefore, in a further effort to minimize the burden on grantees and to also meet our goal to evaluate the effectiveness of the program, we are including only the questions from Part II, ''Reporting of Authorized Expenditures,'' and Part III, ''Reporting of Hazardous Materials Emergency Preparedness (HMEP) Grant Accomplishments,'' in the 2008 HMEP application kit. These questions are to be answered during the close-out procedures conducted and submitted at the end of the application cycle. We are reserving the questions from Part I ''State or Tribe Assessment of Hazardous Materials Transportation Fees'' for use in a pilot project that we are currently developing. The pilot program will collect information on hazardous materials fees from a small number of states. The pilot approach will allow us to ''test'' the questions with a limited number of states and establish a process that might allow for full implementation of the questions at a later date.

III. Information Collection Burden for the HMEP Grant Program

The total revised information collection burden for the HMEP grant program follows:

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Type of Request: Revision of a currently approved information collection. Abstract: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of states, Indian tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Recordkeeping:

Estimated Number of Respondents: 68.

Estimated Number of Responses: 68.

Estimated Annual Burden Hours: 5,290.

Frequency of Collection: On occasion.

Issued in Washington, DC, on July 3, 2008.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E8–15653 Filed 7–9–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0579]

Proposed Information Collection (Request for Vocational Training Benefits—Certain Children of Vietnam Veterans); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine children of Vietnam veterans born with birth defects eligibility for vocational training benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 8, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0579'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Vocational Training Benefits—Certain Children of Vietnam Veterans, 38 CFR 21.8014).

OMB Control Number: 2900–0579.

Type of Review: Extension of a currently approved collection.

Abstract: Vietnam veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, applicants must provide identifying information about themselves and the natural parent who served in Vietnam. The information collected will allow VA counselors to review existing records and to schedule an appointment with the applicant to evaluate the claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 15 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 60.

Dated: June 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–15615 Filed 7–9–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (10–21085a–e(NR))]

Agency Information Collection Activities (Prevalence and Clinical Course of Depression Among Patients with Heart Failure) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900-New (10–21085a–e(NR))'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900-New (10–21085a–e(NR)).''

SUPPLEMENTARY INFORMATION:

Title: Prevalence and Clinical Course of Depression Among Patients with Heart Failure, VA HSR&D, Nursing Research Initiative No. 05–209–3, VA Form 10–21085a–e(NR).

OMB Control Number: 2900-New (10–21085a–e(NR)).

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used to evaluate the prevalence of clinical depression and depressive symptoms among veterans with heart failure during periods of hospitalization and out patient care. The data will be used to identify the patterns of depression and to understand the temporal relationship between clinical depression, alterations in physical functions, and levels of circulating biochemical markers in heart failure patients.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 28, 2008 at page 23009.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,362.

a. VA Form 10–21085a(NR)—18 hours.

b. VA Form 10–21085b(NR)—109 hours.

c. VA Form 10–21085c(NR)—872 hours.

d. VA Form 10–21085d(NR)—218 hours.

e. VA Form 10–21085e(NR)—145 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–21085a(NR)—5 minutes.

b. VA Form 10–21085b(NR)—5 minutes.

c. VA Form 10–21085c(NR)—40 minutes.

d. VA Form 10–21085d(NR)—10 minutes.

e. VA Form 10–21085e(NR)—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,014.

a. VA Form 10–21085a(NR)—218.
b. VA Form 10–21085b(NR)—1,308.
c. VA Form 10–21085c(NR)—1,308.
d. VA Form 10–21085d(NR)—1,308.
e. VA Form 10–21085e(NR)—872.

Dated: June 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–15616 Filed 7–9–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Agency Information Collection (Veteran's Application for Compensation and/or Pension) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 11, 2008

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0001'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0001.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Veteran's Application for Compensation and/or Pension, VA Form 21–526.

b. Authorization and Consent Release Information to the Department of Veterans Affairs (VA), VA Form 21–4142.

OMB Control Number: 2900–0001.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Form 21–526 to apply for compensation and/or pension benefits. Veterans who need VA's assistance in obtaining non-VA medical records must complete VA Form 21–4142.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 28, 2008, at pages 23008–23009.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–526—589,208.

b. VA Form 21–4142—3,292.

Estimated Average Burden Per Respondent:

a. VA Form 21–526—1 hour and 30 minutes.

b. VA Form 21–4142—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: June 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–15617 Filed 7–9–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Agency Information Collection (REPS Annual Eligibility Report) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0405'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0405.''

SUPPLEMENTARY INFORMATION:

Title: REPS Annual Eligibility Report, (Under the Provisions of Section 156, Pub. L. 97–377), VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8941 is completed annually by claimants who have earned income that is at or near the limit of earned income. The REPS program pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the information collected to determine a claimant's continued entitlement to Restored Entitlement Program for Survivors (REPS) benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 1, 2008, at pages 24116–24117.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: July 1, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–15618 Filed 7–9–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Agency Information Collection (Notice of Waiver of VA Compensation or Pension To Receive Military Pay and Allowances) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0463'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0463.''

SUPPLEMENTARY INFORMATION:

Title: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances, VA Form 21–8951 and VA Form 21–8951–2.

OMB Control Number: 2900–0463.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to waive VA disability benefits in order to receive active or inactive duty training pay are required to complete VA Forms 21–8951 and 21–8951–2. Active and inactive duty training pay cannot be paid concurrently with VA disability compensation or pension benefits. Claimants who elect to keep training pay must waive VA benefits for the number of days equal to the number of days in which they received training pay.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 1, 2008, at page 24116.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 21,000.

Dated: July 1, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–15619 Filed 7–9–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
July 10, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Amend the Listing for the Preble's Meadow Jumping Mouse (Zapus hudsonius preblei) To Specify Over What Portion of Its Range the Subspecies Is Threatened; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–ES–2007–0003; 92220–1113–0000; C6]

RIN 1018–AV64

Endangered and Threatened Wildlife and Plants; Final Rule To Amend the Listing for the Preble's Meadow Jumping Mouse (Zapus hudsonius preblei) To Specify Over What Portion of Its Range the Subspecies Is Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service/USFWS), under the authority of the Endangered Species Act of 1973, as amended (Act), amend the listing for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Prebles) to specify over what portion of its range the subspecies is threatened. Based on the best scientific and commercial data available, we have determined that the Prebles is a valid subspecies and should not be delisted based upon taxonomic revision; the subspecies is not threatened throughout all of its range; and the portion of the subspecies' current range located in Colorado represents a significant portion of the current range where the subspecies should retain its threatened status. This determination is based on a thorough review of all available information, which indicates that Prebles' populations in Wyoming are more widespread and threats to the subspecies less severe than those known at the time of listing, but that in Colorado the Prebles is likely to become endangered within the foreseeable future.

DATES: This rule is effective August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office at 134 Union Blvd., Suite 670, Lakewood, CO 80228; telephone (303) 236–4773. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

General Information

Meadow jumping mice (*Zapus hudsonius*) are small rodents with long tails, large hind feet, and long hind legs. Total length of an adult is approximately 187 to 255 millimeters (7 to 10 inches), with the tail comprising 108 to 155 millimeters (4 to 6 inches) of that length (Krutzsch 1954, p. 420; Fitzgerald *et al.* 1994, p. 291).

Typical habitat for Prebles is comprised of well-developed riparian vegetation with adjacent, relatively undisturbed grassland communities and a nearby water source (Bakeman 1997, pp. 22–31). Prebles are typically captured in areas with multi-storied cover with an understory of grasses or forbs or a mixture thereof (Bakeman 1997, pp. 22–31; Bakeman and Deans 1997, pp. 28–30; Meaney *et al.* 1997a, pp. 15–16; Meaney *et al.* 1997b, pp. 47–48; Shenk and Eussen 1998, pp. 9–11; Schorr 2001, pp. 23–24). The shrub canopy is often willow (Salix spp.), although other shrub species may occur (Shenk and Eussen 1998, pp. 9–11). Trainor *et al.* (2007, pp. 471–472) found that high-use areas for Prebles tended to be close to creeks and were positively associated with the percentage of shrubs, grasses, and woody debris. Hydrologic regimes that support Prebles' habitat range from large perennial rivers such as the South Platte River to small drainages only 1 to 3 meters (m) (3 to 10 feet (ft)) in width.

Meadow jumping mice are primarily nocturnal or crepuscular (active during twilight), but also may be active during the day. The Prebles uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Shenk and Sivert 1999a, p. 11; Ryon 1999, p. 12; Schorr 2001, p. 14; Shenk 2004; USFWS 2003b, p. 26). While the Prebles' dispersal capabilities are thought to be limited, in one instance a Prebles was documented moving as far as 1.1 kilometers (km) (0.7 mile (mi)) in 24 hours (Ryon 1999, p. 12). The Prebles typically enters hibernation in September or October and emerges the following May (Whitaker 1963, p. 5; Meaney *et al.* 2003).

For additional information on the biology of this subspecies, see the May 13, 1998, final rule to list the Prebles as threatened (63 FR 26517) and the June 23, 2003, final rule designating critical habitat (68 FR 37275).

Previous Federal Actions

We listed the Prebles as threatened under the Act on May 13, 1998 (63 FR 26517). On May 22, 2001 (66 FR 28125), we adopted a final section 4(d) special rule for the Prebles that provides exemptions from section 9 take prohibitions for certain rodent control activities, ongoing agricultural activities, maintenance and replacement of existing landscaping, and existing uses of water. On October 1, 2002 (67 FR 61531), we amended this rule to provide exemptions for certain noxious weed control and ditch maintenance activities. The special rule, as amended, was scheduled to end May 22, 2004, but was made permanent on May 20, 2004 (69 FR 29101). On June 23, 2003, we designated critical habitat for the Prebles in portions of Colorado and Wyoming (68 FR 37275).

In June 2000, the Service established the Preble's Meadow Jumping Mouse Recovery Team (Recovery Team) composed of scientists and stakeholders. In June 2003, the Recovery Team provided their recommendations to the Service in the form of a draft recovery plan. The Service revised this technical working draft in November 2003. This document (hereafter referred to as the Preliminary Draft Recovery Plan) suggests the long-term protection of populations spread throughout the current range of the subspecies in order to lessen or eliminate threats. In particular, the documents suggest long-term protection of 1 large population (with June abundances of 2,500 or more individuals), 2 medium populations (with June abundances of 500–2,499 individuals), and 6 small populations (with evidence of occupancy; possibly 150 mice) within the North Platte River basin; 2 large, 3 medium, and 18 small populations within the South Platte River basin; and 1 large population, and 6 small populations within the Arkansas River basin (USFWS 2003b, pp. 19–23). Recovery planning efforts were halted in December 2003 after new information became available questioning the taxonomic validity of the subspecies. While the availability of the Preliminary Draft Recovery Plan (USFWS 2003b) has not yet been announced in the **Federal Register**, it represents the best scientific information available to us concerning recovery needs of the Prebles.

On December 23, 2003, we received two nearly identical petitions, from the State of Wyoming's Office of the Governor and Coloradans for Water Conservation and Development, seeking to remove the Prebles from the Federal List of Endangered and Threatened Wildlife (Freudenthal 2003; Sonnenberg 2003). The petitions maintained that the Prebles should be delisted based on the taxonomic revision suggested by Ramey *et al.* (2003) and new distribution, abundance, and trends data that suggested the subspecies was no longer threatened or endangered (Freudenthal 2003, p. 1; Sonnenberg 2003, p. 1).

On March 31, 2004, we published a notice announcing a 90-day finding that the petitions presented substantial information indicating that the

petitioned action may be warranted (69 FR 16944). On February 2, 2005, we published a 12-month finding that the petitioned action was warranted and a proposed rule to remove Prebles from the Federal List of Endangered and Threatened Wildlife (70 FR 5404). This notice also opened a 90-day public comment period. The proposed delisting was based upon a taxonomic revision suggested by Ramey *et al.* (2004a (a revision of Ramey *et al.* 2003)), which concluded that Prebles should be synonymized with a neighboring subspecies (Ramey *et al.* 2004a, pp. 1, 13). Although this report remained unpublished and had received mixed peer reviews, we concluded that a lack of distinct genetic and morphologic differences suggested that Prebles was likely not a valid subspecies of meadow jumping mouse (*Zapus hudsonius*). Considering the weight that the findings of Ramey *et al.* (2004a) had in the proposed delisting, verifying these results prior to making a final decision on the proposal was a high priority of the Service (Williams 2004; Morgenweck 2005). As such, we contracted with the U.S. Geological Survey (USGS) to conduct additional genetic analysis of Prebles and four neighboring subspecies of meadow jumping mice (USGS 2005, pp. 1–4).

On January 25, 2006, the USGS released its report concluding that the Prebles should not be synonymized with neighboring subspecies of meadow jumping mice (King *et al.* 2006a, pp. 2, 29). On February 17, 2006, the Service extended the rulemaking process an additional 6 months as allowed under section 4(b)(6)(B)(i) of the Act (71 FR 8556). This USGS study indicated that there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination contained in our proposed rule. We reopened the comment period for an additional 60 days and announced that we intended to assemble a panel of experts to carefully review and assess the two studies.

On March 30, 2006, we published a notice of availability of the King *et al.* (2006a) and Ramey *et al.* (2005) data and extended the comment period on the proposed delisting rule an additional 30 days (71 FR 16090). We then contracted with Sustainable Ecosystems Institute (SEI) to organize a scientific review panel to analyze, assess, and weigh the reasons why the data, findings, and conclusions of King *et al.* differed from the data, findings, and conclusions of Ramey *et al.* (as written in this sentence, and hereafter, ''Ramey *et al.*'' or ''King *et al.*'' without a modifying date refers to the overall work of these authors instead of a specific publication) (USFWS 2006, p. 14). On July 21, 2006, SEI delivered a final report to the Service (SEI 2006a).

On September 26, 2006, the State of Wyoming submitted a 60-day notice of intent to sue over our failure to publish a final determination on our 2005 proposed delisting rule within the timeframes allowed by the Act. On January 24, 2007, the State of Wyoming filed a petition for review with the court. On June 22, 2007, the Service and the State of Wyoming reached a settlement agreement which required that, by October 31, 2007, we submit to the **Federal Register** for publication either (1) a withdrawal of our 2005 proposed delisting regulation; or (2) a new proposed regulation considering the Prebles' taxonomy and the subspecies' threatened status in light of all current distribution, abundance, and trends data (*State of Wyoming* v. *U.S. Department of the Interior*, No. 07CV025J (District of Wyoming 2007)). On November 7, 2007, we published a revised proposed rule to amend the listing of the Prebles to specify over what portion of its range the subspecies is threatened and opened a 75-day public comment period (72 FR 62992). Under the settlement agreement with the State of Wyoming, the Service agreed to submit a final determination on the revised proposed rule to the **Federal Register** no later than June 30, 2008.

Public Comments Solicited

Comments on this rulemaking were accepted from February 2 to May 3, 2005 (70 FR 5404, February 2, 2005), from February 17 to April 18, 2006 (71 FR 8556, February 17, 2006; 71 FR 16090, March 30, 2006), and from November 7, 2007 to January 22, 2008 (72 FR 62992, November 7, 2007). Open houses and public hearings were held on December 10, 2007, in Lakewood, Colorado, and on December 12, 2007, in Wheatland Wyoming (72 FR 62992, November 7, 2007). These opportunities to comment were publicized via the **Federal Register**, press releases, public notices in area newspapers, postings on our Web site, and direct contact with Federal and State agencies, county governments, scientific organizations, and other interested parties. In addition, the media provided substantial coverage of the proposals. Comments could be hand delivered to us, submitted to us via e-mail, mail, the Federal e-Rulemaking Portal, fax, or provided during public hearing testimony.

Comments were submitted by a variety of parties including the general public, business interests, environmental organizations, and Federal, State, and local governments. We received 122 written, faxed, or e-mailed comments during public comment periods (excluding peer reviewers' comments discussed below). An additional eight comments were provided during two public hearings. On March 24, 2006, the Service received a Data Quality Act challenge on behalf of Coloradans for Water Conservation and Development and the Colorado Farm Bureau. While this challenge was handled separately from this rulemaking, all of the relevant issues raised also were considered public comments and considered in this final determination. All of the public comments available prior to the July 2006 SEI panel were made available to the panelists.

Peer Review

In accordance with our Interagency Policy for Peer Review in Act Activities (59 FR 34270, July 1, 1994) and the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005), we sought the expert opinions of appropriate and independent specialists regarding this rulemaking. First, we contacted five reviewers with expertise in genetics, systematics, and small mammals to review the taxonomic portions of this document. Four of those solicited provided comments during one or more of the comment periods (Gore 2008; Hoekstra 2005; Kelt 2005, 2006, 2008; Spencer 2005, 2006a, 2008). All of the peer reviews submitted prior to the July 2006 SEI panel meeting were made available to the expert panelists (Hoekstra 2005; Kelt 2005, 2006; Spencer 2005, 2006a). Second, we contacted an additional five reviewers with expertise in small-mammal biology, riparian-community ecology and status, population dynamics and extinction risk, and/or development trends and land-use conflicts to review the remainder of the 2007 revised proposal. All five of these reviewers provided comments (Anderson 2008; Beauvais 2008; Buskirk 2008; Nupp 2008; Travis 2008).

Given the information now available, all of the experts who commented on taxonomic portion of the rule were supportive of our discussion, analysis, and/or conclusions. No reviewers expressed significant concerns over our analysis of the Prebles' taxonomy.

Reviews that focused on the remainder of the 2007 revised proposed rule were generally supportive of Service efforts, but provided criticism

and suggestions regarding various aspects of the revised proposed rule. Six reviewers provided comments on whether evidence we presented in the revised proposed rule sufficiently supported our removal of the Act's protections for the Wyoming populations. Three reviewers supported our proposal as being reasonable based on evidence presented. Two reviewers questioned the proposal based largely on adequacy of existing knowledge regarding Prebles' populations in Wyoming. One reviewer opposed the proposal, calling it weakly supported. Two reviewers suggested that the revised proposed rule should have made better use of geographic information systems (GIS) to depict and analyze trapping efforts, documented occurrence, appropriate habitat, and projected threats.

Reviewer opinions also varied on use of the Wyoming—Colorado State line to delineate a significant portion of Prebles' range. While reviewers generally considered a division based on the North Platte River basin and the South Platte River basin more appropriate from an ecological or mouse population perspective, three concluded that the use of the State line was supported by the differing levels of threats described. Two reviewers called for more detailed analysis of threats as related to both sides of the State line. One reviewer discounted significant differences in threats across the State line. Three reviewers mentioned the administrative or practical convenience of using the State line.

Summary of Public Comments

We reviewed all comments from peer reviewers and the public for substantive issues and new information regarding this rulemaking. Substantive comments received during the comment periods have been addressed below or incorporated directly into this final rule. Comments of a similar nature have been grouped together under subject headings in a series of issues and responses.

Technical and Editorial Comments

Issue: Several technical and editorial comments were provided by respondents. In addition, peer reviewers and other commenters provided or suggested additional literature to consider in our final rule.

Response: We corrected inaccuracies in the revised proposed rule wherever appropriate. We also edited portions of the text to make it clearer. We reviewed and incorporated relevant additional literature and information when appropriate. The list of literature cited in this rule will be posted online (*http://www.fws.gov/mountain-prairie/species/mammals/preble/*).

Defining a ''Listable Entity'' under section 4 of the Act.

Issue: We received numerous comments on taxonomic data quality and quantity. Many questioned the amount of data necessary to make such taxonomic determinations. Some commenters questioned the basis for the initial listing of the subspecies. Other commenters discussed whether the available data relied upon in our 2005 proposed rule was sufficient or insufficient. Some commenters suggested we should employ the precautionary principle when making a call on delisting. Other commenters questioned our apparent reliance upon the peer reviewer ''majority vote'' as a justification for our 2005 proposed delisting. Still other commenters noted or questioned evidence of political interference in this rulemaking process.

Response: The Act requires that we base our determinations upon the best scientific and commercial information available. As a result, we evaluate all of the available information, its adequacy and reliability, and determine what the weight of evidence suggests. This final rule meets this standard. These issues and the available data are discussed below in the sections titled: Taxonomy; Other Taxonomic Information Available Prior to Listing; Taxonomic Information Solicited After Listing; and Taxonomic Conclusions.

Issue: Many questioned the standards used to test what is a valid subspecies. Some commenters suggested philosophical differences played a role in shaping the hypothesis of each researcher and what each researcher considered a valid subspecies. Other commenters suggested that the Service is inconsistent in applying subspecies standards in its section 4 determinations. Some commenters noted that there are no quantitative standards in use by the scientific community or the Service with which to objectively describe subspecies. Some commenters suggested that acceptance by the scientific community is often nothing more than opinion.

Response: As defined by the Act, a species includes any subspecies of fish or wildlife or plant, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature. The Act does not further define subspecies. Service regulations (50 CFR 424.11) state that ''In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.'' This regulatory standard is consistent with the Act's requirement that we make such determinations solely on the basis of the best scientific and commercial data available. The Service consistently applies this standard.

In this case, we determine that the best scientific and commercial data available support the conclusion that the Prebles is a valid subspecies. While philosophical differences among researchers may play a role in what a particular researcher considers a biologically meaningful difference, we conclude that the weight of evidence supports the Prebles as a valid subspecies.

Specifically, the Prebles' geographic isolation from other subspecies of meadow jumping mice (Krutzsch 1954, pp. 452–453; Long 1965, pp. 664–665; Beauvais 2001, p. 6; Beauvais 2004; SEI 2006a, p. 34) has resulted in the accretion of considerable genetic differentiation (King *et al.* 2006b, pp. 4336–4348; SEI 2006a, pp. 41–43). The available data suggest that the Prebles meets or exceeds numerous, widely accepted subspecies definitions (Mayr and Ashlock 1991, pp. 43–45; Patten and Unitt 2002, pp. 26–34; SEI 2006a, p. 44).

In terms of quantitative standards, the 75 percent rule (Amadon 1949; Patten and Unitt 2002) is one of the only widely employed quantitative subspecies definitions (Haig *et al.* 2006, pp. 1584–1594). This definition suggests a subspecies is valid if 75 percent or more of a population is separable from all (or > 99 percent of) members of the overlapping population. As noted by SEI (2006a, p. 44), the Prebles exceeds this quantitative standard.

Issue: We received numerous comments regarding the status of the Prebles relative to the requirements of the Interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the ESA (DPS policy) (61 FR 4722, February 7, 1996) including the suggestion that the Prebles should or could be split into multiple DPSs based on significant genetic differences observed between populations north and south of Denver (Ramey *et al.* 2005, pp. 334–341; King *et al.* 2006a, pp. 28–29).

Response: The available data supports the taxonomic status of the Prebles as a valid subspecies making most comments about potential application of the DPS policy moot. We do not believe splitting the subspecies into multiple DPSs would be prudent or beneficial

from a conservation perspective. In this case, we do not foresee any significant benefit to recovering multiple DPSs instead of a single listed entity.

Issue: Some commenters suggested that the Service's revised proposed rule (72 FR 62992, November 7, 2007) displayed bias in our presentation of the available information. Specifically, some commenters suggested we highlighted flaws in reports questioning the taxonomic validity of the Prebles, while not offering similar critiques of information supporting the subspecies' taxonomic validity.

Response: To the maximum extent possible, we attempted to objectively portray the available information regardless of the position it articulated. All information was held to a similar level of critical review. However, we have reviewed the final rule relative to the specific objections and made minor revisions where appropriate.

Ramey *et al.* and King *et al.*

Issue: Some commenters suggested the Ramey *et al.* (2003, 2004a, 2004b, 2005) studies exhibited bias. Some commenters questioned whether the studies could be relied upon because the studies were largely funded by the State of Wyoming, one of the petitioners. Other commenters noted that the conclusions strayed beyond genetics and taxonomy into policy considerations.

Response: Ramey *et al.* (2004a, 2004b, 2005) were subjected to extensive peer and public review, were reviewed and approved by a peer-reviewed journal, and were reviewed by the SEI expert panel. All of this information has been taken into consideration in this final determination.

Issue: Some commenters suggested the King *et al.* (2006a, 2006b) studies exhibited bias. It was suggested that Dr. King has a history of designating unwarranted or questionable subspecies. Some commenters questioned Dr. King's qualifications. Other commenters suggested that USGS was inherently biased because the Service and USGS are sister agencies under the Department of the Interior.

Response: King *et al.* (2006a, 2006b) were the subject of extensive peer review and public review, were reviewed and approved by a peer-reviewed journal, and were reviewed by the SEI expert panel. All of this information has been taken into consideration in this final determination.

We believe the USGS research team was well qualified to conduct the analysis. For example, their previous work concerning Atlantic salmon (*Salmo salar*) was upheld by a National Research Council (2002b, p. 4) review. This validation provided us with confidence that these researchers' expertise could meet our scientific needs. We do not believe that USGS' research conclusions were biased by the fact that it is a sister agency to the Service.

Issue: Some commenters questioned the critiques raised by peer reviewers and the scientific community. Rebuttals were offered for each criticism of Ramey *et al.* (2005) listed in the proposed rule. It was suggested that we failed to explain that many of these issues were relevant to the draft they evaluated (Ramey *et al.* 2004a, 2004b), but resolved in the publication (Ramey *et al.* 2005). Finally, it was suggested that many of these same issues plague the King *et al.* (2006b) report.

Response: We have revised this section (see the Taxonomic Information Solicited After Listing section below) so as to clearly explain that many of the issues raised by peer reviewers of Ramey *et al.* (2004a, 2004b) were rectified in the 2005 publication (Ramey *et al.* 2005). Each of these critiques was carefully considered. All of the issues remaining in this section of this final rule continue to remain relevant and may have contributed, at least in part, to the conclusions of Ramey *et al.* (2005).

For example, while the comment defended the use of museum specimens, we remain concerned that Ramey *et al.*'s (2004a, 2004b, 2005) reliance upon museum specimens may have contributed to contamination of numerous key samples. As noted by Douglas (2004), the quality of DNA extracted from museum specimens is often inferior, fragmented, and low quantity. As a result, amplification can be difficult and cross-contamination with other high-quality DNA can occur. Ramey *et al.* (2004a, p. 6) confirmed ''some DNA extracts, most notably those of older museum specimens (prior to 1980), did not amplify well or at all.'' King *et al.* (2006b, pp. 4355–4357) demonstrated that numerous key DNA sequences were not repeatable. Most importantly, SEI (2006a, pp. 21–30) confirmed evidence of contamination of key Ramey *et al.* samples after reviewing the original supporting data. While other explanations are possible (King *et al.* 2006, p. 4345; Ramey *et al.* 2007, p. 3519), we have concluded that the Ramey *et al.* (2005) data demonstrates sufficient evidence of contamination to warrant inclusion on this list of concerns.

Similarly, results can be meaningfully altered if a museum specimen's tag (marking locality and subspecies) is incorrect. This appears to be the case with museum specimens KU115895, KU115896, and KU115897 (Anderson & Jones 1971 as cited in King *et al.* 2006b, p. 4357). That said, museum specimens remain a valuable resource in providing specimens from a large geographic area and often allow a study to be executed in relatively short time. As recommended by the literature, proper precautions are required (Cooper and Poinar 2000).

Most of the other critiques of Ramey *et al.* centered on study design and the thoroughness of the evaluation. We continue to list these issues because each of these factors may have influenced the study's results and conclusions. We also have tried to clarify when a similar issue may have influenced the results and conclusions of King *et al.* The relative importance of many of these issues is discussed in the SEI report (SEI 2006, pp. 20–43).

Issue: Numerous commenters suggested that the sampling regime was a critical difference between the two studies (Ramey *et al.* 2004a, 2004b, 2005; King *et al.* 2006a, 2006b). Several commenters suggested that Crandall and Marshall (2006) represented the best scientific and commercial information available in that their report combined the Ramey *et al.* (2005) and King *et al.* (2006a) data into a single, comprehensive analysis.

Response: We think that an ideal sampling strategy, with unlimited resources, would sample many individuals from many populations across the range of all 12 recognized meadow jumping mouse subspecies. Instead, Ramey *et al.* sampled a few individuals from many sites, while King *et al.* sampled many individuals from a few sites. Each approach has its strengths and weaknesses.

The Ramey *et al.* approach likely captures variation across the range of the subspecies (Ramey *et al.* 2005, p. 332), but may underestimate the level of within-population variation, inflate within-subspecies variance, and potentially lower the between-subspecies differentiation (King *et al.* 2006b, p. 4346). The King *et al.* population-oriented approach likely denotes the diversity within a population (King *et al.* 2006b, p. 4346), but may not capture variance along past or present contact zones between the subspecies (SEI 2006a, pp. 31–43) and may predispose the results to an exaggeration of genetic distances among subspecies (Ramey *et al.* 2007, p. 3519). We considered each of these potential sources of bias in our evaluation of the available data. Overall, we concluded that sampling played only a minor role

in shaping differences between the two studies. Instead, we believe apparent contamination among a number of key samples was likely the primary reason the Ramey *et al.* (2005) and King *et al.* (2006b) mtDNA data differed. While Crandall and Marshall (2006) employed a hybrid approach reevaluating both the Ramey *et al.* and King *et al.* mtDNA sequences, this unpublished study has a number of important weaknesses (see Spencer 2006b) including the inclusion of these same questionable samples. As Crandall and Marshall (2006, p. 5) put it, ''much is dependent on these few samples.'' We have concluded that inclusion of these apparently contaminated samples makes the mtDNA results and conclusions of Ramey *et al.* (2005) and Crandall and Marshall (2006) unreliable.

Issue: Several commenters suggested that even if the apparently contaminated samples are removed from the analysis, the data still supports the conclusions of Ramey *et al.* (2005).

Response: No data or analysis were presented to support the assertion that Ramey *et al.*'s key conclusions would not differ if the suspect samples were removed. Ramey *et al.* (2007, p. 3520) state that ''With the samples in question excluded, analysis of molecular variance results just exceed our threshold, but the Prebles is still not even close to being reciprocally monophyletic.'' This suggests the mtDNA results would satisfy Ramey *et al.*'s (2005, p. 332) a priori mtDNA hypothesis for a valid subspecies where there was greater molecular variance among than within subspecies. Overall, we feel the available data is compelling in its support of the validity of this taxon.

Issue: A few commenters suggested that Ramey *et al.* set up subspecies standards in advance of data collection, while King *et al.* relied upon post-hoc interpretations of the data.

Response: Our evaluation of Ramey *et al.* (2003, p. 4; 2004a, p. 4; 2005, pp. 331–334), USGS (2005, p. 3) and King *et al.* (2006a, p. 5; 2006b, p. 4332) revealed that both research teams developed their hypotheses in advance of data collection which they consistently applied throughout the process.

Issue: A few commenters questioned whether hybridization between the Prebles and the western jumping mouse could have impacted each study's results.

Response: Genetic distance between the Prebles and the western jumping mouse is significant (King *et al.* 2006b, p. 4341), and the available genetic studies experienced no difficulty differentiating between the two species (Riggs *et al.* 1997, pp. 6–11; Ramey *et al.* 2005, p. 332; King *et al.* 2006b, p. 4341). Wunder and Harrington (1996, section 6.0) also ruled out hybridization based on a small sampling of random amplification of polymorphic DNA (RAPD) (an amplification of random segments of DNA with single primer of arbitrary nucleotide sequence). Based upon the best scientific and commercial information available, we do not believe hybridization is occurring between these two distinct species.

Issue: Several commenters suggested King *et al.* examined too much data. Specifically, it was suggested that the statistically significant differences observed by King *et al.* were the result of the large number of microsatellite loci (the specific position of a gene or other chromosomal marker) examined and not reflective of any meaningful biological difference.

Response: We find no support for the position that significant differences detected by King *et al.* were an artifact of an excessively large sample size. The Ramey *et al.* and King *et al.* microsatellite results do not appear dependent upon the number of loci examined (5 and 21 loci, respectively) as both data sets support a statistically significant independent cluster that corresponds to the Prebles (Crandall and Marshall 2006, pp. 26–27; SEI 2006a, p. 43). This, in combination with other available data, supports continued recognition of the subspecies as a valid taxon.

Information Quality and Peer Review for Taxonomy

Issue: Numerous commenters suggested we should not rely upon unpublished literature that has not been subjected to a scientific journal's peer review process. They felt that using Ramey *et al.* or King *et al.* violated the Data Quality Act (44 U.S.C. 3516 *et seq.*) and Service policy. Several commenters thought we should reopen the comment period once these documents were accepted for publication or published.

Response: The Act requires that our actions be based upon the best scientific and commercial information available. Occasionally, relevant scientific and commercial information is not, or has not yet been, published. In these cases, peer review may assist us in our evaluation of the available science. At this point, most of the key literature relevant to the subspecies' taxonomy has been subjected to extensive peer review, reviewed and published by peer-reviewed journals, and reviewed by the SEI expert panel. Additionally, the public has had an opportunity to review and comment on all of the relevant literature (70 FR 5404, February 2, 2005; 71 FR 8556, February 17, 2006; 71 FR 16090, March 30, 2006; 72 FR 62992, November 7, 2007). Finally, we have conducted numerous peer reviews of our regulatory proposals (70 FR 5404, February 2, 2005; 71 FR 8556, February 17, 2006; 71 FR 16090, March 30, 2006; 72 FR 62992, November 7, 2007) in compliance with the Interagency Cooperative Policy for Peer Review in Act Activities (59 FR 34270, July 1, 1994) and the Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review'' (Office of Management and Budget 2004). We have evaluated all of the available information, its adequacy and reliability, and determined what the weight of evidence suggests. Given the above, we feel we have exceeded all Federal requirements for information quality and peer review.

Issue: Several commenters questioned the independence, impartiality, political motivation, and appropriate expertise of select local peer reviewers. Some commenters questioned the independence and impartiality of the Colorado Division of Wildlife (CDOW) in soliciting these peer reviews.

Response: The CDOW solicited and received nine peer reviews of Ramey *et al.* (2004a) from regional scientists with a variety of expertise relevant to the questions at hand. These reviews were transmitted to us on April 24, 2004. We believe that the CDOW acted independently and impartially in selecting qualified reviewers of the subject study. During the summer of 2004, we solicited reviews from seven additional scientists selected for expertise in genetics and systematics. Reviewers were targeted from a wide variety of areas to geographically balance the CDOW review. Collectively, this diverse group of experts provided a balanced and objective review. To maintain consistency, we later contacted the same 16 experts to peer review Ramey *et al.* (2004b) and King *et al.* (2006a). It should be noted that some reviewers declined to participate in subsequent rounds of review (Ramey *et al.* 2004b; King *et al.* 2006a) because of these accusations of bias.

Issue: Some commenters questioned why the Service asked non-geneticists to review King *et al.* (2006a).

Response: As noted above, we solicited peer reviews of King *et al.* (2006a) from the same 16 reviewers asked to review Ramey *et al.* (2004a, 2004b). While we recognized this group included some non-geneticists, we felt consistency among reviewers was critical. We note that most of the non-

geneticists voluntarily declined to participate in the review of King *et al.* (2006a). The one exception, Armstrong (2006), is a respected academic with considerable expertise on the Prebles. His review was useful.

Expert Panel

Issue: Several commenters questioned the Service's decision to organize a scientific panel to review the available information on the species' taxonomic and conservation status.

Response: Recognizing the controversial nature of this determination, the Service decided not to organize and convene an expert panel ourselves. Instead, we contracted with an independent organization to assemble and manage the scientific review panel.

Issue: Numerous parties had issue with the SEI expert panel. Some commenters opined that the SEI panel was tainted because the composition of the panel and the time allotted to participants was altered to favor a particular outcome. Some commenters questioned the objectivity and qualifications of SEI and the panelists.

Response: We stand by the process used in the SEI review panel. Following an open and competitive bid process, SEI was selected as the contractor in June 2006. Once selected, SEI ran all aspects of this process within the bounds of the contract. The selection and retention of panelists as well as the agenda was entirely within SEI's purview. SEI also determined that the public could attend. In addition, Drs. Ramey, Crandall, and King addressed the panel in person. Other scientists participated over the phone. Questions from the audience were also presented for the panel's consideration. The panel also had access to published literature, unpublished reports, third-party critiques, public comments, and other materials suggested by interested parties (SEI 2006a, pp. 48–55). Overall, we think that the process was fair, open, and unbiased.

Furthermore, we believe SEI and the panelists were well qualified to conduct the contracted review. SEI regularly conducts such scientific reviews including panels on northern spotted owl, pallid sturgeon, and Everglades restoration (see: *http://www.sei.org/*). The panelists' qualifications are well established. As illustrated in appendix 1 of the SEI (2006a, pp. 56–82) report, each panelist has an extensive background in the genetic and systematic issues relevant to the Prebles' review.

Issue: Some commenters suggested that the SEI report went beyond the original scope of their contract. Specifically, commenters suggested the SEI report should have abstained from offering reviewers' taxonomic conclusions.

Response: We contracted with SEI to analyze, assess, and weigh the reasons why the data, findings, and conclusions of the two studies differed (USFWS 2006, p. 14). Incorporation of the panelists' taxonomic conclusions was a natural outgrowth of the contract's stated purpose. The final report fully satisfied SEI's contractual obligations.

Availability of Taxonomic Information

Issue: Several commenters raised a concern that we relied on a paper (King *et al.* in review) for this rulemaking that we did not possess and thus was not available for public review during the comment period. Since this report was not available, some commenters requested an extension of the comment period.

Response: The revised proposed rule referenced a document by USGS cited as ''King *et al.* (in review).'' This article was not the primary jumping mouse study by King *et al.* The primary study and its supporting data were released to the public in early 2006 (King *et al.* 2006a; 71 FR 8556, February 17, 2006; 71 FR 16090, March 30, 2006) and published in *Molecular Ecology* in late 2006 (King *et al.* 2006b).

Instead, King *et al.* (in review) was a comment article that *Molecular Ecology* intended to publish in the News and Views section of the journal, in response to Ramey *et al.* (2007) (another comment article). These comment articles were cited once in the revised proposed rule in a sentence that read: ''Other evaluations of the available literature and data include Ramey *et al.* (in press), King *et al.* (in review), Crandall and Marshall (2006), Spencer (2006b), and Cronin (2007).'' This sentence cited King *et al.* (in review), among other documents, to inform the public we were aware of its existence. However, our determination that the Prebles is a valid subspecies did not use or rely on this document.

The comment was correct that we did not have this document in our files. By citing the document as ''in review,'' we intended to convey that the document had been drafted and submitted for publication, but not yet accepted as it was still undergoing peer review. The USGS typically does not release documents unless they have been accepted for publication or otherwise peer reviewed. As the peer review process for this document remains incomplete, the article is solely in the possession of USGS and the reviewing journal.

Given the context of this citation and its inconsequentiality to our determination, we do not think that this document was critical to the public's review or understanding of our proposal. Therefore, we did not grant an extension of the comment period.

Distribution, Status, Population Size, and Population Trends

Issue: Some commenters contended that our 2005, 12-month finding and proposed rule should have evaluated the distribution, abundance, trends, and threats information from the delisting petitions.

Response: On February 2, 2005, we issued a 12-month finding on a petition to delist the Prebles and proposed to remove the mouse from the Federal list of endangered and threatened species (70 FR 5404, February 2, 2005). The basis for the proposed action was that the Prebles was ''likely not a valid subspecies of meadow jumping mouse.'' It was not necessary or appropriate to consider distribution, abundance, trends, or threats until it was determined that the Prebles qualified as a listable entity under the Act. Once we determined that the Prebles was a valid subspecies, we considered all relevant information on Prebles' distribution, abundance, trends, and threats in our revised proposed rule (72 FR 62992, November 7, 2007) and in this final rule.

Issue: Some commenters suggested that Figure 1 could have been more clear or more informative. Specific suggestions put forth were to: Include more detail; depict all jumping mouse captures noting the species; and provide a better explanation of the data depicted in the key and text. One reviewer commented that the database from which Figure 1 was derived should be available to the public.

Response: Figure 1 was too busy and difficult to read in the **Federal Register**. As a result, we have split this graphic representation of occupancy into a Wyoming (Figure 1) and a Colorado figure (Figure 2). We also revised the corresponding text. This final rule more clearly depicts known Prebles' distribution and results of other trapping efforts. The supporting data (Service 2008) is available upon request.

Issue: Reviewers commented that distribution of available habitat and threats to the Prebles could be mapped, quantified, and better visualized through use of GIS. One reviewer suggested that we clearly map all threats or confirm that project constraints make these measures impractical.

Response: The Service has mapped potential Prebles' habitat (67 FR 47154, July 17, 2002; 68 FR 37276, June 23, 2003), as has the Wyoming Natural Diversity Database (WNDD) (Beauvais 2001, 2004), the CDOW, and some Colorado counties. The Center for the West produced a series of GIS maps predicting growth through 2040 for the west including the Colorado Front Range and Wyoming (Travis *et al.* 2005, pp. 2–7). These models represent a good approximation of projected development pressures. We also worked with the CDOW to examine protection status of designated critical habitat units and other selected areas supporting the Prebles. These results are summarized in the 5-factor analysis below.

Issue: We received numerous comments on data quality and quantity relative to the subspecies' status. Many noted limited available information or data on historical and current range, current abundance, population trends, threats, and ecological relationships. Some commenters suggested this illustrated the weakness of our original listing and, therefore, suggested we should delist range-wide. Other commenters suggested a change in listing status in any portion of the subspecies' range should be precluded until better data is available.

Response: The Act requires our determinations be based upon the best scientific and commercial information available. As a result, we evaluate all of the available information, its adequacy and reliability, and determine what the weight of evidence suggests. This final rule meets this standard.

Issue: One reviewer suggested that we quantify relative abundance of the Prebles and compare abundance estimates to habitat features to better define quality habitat. This reviewer thought we could estimate relative abundance by calculating and comparing Prebles captured per trap night (number of traps employed times number of nights of trapping) for all trapping efforts throughout Prebles' range.

Response: Where we have abundance information, we present it in this final rule. Data available is not adequate to quantify and compare the relative abundance of the Prebles across its range with any reasonable degree of confidence (i.e., much of the trapping was on small sites and over short periods with inconsistent timing and conditions).

Issue: One commenter claimed our analysis is flawed because the Prebles cannot be differentiated from the western jumping mouse.

Response: Genetic markers are effective in differentiating meadow jumping mice and western jumping mice (Riggs *et al.* 1997, pp. 2–8; Ramey *et al.* 2005, pp. 344–346; King *et al.* 2006b, pp. 4341, 4344). Additionally, Discriminant Function Analysis (DFA) (analysis of cranial measurements and an anterior medial toothfold characteristic) appears to be a reliable technique for differentiating the two species (Conner and Shenk 2003a). We acknowledge that, for a number of historical and recent capture sites, mice were tentatively identified in the field based on capture location, size, and external features, but definitive identification to species was never attempted. In many of these cases, genetic samples were not obtained nor were voucher specimens taken; therefore, the specimen's species identity remains inconclusive. As noted below, positive identification to species is only an issue in areas of overlapping range (i.e., high-elevation sites in Colorado and most of Wyoming). We have addressed potential shortcomings for species identification in our analysis, and we have reviewed and modified the text for added clarity.

Issue: Several commenters noted that Prebles are now known from more drainages and a greater number of sites than at the time of listing. These commenters suggested this was evidence that Prebles' populations are secure. One commenter requested that we state the specific number of sites where the Prebles is known to occur.

Response: We have acknowledged an increase in our knowledge of distribution of Prebles, especially in the Wyoming portion of its range. We have summarized areas of known or potential occurrence by river basin, drainage (8-digit USGS hydrologic units), and river or stream. We also have emphasized instances where confirmed captures have extended our knowledge of Prebles' range and occurrence. We think that the number of individual capture sites is less meaningful. Documentation of multiple capture sites within portions of drainages or along streams where Prebles' populations occur is largely a function of trapping effort. When multiple sites are within close proximity of each other, counting each occurrence instead of a single population exaggerates abundance. Further, as one peer reviewer correctly cautioned, trends cannot be established from the number of documented sites alone, and that an increase in documented sites resulting from increased trapping efforts could mask a decreasing population trend.

Issue: One commenter stated that the Prebles' range has not declined significantly. This commenter suggested the subspecies is now known to be present in virtually all historically documented locations except those in the greater Denver area.

Response: The subspecies' declines within Colorado are fully explained in Factor A below. This analysis includes the apparent extirpation of the subspecies from approximately 420 km (260 mi) in and downstream of areas with concentrated human development. In terms of historically documented locations (i.e., sites from which we have specimens prior to 1980), we are aware of 17 such sites in Colorado. Of these, only one of these sites is currently thought to support the Prebles. The majority of historical records of Prebles in Colorado come from what is now widely known as the Front Range urban corridor, which extends well beyond the Denver area. In Wyoming, with the possible exception of Cheyenne, the Prebles is likely present at the few sites where it was historically documented.

Issue: One commenter concluded that the high number of section 7 consultations conducted in Colorado as compared to Wyoming was evidence of ''expansive range and increasing populations'' in Colorado.

Response: A more reasonable explanation for the number of section 7 consultations is that human development is expanding into areas of Prebles' occurrence. In Wyoming, far less development is occurring in areas where the Prebles is present.

Issue: Some commenters questioned how we established that over 80 percent of trapping efforts in Colorado since listing have failed to capture Prebles. They questioned whether western jumping mice were included in the results and questioned the expertise of the trappers conducting the studies. Some commenters requested comparative trapping success rates from Wyoming trapping.

Response: From 1998 to 2007, 27 percent of 1,350 data points associated with trapping efforts targeting Prebles in Colorado have resulted in captures of jumping mice (USFWS 2008). When we controlled for repeated trapping at single sites, such as established research sites, jumping mouse capture rates drop to less than 20 percent. Even this estimate may be high as some of these jumping mice were likely western jumping mice, particularly those from high-elevation trapping efforts.

From 1998 to 2007, 74 percent of 219 data points associated with trapping efforts in Wyoming have resulted in captures of jumping mice (USFWS

2008). The overlapping range of Prebles and western jumping mouse in Wyoming must be considered when comparing Preble's capture success between the two States. Based on individual mice confirmed to species, it is likely that more of the successful trapping efforts in Wyoming captured only western jumping mice. Of positive jumping mouse capture sites, 29 percent of the sites included only Prebles, 55 percent of the sites included only western jumping mice, 5 percent of the sites had both species present, and specimens from 11 percent of the successful sites were never positively identified to species.

All jumping mouse trapping efforts since listing have been carried out by researchers holding Service and State permits. While experience of individual biologists may vary, we believe all individuals permitted to trap Prebles are qualified to conduct such surveys.

Foreseeable Future

Issue: One commenter stated that foreseeable future as defined in the revised proposed rule was too short, citing climate change projections to 100 years and Service HCPs issued for 50 years.

Response: The term foreseeable future is not defined by the Act or in the implementing regulations at 50 CFR part 424. Merriam-Webster's Law Dictionary (1996) defines ''foreseeable'' as such as that which reasonably can or should be anticipated such that a person of ordinary prudence would expect it to occur or exist under the circumstances (Merriam-Webster's Dictionary of Law 1996; *Western Watershed Project* v. *Foss* (D. Idaho 2005; CV 04–168–MHW). Determination of foreseeable future is typically based on the timeframe over which the best available scientific data allows us to reasonably assess the threats and the species' response to those threats, and is supported by species-specific factors, including the species' life history characteristics (e.g., generation time) and population dynamics. From a scientific perspective, it would be inappropriate to set foreseeable future timeframes so short that natural variability in the ecosystem of the species, short-term population dynamics, or the expression of life history traits of the species through generational-scale variation in reproductive success or recruitment cannot be accounted for in the longer-term examination of factors impacting the species. Typically, threats tend to operate through their effects on survival and productivity over multiple generations, with one to two generations being insufficient to separate natural variability from directional effects of threats. Whenever possible, we will determine the ''foreseeable future'' based on a detailed assessment of threats and species-specific biological information.

For the Prebles, we defined foreseeable future based upon a threat-projection timeframe because future development intensity and patterns are likely to be the single greatest factor contributing to the subspecies' future conservation status. The foreseeable future for the Prebles, based on the currently available data, extends to approximately 2040. While it is likely human population growth and development projections could be extrapolated out into the more distant future, growth and development projections beyond this point are of increasingly lower value as uncertainty escalates. However, we agree that not all threat factors are necessarily foreseeable over the same time horizon and that for some threat factors a longer time horizon may be appropriate. Thus, this rule considers the range of climatic conditions predicted by the Intergovernmental Panel on Climate Change (IPCC) for the 21st century. While climate projections routinely go out past this 2040 time horizon (IPCC 2007, p. 7), climate change forecasts, like human development projections, become less certain as they are extended into the future (Hall 2008; Meyers 2008). The IPCC acknowledged this uncertainty in their most recent report when they stated that projections beyond the next two decades depend on specific emission scenarios (IPCC 2007, p. 7). The duration of section 10 permits, issued in support of approved Habitat Conservation Plans, have no bearing on what is foreseeable for this subspecies.

Impacts From Increased Human Population and Development

Issue: Some commenters stated that local extirpations of Prebles in the Front Range urban corridor cannot be used to speculate about future threats in other portions of its range. They suggested that development threats are localized and do not affect most Prebles' populations.

Response: While threats do vary across the range of the subspecies, we believe that the rule adequately captures and presents the severity of the issue across all portions of the subspecies' range. The direct and indirect effects of human development have resulted in substantial habitat alteration across large parts of the Colorado range. While habitat alteration has been most severe in the expanding Front Range urban corridor, projected future human growth will substantially extend this area of impact. Additional threats exist outside of areas of intense human development. For example, linear projects such as roads and pipelines may impact multiple counties and can affect rural habitat as well as that in urbanizing areas, and potential impacts from overgrazing are more likely to affect Prebles' habitat in rural areas than in areas of high residential density.

Issue: Some commenters suggested that population growth forecasts can be unreliable. They pointed to the current housing slump and suggest that population growth within the Prebles' range will be less than predicted. One commenter stated that the Center for the American West models' depiction of development patterns in the future have limited utility since they assume that all private land is technically buildable and available for development.

Response: Any future predictions include a degree of uncertainty. That said, we consider projections and related models to be the best information available on this subject. Economic downturns, that are relatively short-lived, are unlikely to significantly alter long-term forecasts.

The Center for the American West models (Travis *et al.* 2005, pp. 2–7) predict development patterns on a sub-regional basis. The fate of individual parcels could be determined by a number of factors not addressed by the models, and the model developers have noted that the projections should not be applied to individual properties. We have cited these models in evaluating threats related to likely patterns of future human growth, not the presumed fate of individual properties. We have expanded our discussion of the models and their use in the text.

Issue: One reviewer noted that while human development in Wyoming is likely to be far less than in Colorado, Wyoming does not ''lack'' development and much of it will be in rural areas. A few commenters addressed current and modeled future human population growth in Wyoming centered near Cheyenne. One reviewer questioned whether the absence of the Prebles in Cheyenne area was the result of development. Another reviewer concluded that projected growth in the Cheyenne area would not result in impacts to the Prebles because it would not overlap areas known to support the subspecies.

Response: We acknowledge that human development is likely to occur in portions of Wyoming now supporting the Prebles. However, we believe that expansion of human presence and

related threats will be localized and relatively minor, and will not threaten the continued persistence of the Prebles in those areas.

Known occurrence records suggest that the Prebles is not common or widely present in the South Platte River basin in Wyoming. The cause of this rarity is unknown. The continued existence of the Prebles in the Cheyenne area also is unknown. Sites of recent confirmation of the Prebles in the South Platte River basin of Wyoming have been well upstream from Cheyenne. Development could impact Prebles' populations in the Cheyenne area, should they exist. However, the long-term viability of populations in these drainages is more likely to depend on persistence in upstream portions of the drainages rather than the Cheyenne area.

Issue: Some commenters predicted that secondary impacts associated with human development in Colorado would impact Prebles' habitat in southern Wyoming. Particular issues raised included vacation homes, human recreational activities, water resource development and storage, and aggregate mining.

Response: As human populations in Colorado, particularly northern Colorado, continue to grow, secondary impacts may spill over into southeastern Wyoming. Regarding vacation homes, the Center for the West models of human population growth take into account urban, suburban, ex-urban, and rural development (*http://www.centerwest.org/futures/west/2040.html; http://www.centerwest.org/futures/archive/development/development_wy.html*). These projections suggest ex-urban development could link Cheyenne and Fort Collins by mid-century, but indicate little development in the documented range of the Prebles in Wyoming. While some development will undoubtedly occur, we do not have data to indicate meaningful impacts are likely anywhere in the Wyoming portion of the subspecies' range, except around Cheyenne where the subspecies has not been recently documented to occur.

While increasing population may result in increased recreation, new water development, or additional aggregate mining, we are not aware of any specific proposals that would increase the effects of these types of activities on Prebles' populations. These issues are evaluated further in our 5-Factor analysis below.

Impacts From Agriculture

Issue: Some commenters stated that grazing is not a significant threat, as evidenced by the special 4(d) rule allowing continued agricultural activities. One commenter stated that chronic violations of grazing regulations on public grazing lands impact Prebles' habitat. One commenter provided a Bureau of Land Management (BLM) (2004) report on public range in Wyoming, to demonstrate that range improvements have occurred over time. The report stated that range conditions have improved over time; efforts are under way to stop invasive weeds; and wildlife populations have increased.

Response: Our special rule provides exemption from take prohibitions under section 9 of the Act for certain land uses including continued agriculture. While overgrazing can and does impact Prebles' habitat, and in some cases can be a threat, the 4(d) rule (66 FR 28125, May 22, 2001; 67 FR 61531, October 1, 2002; 69 FR 29101, May 20, 2004) was instituted to acknowledge that those ongoing agricultural operations maintaining habitat that supports the Prebles are an asset to conservation and recovery. Through this special rule, we anticipated increased opportunity to partner with agricultural interests toward conservation of the Prebles.

While we are aware of instances where operators have violated provisions of their grazing permits, we have concluded that this is not a widespread threat within the Prebles' range. We solicited and received data and information on livestock grazing from the U.S. Forest Service (USFS) regarding three National Forests that support Prebles' populations. Allotment inspection records or monitoring reports were received from the Laramie Ranger District, Medicine Bow National Forest in Wyoming (Florich 2008); the Canyon Lakes Ranger District, Arapahoe National Forest (Hodges 2008); and the South Park Ranger District, Pike National Forest (Branch 2008). While the records include instances of non-compliance and note grazing impacts to habitat, more often they reflect livestock grazing conducted in accordance with grazing plans that are consistent with maintenance of Prebles' habitat. Federal agencies, including the USFS and BLM, work cooperatively with the Service to fulfill their responsibilities under the Act. For example, we recently coordinated with the USFS regarding permittee non-compliance issues on the Arapahoe National Forest's Greyrock allotment. In that area, riparian habitat along the North Fork, Cache La Poudre River is recovering following remedial measures to counteract overgrazing.

We reviewed BLM (2004). While not specific to the Prebles' range, we are encouraged by its conclusions that conditions on BLM grazing lands in Wyoming are improving.

Issue: One commenter stated that the Service inappropriately cited the Taylor (1999) trapping study as evidence of Prebles' compatibility with grazing. This comment indicated that: The properties on which the trapping was conducted are not representative of most grazing operations; the report documents grazing impacts on riparian habitat; and Prebles' populations may have decreased since this study because of drought.

Response: The study at issue is by far the most extensive effort conducted on private lands in Wyoming. Jumping mice were captured at 18 of 21 survey sites representing diverse habitat conditions. Genetic testing confirmed Prebles at 11 sites, western jumping mice at 3 sites, both species at 3 sites, and one site was never identified to species (it is also worth noting that although many sites had multiple captures, not all specimens were preserved for species identification). Capture sites included both ideal habitat, such as riparian habitat or sub-irrigated hayfields, and sites where grazing or other factors had impacted habitat quality. While Prebles' habitat and populations are likely affected by periodic droughts, results of this trapping effort demonstrate a broad, long-term ability of the subspecies to coexist with traditional agricultural operations in Wyoming.

Issue: Some commenters recommended that we explore additional threats to the Prebles in Wyoming from agricultural conversion to biofuels.

Response: As discussed in the revised proposed rule, the conversion of native habitat to row crops has become increasingly rare in both Colorado and Wyoming (U.S. Department of Agriculture 2000, Tables 2, 3, & 9). This trend likely reflects that riparian habitats (and other areas) that could be feasibly converted to crop production have already been converted. Although pressures to increase agricultural production may result from the demand to produce biofuels, we are not aware of information that indicates this would result in meaningful decreases in the Prebles' riparian habitat in Wyoming. We explored whether former cropland removed from production through the Conservation Reserve Program (CRP) is now being returned to production and concluded that this scenario is likely to

have a negligible impact on the Prebles and its habitat. The issue is further discussed in Factor A below.

Other Potential Threat Factors

Issue: One commenter noted that if the Prebles was delisted, forestry operations including thinning and prescribed burns could be a significant threat.

Response: The role of fire, a natural part of the ecosystem, is discussed under Factor E below. Thinning of trees increases sunlight at ground level and prescribed burns release nutrients, both of which can promote increased vegetative growth at ground level. While these forest management activities can result in adverse impacts to Prebles' habitat, the impacts are generally temporary and offset by long-term benefits. In general, we conclude that management designed to improve forest health or prevent catastrophic fire will contribute to the long-term conservation of the Prebles and its habitat.

Issue: Some commenters highlighted threats that occur range-wide including: Lack of adequate regulatory mechanisms in the absence of the Act's protections; invasive weeds; hydrologic changes brought on by climate change; and catastrophic fire. We also received some comments supporting our conclusion that only minor threats occur in Wyoming, but substantial threats related to human development occur in Colorado.

Response: This rule summarizes the magnitude, immediacy, and likelihood of foreseeable threats in both States and as well as at the county or drainage level where supporting data are available. While some threats are relatively similar across portions of the two States, these non-development-related threats are not substantial factors driving the subspecies' conservation status. We believe small, fragmented populations are likely at greatest risk from these secondary threat factors. Across most of the subspecies' Colorado range, development actions will increasingly cause populations to become small and fragmented, thus, susceptible to these factors. The available data suggest that few Wyoming Prebles' populations suffer from small population size and fragmentation, and no foreseeable threats are likely to substantially increase this inherent vulnerability. Thus, despite a continued risk from some potential threats in both Wyoming and Colorado, these factors are not likely to threaten or endanger the subspecies in all of its range.

Issue: Some commenters recommended that we explore additional threats to the Prebles in Wyoming from energy development, especially coalbed methane and natural gas.

Response: Information on coalbed methane targets in Wyoming (Jones and DeBruin 1990, p. 10) indicates that coalfields and the range of the Prebles have little overlap in Wyoming. Furthermore, the coalfields that are nearest the subspecies' range are believed to have low coalbed methane development potential (DeBruin 2004, p. 6). Similarly, only a small portion of the Wyoming range of the Prebles may overlap with oil and gas producing formations (e.g., cretaceous and early tertiary rocks). A much larger portion of the subspecies' range overlaps with exposed undifferentiated precambian rocks or other non oil and gas producing formations (DeBruin 2002). Based on the limited potential for development of these resources within the Wyoming range of Prebles, we conclude that these activities (directly or indirectly) would not meaningfully affect the conservation status of the Prebles in Wyoming now or in the foreseeable future.

Issue: Some commenters believe there is a lack of understanding regarding the relationship between the two jumping mouse species in all Wyoming drainages.

Response: We do know that the Prebles and the western jumping mouse coexist in multiple drainages in both Wyoming and Colorado. In absence of evidence to the contrary, we conclude that this coexistence is not a recent occurrence. Because information is lacking as to whether, or to what degree, populations of Prebles and western jumping mice impact one another, we cannot conclude that western jumping mouse presence is a threat to the Prebles. However, further research may be valuable to identify the relationship between the two species where they co-occur.

Issue: We received several comments on the potential threat to the Prebles from climate change. These commenters suggested that we had not given sufficient attention to future threats caused or compounded by climate change; that it could affect future demand and competition for water resources and influence water resource development; and that a warming climate could cause shifts in the subspecies' range and increase the importance of high-latitude, high-altitude Prebles' populations in Wyoming to the subspecies' survival. In contrast, we received a comment that future precipitation changes were too uncertain to be used in an analysis of future threats.

Response: According to the IPCC (2007, p. 2) ''warming of the climate system is unequivocal, as it is now evident from observations of increases in global air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' In general, a trend of warming in the mountains of western North America is expected to decrease snowpack, hasten spring runoff, and reduce summer flows (IPCC 2007, p. 11). While this change could affect the Prebles and its habitat, to date, a negative impact has not been documented. A significant degree of uncertainty exists as to how projected climate changes, alone and in concert with other threats, will affect the Prebles over the foreseeable future. This issue is discussion in greater detail in Factor E below.

Issue: One reviewer noted that our analysis struggles to weigh cumulative effects, and that threats to the Prebles were likely larger than a simple account of individual effects.

Response: In the biological sense, cumulative effects include effects of stressors imposed by more than one mechanism, that when taken together can have different or more dramatic effects than those recognized from any one alone. In the context of threats to the Prebles, a combination of identifiable threats may have more impact than what would be expected for each individually. Cumulative effects are difficult to predict. Based on the best information available, we have considered the potential for cumulative effects of threats in our analysis. In many instances, we cite that small or fragmented populations may be more vulnerable to specific threats; this outcome also is likely the case with regard to vulnerability to cumulative effects.

Issue: One commenter cited a report by Cryan (2004) that indicates that habitat for meadow jumping mice is increasing in the West.

Response: Cryan (2004, p. 7) reviewed and synthesized existing information on meadow jumping mice in the northern Great Plains (North Dakota, South Dakota, Nebraska, Montana, and Wyoming). While he attributed a likely increase in meadow jumping mouse habitat in the western parts of the Great Plains to westward expansion of riparian forests and mixed-grass prairie, this assertion was not specific to the range of the Prebles nor do we see this habitat trend occurring within the subspecies' range.

Existing Protections

Issue: Several commenters stated that we failed to properly consider Federal,

State, and local efforts to conserve the Prebles. One commenter thought that we did not differentiate between Federal and other lands in terms of future development threats. Some commenters suggested that States and counties will continue to protect the Prebles regardless of delisting. One commenter stated that extensive local regulations prohibit development in riparian habitat. Other commenters suggested that conservation measures by State and local governments are widespread and that lands set aside as open space or under conservation easements protect Prebles' habitat. The CDOW (Nesler 2008) commented that our recognition of ongoing efforts in Colorado is incomplete. The CDOW provided an estimate that, as of spring 2007, 45 percent of occupied Prebles' habitat in Colorado was protected in public lands, land trusts, or through conservation easements.

Response: Both the revised proposed rule and this final rule considered the differential level of threat facing Prebles' populations and their habitat on Federal and other lands. In general, private lands face the greatest threat from direct development pressures. However, Federal and other public lands are not immune from development threats. Roads, trails, recreational facilities including campgrounds, and other human development is likely to affect habitat present on public lands. Indirect effects of upstream development also can meaningfully impact Prebles' populations on protected lands.

Effectiveness of local regulations in maintaining naturally functioning riparian corridors varies greatly depending on how these apparently flexible regulations are implemented. While certain local regulations are designed to conserve wetlands or floodplains on private lands, their effectiveness in conserving Prebles is uncertain. It is also unlikely they would effectively control land uses (grazing, mowing, cutting, and burning) that may affect the hydrology, vegetation, and hibernacula sites on which the Prebles depends. Importantly, most local regulations are flexible and provide little assurance. It is not clear what level of interest in Prebles' conservation would continue following delisting.

We have worked with the CDOW to further understand, document, map, and analyze the lands in public ownership in Colorado. This rule appropriately weighs existing and likely future conservation efforts. All of these factors are discussed below in Factor D and considered in the Conclusion of the 5-Factor Analysis.

Issue: Some commenters stated that there is no proof that existing HCPs are working to protect the Prebles.

Response: HCPs developed for the Prebles are designed to support its conservation and recovery. Permit conditions and monitoring requirements help insure that conservation benefits ensue. Some individual HCPs are complete and have met their planned objectives while other HCPs are in the implementation or monitoring phase.

Issue: One commenter stated that the CWA is the ''cornerstone of surface water quality protection,'' and requires mitigation of all wetland and riparian habitats impacted. Thus, security of the Prebles' habitat is assured under the CWA.

Response: The primary purpose of the CWA is to protect water quality. To achieve this goal, the CWA seeks to avoid and minimize impacts to jurisdictional wetlands. Human impacts to many habitats utilized by the Prebles (including riparian and floodplain habitats outside of jurisdictional wetlands, and adjacent upland habitats) are not directly addressed by the CWA.

Issue: Some commenters suggested that we had not followed section 4(b)(1)(A) of the Act and our Policy for Evaluation of Conservation Efforts (PECE Policy) (68 FR 15100, March 28, 2003) when addressing beneficial measures to conserve the Prebles.

Response: Section 4(b)(1)(A) of the Act requires that we make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the species' status and after taking into account those efforts being made by State and local governments. This rulemaking meets this standard, including consideration of efforts being made by State and local governments.

The PECE policy was developed to ensure consistent and adequate evaluation of current and future conservation efforts when considering species for addition to the Federal list of endangered and threatened species. This policy does not apply to delisting determinations. Nevertheless, we have appropriately weighed existing and likely future conservation efforts. This evaluation, included in Factor D below, considered Federal, State, and local regulations; land ownership, use, and management; and relevant programs and initiatives of conservation significance to the Prebles.

Issue: Several commenters suggested the subspecies was threatened in Wyoming by a lack of adequate regulatory mechanisms.

Response: Under the Act, listing can be justified in cases where the entity suffers from the inadequacy of existing regulatory mechanisms. In order to meet this standard, the lack of adequate protections, typically in combination with other threat factors, must result in the species being in danger of extinction throughout all or a significant portion of its range (i.e., endangered) or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (i.e., threatened). The Wyoming population of Preble's do not appear, at present or within the foreseeable future, dependent upon regulatory mechanisms to maintain their conservation status. As such, the lack of regulatory mechanisms does not appear to threaten or endanger this portion of the range and, thus, the Act's protections are not warranted in Wyoming because of inadequate regulatory mechanisms.

Prebles Status Under the Act, Service Conclusions, and Our Use of Significant Portion of Range

Issue: One commenter suggested that we would be in violation of the Interagency Policy Regarding the Role of the State Agencies in Act Activities and Executive Order 13352 if we failed to delist the Prebles, since both the States of Wyoming and Colorado supported delisting.

Response: Neither the Interagency Policy Regarding the Role of the State Agencies in Act Activities (59 FR 34275, July 1, 1994) nor Executive Order 13352 (69 FR 52989, August 30, 2004) delegates Act listing decisions to the States. Such delegation would violate the Act. Instead, the Interagency Policy Regarding the Role of the State Agencies in Act Activities requires that we solicit and utilize the expertise of and information possessed by State agencies. Similarly, Executive Order 13352 promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decision making, in accordance with their representative agency missions, policies, and regulations. We have worked, and will continue to work cooperatively in seeking and utilizing all relevant information in possession of both the Wyoming Game and Fish Department (WGFD) and the CDOW as required for decisions made under section 4 of the Act. Thus, we have met or exceeded the requirements of the Interagency Policy Regarding the Role of the State Agencies in Act Activities and Executive Order No. 13352.

Issue: Several commenters suggested that the Service should delist the Prebles because of the economic impact of the listing or the expense of conservation efforts relative to the

conservation benefits realized. Some commenters suggested that the Final Listing Priority Guidance for Fiscal Year 2000 (Listing Priority Guidance) (57 FR 57114, October 22, 1999) requires that we focus our efforts on listing actions that provide the greatest conservation benefits.

Response: Any determination on whether a species is threatened or endangered must be based solely on the basis of the species conservation status using the best scientific and commercial information available. Spending on a species or economic impacts cannot be considered in such a determination.

The Final Listing Priority Guidance for Fiscal Year 2000 (57 FR 57114, October 22, 1999) does not apply to this rulemaking. The Listing Priority Guidance provides guidance for assigning relative priorities to listing actions conducted by the Service's Listing Program under section 4 of the Act. The guidance clearly articulates that delisting activities are not part of the listing program. Delisting activities have been undertaken by the Service's Recovery Program since fiscal year 1999.

Issue: One commenter was concerned that the revised proposed rule was inconsistent with Prebles' status as classified by the WNDD.

Response: The WNDD (2003, p. A–12) lists the Prebles among 1 of 35 mammal species or subspecies of concern in Wyoming (specific ranking and ranking criteria available at: *http://uwadmnweb.uwyo.edu/wyndd/SOC/2003_WYNDD_Soc.pdf*). In making our determination we considered the best scientific and commercial information available including information available from the WNDD. However, our evaluation and determination of status under the Act is not dictated by the WNDD classification of the Prebles.

Issue: Several commenters stated that the 2007 Department of the Interior Solicitor's opinion (U.S. Department of the Interior 2007) was an incorrect interpretation of the Act. These commenters argued that we have authority to list or delist only whole species, subspecies, and DPSs—in other words, if we find a species to be in danger of extinction in only a significant portion of its range, we must list it and apply all of the protections of the Act to its entire range, even to portions of the range that are not at risk. These commenters opined that the ''partial-listing'' approach represents a dramatic departure from thirty years of listing practice.

In particular, some commenters suggested the Prebles should be protected rangewide because it is threatened over a significant portion of its range. They suggested ''partial-listings'' would lead to a limitless series of petitions and lawsuits over the status of taxa in portions of their ranges.

Others suggested the subspecies should be delisted throughout its entire range, unless the threats are so severe in the Colorado portion of the range that it puts the subspecies' ''future * * * in doubt.'' This commenter suggested the Service's new listing approach inappropriately allows ''partial-listings'' when the loss of a portion of range results in a decrease, no matter how small, in the ability to conserve a species, subspecies, or DPS.

Response: We agree with the interpretation of the Act set forth in the Solicitor's opinion, and disagree with these comments for the reasons given in that opinion. It is true that the Act only allows the listing and delisting of species, subspecies, or DPSs. As such, this action lists the Preble's because the subspecies is likely to become endangered within the foreseeable future in a significant portion of its range. However, once we determine listing is appropriate, section 4(c) of the Act requires we ''specify with respect to each such species over what portion of its range it is threatened.'' In this case, we are specifying that the subspecies is threatened in Colorado. Thus, the protections of the Act are only necessary and shall only apply in the Colorado portion of its range.

The interpretation of the Act advocated by these commenters fails to give sufficient consideration to the import of section 4(c), is inconsistent with legislative history of the Act that strongly supports the view that Congress intended to give the Secretary broad discretion to tailor the protections of the Act with the needs of the species, and would lead to absurd results.

Moreover, even before the 2007 Solicitors opinion, we have applied differential levels of protections for species facing differential levels of threats in different parts of their range. For example, in 1978, the gray wolf (*Canis lupus*) was protected as endangered in the lower-48 States, except in Minnesota, where it was protected as threatened (a lower level of protection is often provided to threatened species than to endangered species) (43 FR 9607, March 9, 1978). Nor is the listing determination for Prebles the only listing determination applying the Solicitor's opinion. In our 2008 Gunnison prairie dog 12-month finding (73 FR 6660, February 5, 2008), we determined that the Gunnison's prairie dog does not warrant the Act's protections throughout its range, but that the significant portion of the species' range located in central and south-central Colorado and north-central New Mexico does warrant protection under the Act.

According to the Solicitor's opinion, we have broad discretion in defining what portion of a range is ''significant,'' but this discretion is not unlimited. Specifically, we may not define ''significant'' to require that a species is endangered only if the threats faced by a species in a portion of its range are so severe as to threaten the viability of the species as a whole. The suggestion by one of the commenters that a portion of the range of a species can be significant only if its loss would put the ''future [of the species] in doubt'' rests on a single quote from hearing testimony on a bill that was a precursor to the Act. If by the future of the species being in doubt the commenter means that the threat to the portion of the range must threaten the entire species, such an interpretation would read the ''significant portion or its range'' language from the Act. Unlike the Solicitor's opinion, the commenter did not address this issue, or the relevant case law.

For this determination, we used an analysis similar to that we have used in other recent listing determinations: A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. In other words, in considering significance, the Service asks whether the loss of this portion likely would eventually move the species toward extinction, but not to the point where the species should be listed as threatened or endangered throughout all of its range.

To determine if a portion of the species' range contributes substantially to the resiliency of the species, the Service considered in this instance: (1) To what extent does this portion of the range contribute to the total of large blocks of high-quality habitat? (2) To what extent do the population size and characteristics within this portion of the range contribute to the ability of the species to recover from periodic disturbances? (3) To what extent does this portion of the range act as a refugium of the species? (4) To what extent does this portion contain an important concentration of habitats necessary for certain life history functions?

To determine if a portion of the species' range contributes substantially

to the redundancy of the species, the Service considered in this instance: (5) To what extent does this portion of the range contribute to the total [gross area] range of the species? (6) To what extent does this portion of the range contribute to the total population of the species? (7) To what extent does this portion of the range contribute to the total suitable habitat? (8) To what extent does this portion of the range contribute to the geographical distribution of the species?

To determine if a portion of the species' range contributes substantially to the representation of the species, the Service considered in this instance: (9) To what extent does this portion of the range contribute to the genetic diversity of the species? (10) To what extent does this portion of the range contribute to the morphological/physiological diversity of the species? (11) To what extent does this portion of the range contribute to the behavioral diversity of the species? (12) To what extent does this portion of the range contribute to the diversity of ecological settings in which the species is found?

These questions provide for a relative ranking (high, medium, and low) of the level of the portion's contribution to the listable entity's (species, subspecies or DPSs) representation, resiliency, or redundancy. Because the questions may not be independent of each other or equivalent in value, it is inappropriate to ''sum'' the high, medium, and low rankings across questions or arrive at a total ''score.'' Rather, the questions are tools to identify those factors that are important in considering a portion's contribution to resiliency, redundancy, and representation, and whether it is significant. The Service then reviews the results and the justifications to decide whether the portion contributes substantially to the representation, redundancy and resiliency of the listable entity (species, subspecies or DPS). In general, if the contribution to the representation, resiliency, or redundancy of all the questions is low, the portion likely does not contribute substantially to representation, resiliency, or redundancy; if the contribution to the representation, resiliency, or redundancy of most or multiple questions are high, the portion likely contributes substantially to representation, resiliency, or redundancy.

Issue: Several commenters suggested the ''partial-listing'' approach allowed by the Solicitor's opinion undoes the effect of the 1978 DPS amendments to the Act.

Response: We do not believe this approach undoes the 1978 amendments to the Act, instead it compliments the 1978 amendments. A DPS of a vertebrate species which interbreeds when mature is considered and treated as a species (i.e., a listable entity) under the Act. A significant portion of the range is a portion of the range of the listed entity (whether a full species, subspecies, or DPS of a vertebrate) that contributes meaningfully to the conservation of the species. Therefore, we may apply the protections of the Act in a significant portion of a DPS. In addition, we may apply the protections of the Act in a significant portion of a species or subspecies of non-vertebrate.

According to our DPS policy (61 FR 4722, February 7, 1996), a DPS must be discrete and must be significant to the taxon to which it belongs (species or subspecies) as a whole. The term ''significant'' in the Act's definitions of endangered and threatened species should not be considered entirely equivalent to the ''significance'' element of the DPS policy. We recognize, however, that many of the attributes (described below) we have identified as important for evaluating whether a portion of a species' range is significant are similar to the attributes identified in the DPS policy as being appropriate for evaluating the significance of a potential DPS. There is no requirement that a significant portion of the range be discrete, but similar to DPSs, a significant portion of the range must be significant. As explained in detail previously, the significance of a significant portion of the range is based on an evaluation of its contribution to the conservation of the listable entity being considered. The DPS policy lists four possible factors to consider when determining significance, but does not limit consideration of significance to only those four factors. The considerations we made in this instance for determining whether a portion is significant encompass and expand on some of the concepts in the DPS policy.

Issue: One commenter suggested we use a 4(d) rule to reduce regulatory restrictions in more secure portions of its range instead of this ''partial-listing'' approach.

Response: Special rules under section 4(d) of the Act apply only where the protections of the Act are in place. Thus, once we determined the subspecies was not threatened in the Wyoming portion of its range, use of section 4(d) was no longer an option for Prebles populations in Wyoming. While a 4(d) rule allows us to tailor the Act's taking provisions as necessary and advisable to provide for the conservation of the species, the approach utilized here also eliminates the need for critical habitat and consultation under section 7 of the Act. We believe this approach is more consistent with the intention of Congress as expressed in the legislative history concerning the phrase ''significant portion of its range.''

Issue: Some commenters questioned our analysis and conclusion regarding the status of the Prebles in Wyoming as compared to our analysis and conclusion regarding Colorado. They stated that, like Colorado, the Wyoming portion of the range is necessary for resiliency, redundancy, and representation of the Prebles, and that loss of populations in Wyoming would result in a decrease in our ability to conserve the Prebles. Some commenters stated that Preble's populations in Wyoming should be protected because, even with the protections of the Act, the subspecies continues to decline in Colorado. These commenters suggested Wyoming Preble's populations will likely be essential to conserving the subspecies.

Response: The Wyoming portion of its range is necessary for resiliency, redundancy, and representation of the Prebles. The basis for amending the listing of the Prebles in the Wyoming portion of its range is not the lack of significance of Wyoming populations to the survival of the subspecies, but rather that Wyoming populations appear secure into the foreseeable future without protections of the Act. Overall, in the absence of the Act's protective measures, we believe the subspecies will likely remain secure and well distributed across Wyoming into the foreseeable future. We have concluded that the lack of present or threatened impacts to the Prebles in these areas indicates that this subspecies is neither in danger of extinction, nor likely to become endangered within the foreseeable future, throughout all of its range. Thus, the Prebles does not merit continued listing as threatened throughout all of its range. In Colorado, where we have determined the Prebles remains threatened, the Act will provide for the subspecies' protection and, with the assistance of our partners, eventual recovery.

Issue: Some commenters suggested a ''partial delisting'' would not improve the conservation status of the subspecies and would treat different communities inequitably with regards to the level of protection required and costs associated with them over different geographic areas.

Response: We believe this approach allows for a more surgical application of the Act, as envisioned by Congress when it wrote the ''significant portion of its range'' language. The Act does not

allow us to consider in this listing decision whether there would be higher costs in Colorado than in Wyoming. On the whole, we believe this targeted approach provides for the necessary and appropriate needs of the species, while avoiding unnecessary regulatory burdens.

Issue: Two reviewers suggested that our proposal, which would result in the removal of the Act's protections for the Prebles in Wyoming, but not in the Colorado portion of its range, may limit human activities in Colorado and thereby encourage the transfer of those same activities and impacts to the Prebles' habitats in Wyoming.

Response: We have concluded that this outcome is unlikely. For example, we cannot envision prohibitions of the Act limiting residential development in Colorado to the extent that development options in Wyoming are pursued that would otherwise not be pursued. Much more likely, human development activities planned in Colorado that could adversely impact the Prebles would be modified. Prebles' occurrence is largely limited to riparian corridors and adjacent uplands that make up a small portion of the Colorado Front Range. Most activities that could prove harmful to the subspecies and its habitat can be feasibly modified to avoid impacts, or adverse effects can be addressed through section 7 consultations or HCPs. If relocation of projects occurs, in most cases we think that viable project alternatives are likely to be near the originally proposed site.

Issue: A few commenters stated that a change in listing status could preclude further investigation, monitoring, and assessing of the Prebles in Wyoming. Other commenters argued that we did not explain how maintenance of populations in Wyoming would be assured without monitoring. Some commented that a 5-year monitoring plan should be developed to monitor State and county commitments to conserve the Prebles and its habitat. One suggested a ''special rule'' be developed to assure such monitoring.

Response: As discussed previously, according to 50 CFR 424.11(d) of our regulations, we may delist a species if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error. Section 4(g)(1) of the Act requires us to monitor a species for at least 5 years after it is delisted based on recovery. In this case, we are amending the status of the Prebles based on new information that was not available at the time of listing. Of the three options laid out in 50 CFR 424.11(d) of our regulations and identified above, we have determined that this case most appropriately falls under option (3) the original scientific data used at the time the species was classified were in error. The Act does not require us to monitor a species in such cases. However, we intend to work with the State and other interested parties in Wyoming to continue monitoring efforts for the subspecies.

The State of Wyoming has committed to conducting ongoing monitoring efforts for the Prebles and to ensuring its long-term viability (Freudenthal 2008). The State has expressed an interest in working with the Service in developing monitoring protocols. The State is working with the WNDD to determine relative connectivity of Prebles' populations in Wyoming. In addition, the WNDD (Griscom *et al.* 2007) is engaged in a 5-year to 7-year study with the USFS to inventory and monitor Prebles' populations, correlate populations with habitat conditions, and measure effects of fire and livestock grazing.

Issue: Several commenters stated that any delisting rule for the Prebles must provide evidence that the subspecies has met the recovery criteria cited in the Preliminary Draft Recovery Plan.

Response: Because this action is based upon error (i.e., ''the original scientific data used at the time the species was classified were in error'') and not recovery, satisfying the Preliminary Draft Recovery Plan is not necessary. Additionally, recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. In short, recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan. Finally, the Preliminary Draft Recovery Plan is a draft and has not been approved by either the Service or the Recovery Team.

That said, we believe that our determinations regarding the conservation status of Prebles in Wyoming and Colorado are largely consistent with the recovery concepts described in the Preliminary Draft Recovery Plan. In Wyoming, the Preliminary Draft Recovery Plan focuses on maintaining 1 large population and 2 medium populations. The availability of large, connected areas of suitable habitat with confirmed Prebles occurrence records suggests these populations currently exist (USFWS 2003b, pp. iv, 29; Beauvais 2004; USFWS 2008). Because these populations face no meaningful threats over the foreseeable future, we believe these populations will be maintained well into the foreseeable future. Thus, the protections of the Act are no longer necessary or appropriate in this portion of range. The same is not true for Prebles' populations in Colorado where the protections of the Act remain necessary.

Issue: One commenter questioned our conclusions and stated that there was no indication that habitat conditions for the Prebles have improved since the time of listing and that the same threats persist.

Response: Our determination that the Prebles should remain listed in the Colorado portion of its range recognizes the continuation of the main threats identified at the time of listing. Our determination regarding Prebles populations in Wyoming is based on expanded knowledge of populations present and subsequent evaluation of foreseeable threats in relation to areas supporting these populations.

Issue: One commenter noted that, based on extrapolated estimates of the Prebles per mile and extent of apparently occupied habitat, more Prebles exist in Colorado than are needed for recovery as proposed in the Preliminary Draft Recovery Plan.

Response: Extrapolation of Prebles' numbers based on limited distribution and population data must be made with caution. Habitat varies greatly across the known range of the subspecies and the actual extent of occupied habitat is largely unknown. In addition, the Preliminary Draft Recovery Plan does not emphasize total numbers of Prebles throughout the subspecies' range, but rather the documentation of existing populations of specified size and distribution, establishing stability of these populations over time, and the elimination of threats. We cannot, based on the best available information, conclude that Prebles' populations in Colorado meet these criteria or warrant removal of the protections of the Act.

Use of State Line To Delimit the Colorado Significant Portion of Range

Issue: Some commenters questioned the use of the State line to delineate the Colorado significant portion of range. They were concerned that the State border does not represent a biological divide between Prebles' populations. Furthermore, they contend that southern Wyoming and northern Colorado are ecologically similar, as are

the dominant agricultural land uses. Some suggested the use of the State line to delineate the Colorado significant portion of range appeared to be a political compromise. Some commenters suggested that we should study Prebles' interactions across the State line. One reviewer questioned whether a metapopulation or source-sink structure existed with populations in one State, dependent on populations in the other. Other commenters stated that management practicality favors use of the State line. One respondent commented that landowners are used to and better understand regulations based on governmental lines (rather than watershed lines) and that regulation based on State or county lines best corresponds to local zoning and development-related permitting.

Response: The State line is not a strict ecological divide. However, this rule incorporates this geopolitical boundary because it appropriately divides differential threats to the north and south. As such, it is relevant biologically to the subspecies' status.

Furthermore, the available data suggests use of the State line will not split any Prebles' populations into federally protected and unprotected segments. Prebles' populations in the Upper Lodgepole, Upper Laramie, Crow Creek, and Lone Tree Creek drainages are not known in Colorado, and Prebles' populations in the Cache La Poudre drainage are not known to occur in Wyoming. While such populations may exist, we see little potential for Prebles' populations in any drainage to have a significant component in the immediate area of the Wyoming-Colorado State line. Based on known dispersal abilities of the Prebles and proximity of known populations in Wyoming and Colorado, interaction across the State line is not known or likely to occur. Even if such interactions exist, they are likely infrequent or unimportant to populations on either side. Further, if such dependency exists, we do not anticipate it would be disrupted by the action in this final rule. Threats north of the border that would disrupt any metapopulation dynamic are minimal, while populations in Colorado remain protected.

As we have described, there also is a practical consideration supporting use of the State line to delineate the significant portion of range where the Act's protections are still necessary.

Issue: One commenter thought that political boundaries may be supportable in the assessment of listing status in cases where State regulations vary, but noted that there are no such differences between Wyoming and Colorado.

Response: Differential protection under State regulations could render a State line an important boundary of differing threats. In this case, we have concluded that levels of threats differ largely because of differing levels of projected human population growth. Rationale for using the State line is the same (i.e., differential threats) though the reason for the threats differs.

Modification of the Boundaries for the Colorado Significant Portion of Range

Issue: We received numerous comments regarding our delineations of the southern, eastern, and western boundaries of the Colorado significant portion of range. Some supported the boundaries as proposed. One feared that altering the proposed lines of protection could detract from recovery activities. Another commenter suggested that boundaries were adequately delineated, and that block clearances and site exclusions are viable regulatory options to address concerns at sites within the significant portion of range where the Prebles was not likely present. One commenter stated that attempts to fine tune boundaries by drainages or counties were inappropriate and supported the proposed latitude-longitude boundaries. This commenter concluded that ''simplest is best.'' In contrast, we also received comments that we should remove areas where appropriate habitat for Prebles was not present.

Response: We have considered these comments and continue to conclude that a broad delineation of the Colorado significant portion of range is appropriate. Such a delineation is likely to encompass all Prebles' populations, maximizing conservation potential within Colorado. Fine-scale delineation of habitat is more akin to a critical habitat designation and not appropriate for a significant portion of the range designation of where the Act's protections apply. Elimination of all non-habitat would require determinations of habitat suitability for each individual stream reach creating an unwieldy task. Furthermore, only listing the subspecies in these stream reaches would require lengthy legal descriptions of all habitat boundaries including possible UTM delineations (a standardized coordinate system based on the metric system and a division of the earth into sixty 6-degree-wide zones). This would be difficult for the public, other Federal agencies, State agencies, local governments and other interested parties to interpret and implement.

We also considered an intermediate approach. This approach would apply the Act's protections to all riparian areas and their associated wetlands, their 100-year floodplain and an additional 100 m (330 ft) within the portion of Colorado west of 103 degrees 40 minutes West, north of 38 degrees 30 minutes North, and east of 105 degrees 50 minutes West. One difficulty with this approach is that 100-year flood plains have not been designated by Federal Emergency Management Agency throughout the range of the subspecies. Because these designations have not been defined across the range, the actual table at 50 CFR 17.11 would require lengthy legal descriptions including possible UTM delineations. Alternatively, we considered applying the Act's protections to all riparian areas and their associated wetlands plus a defined buffer (such as 1,000 m (3,300 ft)) within the portion of Colorado west of 103 degrees 40 minutes West, north of 38 degrees 30 minutes North, and east of 105 degrees 50 minutes West. This approach would likely be inaccurate as actual utilized habitat varies across streams and within streams based on topography of that particular reach. An additional complication with this approach is defining ''riparian areas and their associated wetlands.'' Generally, these terms lack a regulatory definition. Perhaps the closest regulatory definition is Clean Water Act's (CWA) area of authority described as ''navigable waters of the United States.'' Unfortunately, many areas utilized by Prebles fall outside these jurisdictional wetlands. As such, the actual table at 50 CFR 17.11 would again require lengthy legal descriptions including possible UTM delineations. As such, we believe these intermediate approaches would also be difficult for the public, other Federal agencies, State agencies, local governments and other interested parties to interpret and implement.

Instead, we will continue to determine potential for habitat at a particular site to support the Prebles on a case-by-case basis. All block clearances and site exclusions will continue to be subject to individual review, amendment, and expansion/contraction as more information becomes available on Prebles' presence.

Issue: Some commenters opined that Prebles' populations in particular drainages, counties, or stream reaches in Colorado should be removed from protection under the Act based on considerations similar to those we cited for removing protections in Wyoming. One commenter suggested that all areas where threats were less severe should be excluded from protections in Colorado. The State of Wyoming suggested that we remove protections of the Act for

Prebles' populations in Lone Tree-Owl, Crow Creek, and Upper Laramie drainages in Colorado.

Response: We have considered these comments and continue to conclude that existing Prebles' populations in Colorado represent a single significant portion of range that should not be further subdivided. While we also considered splitting the subspecies into significant portions of the range based on river basins (i.e., only removing the Act's protections in the North Platte River basin), we concluded that this would be more difficult to administer with little conservation benefit to the subspecies.

Given expected development patterns in the Colorado portions of these drainages, we do not believe the available data support Wyoming's proposal to remove the Act's protections for Prebles' populations in Lone Tree-Owl, Crow Creek, and Upper Laramie drainages in Colorado. While we recognize that information is currently lacking to confirm the presence of existing Prebles' populations in the Colorado portion of Lone Tree-Owl and Crow Creek drainages, we believe that, based on the availability of suitable habitat (Pague and Granau 2000, pp. 2–3, 5–3, 7–3), portions of these drainages may be occupied.

Issue: One reviewer suggested that we extend the limits of the Colorado significant portion of range protection further east to include lower basins and the confluence of occupied rivers and streams. This reviewer thought that such protection might be critical to habitat connectivity and dispersal.

Response: In cases where lower portions of drainages and basins are thought to be outside of the current range of the Prebles, we doubt that dispersal via these routes would occur as suitable habitat no longer exists and is not viewed as likely recoverable. Therefore, we do not see any reason to extend protection to these areas that are unlikely to support the subspecies. Connectivity among populations in separate drainages may be occurring overland where drainages have closely adjacent headwater streams or by way of water conveyance ditches.

Other Issues

Issue: One commenter suggested that our final rule should address Prebles' status in Wyoming by June 30, 2008, consistent with our settlement agreement with the State of Wyoming, but allow for additional time to consider status of the Prebles in Colorado.

Response: Our revised proposed rule addressed the status of the Prebles throughout its range. It would be inconsistent with our draft guidance on the application of a significant portion of range analysis and settlement agreement to delay our final determination for any part of the Prebles' range. Status of the Prebles in Colorado will be further evaluated during future 5-year reviews.

Issue: Several commenters requested that the final rule clarify how the removal of the Act's protections in Wyoming impacts existing HCPs and previous section 7 consultations including mitigation, monitoring, and reporting requirements.

Response: No HCPs are in effect in Wyoming so this portion of the issue is moot. Previous commitments made through the section 7 process with respect to an action area in Wyoming will no longer be binding as of the effective date of this listing determination; however, coordination with lead Federal agencies should be pursued to substantiate their jurisdiction over other aspects of previously approved projects. For example, commitments specific to the Prebles and to conservation of wetlands and adjacent buffers under CWA permits may overlap.

Issue: Some commenters questioned how the proposed action might impact section 9 take prohibitions and the section 7 consultation process, including jeopardy determinations.

Response: The prohibitions under section 9 of the Act and requirements under section 7 of the Act apply to the portion of the subspecies' range where it remains threatened. Our jeopardy analysis will be conducted on the significant portion of range which remains listed (i.e., Colorado), rather than the subspecies' range as a whole. The question we will ask with regard to the jeopardy analysis is, ''does the proposed action appreciably reduce the likelihood of survival and recovery of the species within the significant portion of range where the prohibitions of the Act apply?''

Taxonomy

The Prebles is a member of the family *Dipodidae* (jumping mice) (Wilson and Reeder 1993, p. 499), which contains four extant genera. Two of these, *Zapus* (jumping mice) and *Napaeozapus* (woodland jumping mice), are found in North America (Hall 1981, p. 841; Wilson and Ruff 1999, pp. 665–667).

In his 1899 study of North American jumping mice, Edward A. Preble concluded the *Zapus* genus consisted of 10 species (Preble 1899, pp. 13–41). According to Preble (1899, pp. 14–21), *Z. hudsonius* (the meadow jumping mouse) included five subspecies. Preble (1899, pp. 20–21) classified all specimens of the meadow jumping mouse from North Dakota, Montana, South Dakota, Wyoming, Nebraska, Colorado, and Missouri as a single subspecies, *Z. h. campestris*. Cockrum and Baker (1950, pp. 1–4) later designated specimens from Nebraska, Kansas, and Missouri as a separate subspecies, *Z. h. pallidus*.

Krutzsch (1954, pp. 352–355) revised the taxonomy of the *Zapus* genus after studying morphological characteristics of 3,600 specimens. This revision reduced the number of species within this genus from 10 to 3, including *Z. hudsonius* (the meadow jumping mouse), *Z. princeps* (the western jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse). According to Krutzsch (1954, pp. 385–453), the meadow jumping mouse included 11 subspecies.

Krutzsch (1954, pp. 452–453) described and named the subspecies Prebles (*Zapus hudsonius preblei*) based on geographic separation and morphological (physical form and structure of an organism) differences. Krutzsch (1954, pp. 452–453) discussed the presence of physical habitat barriers and the lack of known intergradation (merging gradually through a continuous series of intermediate forms or populations) between the Prebles, known only from eastern Colorado and southeastern Wyoming, and other identified subspecies of meadow jumping mice ranging to the east and north. Additionally, Krutzsch (1954, pp. 452–453) examined the morphometric characteristics of 4 adult and 7 non-adult specimens. Krutzsch (1954, pp. 452–453) reported 7 distinguishing traits, but only published quantitative results (9 measurements) on two of these traits (n=3) (Krutzsch 1954, p. 465). Acknowledging the small number of samples upon which his conclusion was based, Krutzsch (1954, p. 453) nonetheless concluded that the differences between Prebles and neighboring meadow jumping mice was considerable and enough to warrant a subspecific designation.

In Krutzsch's analysis, subspecies neighboring Prebles included *Zapus hudsonius campestris* in northeastern Wyoming, southwestern South Dakota, and southeastern Montana; *Z. h. intermedius* in North Dakota, and northwestern, central, and eastern South Dakota; and *Z. h. pallidus* (Cockrum and Baker 1950) in Nebraska, Kansas, and Missouri (Krutzsch 1954, pp. 441–442, 447–452). In 1981, Hafner *et al.* (1981, p. 501) identified *Z. h. luteus* from Arizona and New Mexico as another neighboring subspecies of meadow

jumping mouse. This population had previously been assumed a subspecies of western jumping mouse (Krutzsch 1954, pp. 406–407; Hall and Kelson 1959, pp. 774–776; Jones 1981, p. iv). Among recognized subspecies, Krutzsch (1954, p. 452) found that Prebles most closely resembled *Z. h. campestris* from northeastern Wyoming, but documented differences in coloration and skull characteristics.

Krutzsch's description (1954), as modified by Hafner *et al.* (1981, p. 501), with 12 subspecies of meadow jumping mice, has been generally accepted by most small mammal taxonomists for the past half-century (Hall and Kelson 1959, pp. 771–774; Long 1965, pp. 664–665; Armstrong 1972, pp. 248–249; Whitaker 1972, pp. 1–2; Hall 1981, pp. 841–844; Jones *et al.* 1983, pp. 238–239; Clark and Stromberg 1987, p. 184; Wilson and Reeder 1993, p. 499; Hafner *et al.* 1998, pp. 120–121; Wilson and Ruff 1999, pp. 666–667).

Other Taxonomic Information Available Prior to Listing

As part of a doctoral dissertation, Jones (1981, pp. 4–29, 229–303, 386–394, 472) analyzed the morphology of 9,900 specimens within the *Zapus* genus from across North America, including 39 Prebles' specimens. Jones' dissertation (1981, p. 144) concluded that the Pacific jumping mouse was not a valid taxon and suggested reducing the number of species in the genus to two (the western jumping mouse and the meadow jumping mouse). At the subspecific level, Jones (1981, pp. V, 303) concluded that no population of meadow jumping mouse was sufficiently isolated or distinct to warrant subspecific status. Regarding the Prebles, Jones (1981, pp. 288–289) wrote that ''No named subspecies is geographically restricted by a barrier, with the possible exception of *Z. h. preblei* [Preble's meadow jumping mouse]'' which ''appears to be isolated,'' but that ''no characteristics indicate that these populations have evolved into a separate taxon.'' Jones' taxonomic conclusions regarding the Prebles are difficult to evaluate as he did not compare the Prebles to *Z. h. campestris*, the closest neighboring subspecies, nor did he conduct statistical tests of morphological differences between the Prebles and any other subspecies. This dissertation was approved by Jones' doctoral committee and the Indiana State University's School of Graduate Studies in 1981 (Jones 1981, p. ii). Jones' (1981) findings were not published in a peer-reviewed journal and were not incorporated into the formal jumping mouse taxonomy.

Prior to listing, the CDOW contracted for a genetic analysis of the Prebles (Riggs *et al.* 1997). Riggs *et al.* (1997, p. 1) examined 433 base-pairs in 1 region of the mitochondrial deoxyribonucleic acid (mtDNA) (maternally inherited genetic material) across 5 subspecies of meadow jumping mouse (92 specimens). This study concluded that the Prebles' specimens formed a homogenous group recognizably distinct from other nearby populations of meadow jumping mice (Riggs *et al.* 1997, p. 12). At the request of the Service, Hafner (1997, p. 3) reviewed the Riggs study, inspected Riggs' original sequence data, and agreed with its conclusions. The supporting data for this report remain privately held (Ramey *et al.* 2003, p. 3). The Riggs *et al.* (1997) results were not published in a peer-reviewed journal. Prior to listing, this study was the only available information concerning the genetic uniqueness of the Prebles relative to neighboring subspecies.

Our original listing determined that Krutzsch's (1954) revision of the meadow jumping mouse species, including the description of the Prebles, was widely supported by the scientific community as indicated by the available published literature (63 FR 26517, May 13, 1998). Our 1998 determination weighed the information in unpublished reports, such as Jones (1981), and public comments on the rule and found that they did not contain enough scientifically compelling information to suggest that revising the existing taxonomy was appropriate (63 FR 26517, May 13, 1998). Our 1998 conclusion was consistent with Service regulations that require us to rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group (50 CFR 424.11).

Taxonomic Information Solicited After Listing

In 2003, the Service, the State of Wyoming, and the Denver Museum of Nature and Science funded a study to resolve ongoing taxonomic questions about the relationship between the Prebles and neighboring mouse taxa (USFWS 2003a, pp. 1–2). In December 2003, we received a draft report from the Denver Museum of Nature and Science examining the uniqueness of the Prebles relative to other nearby subspecies of meadow jumping mice (Ramey *et al.* 2003). In 2004, the Service and other partner agencies provided additional funding to expand the scope of the original study (USFWS 2004). In August 2005, an expanded version of this original report was published in the journal *Animal Conservation* (Ramey *et al.* 2005). This publication included an examination of morphometric differences, mtDNA, and microsatellite DNA (a short, noncoding DNA sequence, usually two to five base-pairs, that is repeated many times within the genome of an organism). Ramey *et al.* (2005, pp. 339–341) also examined the literature for evidence of ecological exchangeability among subspecies (a test of whether individuals can be moved between populations and can occupy the same ecological niche).

Ramey *et al.*'s morphometric analysis tested 9 skull measurements of 40 Prebles, 40 *Zapus hudsonius campestris*, and 37 *Z. h. intermedius* specimens (Ramey *et al.* 2005, p. 331). Their results did not support Krutzsch's (1954, p. 452) original description of the Prebles as ''averaging smaller in most cranial measurements'' (Ramey *et al.* 2005, p. 334). Ramey *et al.* (2005, p. 334) found that only one cranial measurement was significantly smaller, while two cranial measurements were significantly larger.

Ramey *et al.* examined 346 base-pairs in 1 region of the mtDNA across 5 subspecies of meadow jumping mice (205 specimens) (Ramey *et al.* 2005, pp. 331–332, 335). Ramey *et al.* (2005, p. 335, 338) found low levels of difference between the Prebles and neighboring subspecies. The subspecies failed Ramey *et al.*'s tests of uniqueness in that the subspecies did not show greater molecular variance among than within subspecies or did not demonstrate nearly complete reciprocal monophyly with respect to other subspecies. The data demonstrated that all of the mtDNA haplotypes (alternate forms of a particular DNA sequence or gene) found in the Prebles also were found in *Zapus hudsonius campestris*. The mtDNA data demonstrated evidence of recent gene flow between the Prebles and neighboring subspecies (Ramey *et al.* 2005, p. 338).

Ramey *et al.* (2005, pp. 333–334, 338) analyzed 5 microsatellite loci across 5 subspecies of meadow jumping mice (195 specimens). The subspecies failed Ramey *et al.*'s tests of uniqueness in that the subspecies did not show greater molecular variance between than within subspecies and that multiple private alleles were not at a higher frequency than shared alleles at the majority of loci (Ramey *et al.* 2005, p. 333). Ramey *et al.* (2005, p. 340) concluded that these results were consistent with their morphometric and mtDNA results.

Finally, a review of the literature found no published evidence of adaptive or ecological differences

between Prebles and other subspecies of jumping mouse. Ramey *et al.* (2005, pp. 339–341) conclude that the lack of morphological difference supported the proposition of no adaptive or ecological difference.

Based on hypothesis testing using four lines of evidence—morphometrics, mtDNA, microsatellites, and a lack of recognized adaptive differences—Ramey *et al.* (2005, p. 340) concluded that Prebles and *Zapus hudsonius intermedius* should be synonymized with *Z. h. campestris*.

Prior to publication of Ramey *et al.* (2005) in *Animal Conservation*, the CDOW and the Service solicited 16 peer reviews of the 2004 draft report provided to the Service (Ramey *et al.* 2004a). Fourteen of these reviewers provided comments (Armstrong 2004; Ashley 2004; Bradley 2004; Conner 2004; Crandall 2004; Douglas 2004; Hafner 2004; Meaney 2004; Mitton 2004; Oyler-McCance 2004; Riddle 2004; Sites 2004; Waits 2004; White 2004). In 2005, the Service approached the same 16 experts to review Ramey *et al.* 2004b (an expansion of Ramey *et al.* 2004a). Eleven of these reviewers provided comments (Ashley 2005; Baker and Larsen 2005; Bradley 2005; Crandall 2005; Douglas 2005; Hafner 2005; Maldonado 2005; Mitton 2005; Oyler-McCance 2005; Waits 2005; White 2005). In 2006, some of these reviewers provided comments on Ramey *et al.* (2005) as part of their review of King *et al.* (2006a). Krutzsch (2004) also reviewed Ramey *et al.* (2004a). In August 2006, *Animal Conservation* published two critiques of Ramey *et al.* (2005) (Martin 2006; Vignieri *et al.* 2006) and two responses (Crandall 2006b; Ramey *et al.* 2006a).

Many of the reviewers generally supported the findings of Ramey *et al.* (Baker and Larsen 2005; Bradley 2004, 2005; Crandall 2004, 2005; Hafner 2004; Krutzsch 2004; Maldonado 2005; Meaney 2004; Mitton 2004, 2005; Riddle 2004; Sites 2004; Waits 2004, 2005). However, the reviewers raised a number of important issues. Because these experts reviewed the unpublished reports (Ramey *et al.* 2004a, 2004b), many of the criticisms were addressed prior to publication in *Animal Conservation* (Ramey *et al.* 2005). For example, reviewers recommended that the study be augmented to include microsatellite data; this information was added to the published version (Ramey *et al.* 2005). Some of the most significant unresolved issues identified included:

(1) Reliance upon museum specimens which can be prone to contamination (Douglas 2004, 2005, 2006; Hafner 2006; Maldonado 2005);

(2) The reliability of, and failure to validate, specimens' museum identification tag (Ashley 2005; Douglas 2004, 2005; Hafner 2004; Oyler-McCance 2004, 2005, 2006);

(3) The sampling regime and its impact on the analysis (Ashley 2006; Crandall 2006a; Douglas 2006; Hafner 2006; Maldonado 2005, 2006; Oyler-McCance 2004, 2006);

(4) Reliance upon a small portion (346 base-pairs) of mtDNA (Ashley 2004, 2005; Baker and Larsen 2005; Crandall 2004, 2005, 2006a; Douglas 2004, 2005, 2006; Hafner 2005, 2006; Maldonado 2005; Oyler-McCance 2004, 2005, 2006; Riddle 2004; Sites 2004; Waits 2004, 2005);

(5) The small number of microsatellite DNA loci examined (five) (Crandall 2006a; Oyler-McCance 2006; Hafner 2006; Vignieri *et al.* 2006, p. 241);

(6) The statistical tests employed (Crandall 2004; Douglas 2004, 2005; Hafner 2006; Maldonado 2005; Mitton 2005; Oyler-McCance 2005, 2006);

(7) The criteria used and factors considered to test taxonomic validity as well as alternative interpretations of the data (Ashley 2004; Conner 2004; Douglas 2004, 2005, 2006; Hafner 2005, 2006; Oyler-McCance 2004, 2005; Vignieri *et al.* 2006, pp. 241–242; White 2004);

(8) Whether the western jumping mouse was an appropriate outgroup (a closely related group that is used as a rooting point of a phylogenetic tree) (Douglas 2004);

(9) Failure to measure all of the morphological traits examined by Krutzsch (1954) (Vignieri *et al.* 2006, p. 238); and

(10) An inadequate evaluation of ecological exchangeability and habitat differences among subspecies (Ashley 2004; Conner 2004; Douglas 2004; Meaney 2004; Mitton 2004; Oyler-McCance 2004, 2005; Sites 2004; Vignieri *et al.* 2006, p. 238; Waits 2004, 2005). Collectively, these critiques indicated that delisting based on the conclusions of Ramey *et al.* alone might be premature.

Because the proposed rule to delist the Prebles relied solely upon an unpublished report (Ramey *et al.* 2004a) that had received mixed peer reviews (see above), verifying these results was a high priority of the Service (Morgenweck 2005; Williams 2004). Thus, in 2006, the Service contracted with USGS to conduct an independent genetic analysis of several meadow jumping mouse subspecies (USGS 2005, pp. 1–4). The USGS study concluded that the Prebles should not be synonymized with neighboring subspecies (King *et al.* 2006a, pp. 2, 29). An expanded version of this report was published in the journal *Molecular Ecology* (King *et al.* 2006b). This study included an examination of microsatellite DNA, 2 regions of mtDNA, and 15 specimens critical to the conclusions of Ramey *et al.* (2005).

King *et al.*'s (2006b, p. 4336) microsatellite analysis examined approximately 4 times the number of microsatellite loci (21) and more than 1.75 times more specimens (348 specimens) than Ramey *et al.* (2005) across the same 5 subspecies of meadow jumping mice. King *et al.* (2006b, p. 4337) concluded that their microsatellite data demonstrated a strong pattern of genetic differentiation between the Prebles and neighboring subspecies. King *et al.* (2006b, pp. 4336–4341) also reported that multiple statistical tests of the microsatellite data verified this differentiation.

In their evaluation of mtDNA, King *et al.* (2006b, p. 4341) examined approximately 4 times the number of base-pairs across 2 regions (374 control region and 1,006 cytochrome-B region base-pairs) and more than 1.5 times more specimens (320 specimens for the control region analysis and 348 for the cytochrome-B analysis) than Ramey *et al.* (2005) across the same 5 subspecies of meadow jumping mice. King *et al.* (2006b, p. 4341) concluded that these data suggested strong, significant genetic differentiation among the five subspecies of meadow jumping mice surveyed.

Additionally, their mtDNA results indicated that the Prebles did not share haplotypes with any neighboring subspecies (King *et al.* 2006b, p. 4341). Such haplotype sharing contributed to Ramey *et al.*'s (2004a, pp. 1, 9; 2005, p. 335) conclusion that the Prebles was not unique and that the Prebles was a less genetically variable population of *Zapus hudsonius campestris*. Because of these conflicting results, King *et al.* (2006b, pp. 4355–4357) reexamined 15 specimens from the University of Kansas Museum collection that were key in Ramey *et al.*'s determination that neighboring subspecies shared haplotypes. King *et al.* (2006b, p. 4357) could not duplicate the mtDNA sequences reported by Ramey *et al.* for these specimens. If these specimens were removed from the analysis, neither study would illustrate haplotype sharing between the Prebles and neighboring subspecies. King *et al.* (2006b, p. 4357) concluded that ''these findings have identified the presence of a systemic error in the control region data reported by Ramey *et al.* (2005)'' and ''calls into question all of the results of Ramey *et al.* (2005) based on the

mtDNA genome and prevents analysis of the combined data.'' King *et al.* (2006, p. 4357) noted that possible reasons for the difference in sequences included contamination, mislabeling of samples, or other procedural incongruity. Ramey *et al.* (2007, pp. 3519–3520) proposed a number of alternative explanations for these contradictory results including nuclear paralogs (copies of mtDNA sequence that have been incorporated into the nuclear genome and are now pseudogenes, that is, they are no longer functional), heteroplasmy (the existence of more than one mitochondrial type in the cells of an individual), different amplification primers and conditions, and template quality.

Overall, King *et al.* (2006b, p. 19) concluded that considerable genetic differentiation occurred among all five subspecies and found no evidence to support the proposal to synonymize the Prebles, *Zapus hudsonius campestris*, and *Z. h. intermedius*.

Prior to its release, King *et al.* (2006a) underwent an internal peer review per USGS policy (USGS 2003, pp. 3, 6, 12, 28–33). In an effort to provide consistent, comparable reviews, we solicited peer reviews from the same 16 reviewers asked to review Ramey *et al.* (2004a, 2004b). Nine of the experts provided comments (Armstrong 2006; Ashley 2006; Bradley 2006; Crandall 2006a; Douglas 2006; Hafner 2006; Maldonado 2006; Oyler-McCance 2006; Riddle 2006). Ramey *et al.* (2006b, 2007) also critiqued King *et al.* (2006a, 2006b).

Most of the reviewers supported the findings of King *et al.* (Armstrong 2006; Ashley 2006; Douglas 2006; Hafner 2006; Maldonado 2006; Oyler-McCance 2006; Riddle 2006). These reviews offered a number of issues and possible explanations why the results differed from Ramey *et al.* Because reviewers were asked to review the unpublished report (King *et al.* 2006a), some of the issues were addressed in the *Molecular Ecology* publication (King *et al.* 2006b). For example, numerous reviews suggested expanding the geographic range of the study by adding a Prebles' population in Wyoming; this issue was addressed in the published version (King *et al.* 2006b). Similarly, the publication incorporated the suggestion to retest the museum specimens Ramey *et al.* (2005) identified as having shared haplotypes for signs of cross contamination. Some of the other issues raised included:

(1) The sampling regime and its impact on the analysis (Armstrong 2006; Ashley 2006; Crandall 2006a; Douglas 2006; Oyler-McCance 2006; Ramey *et al.* 2007, p. 3519; Riddle 2006);

(2) Failure to evaluate morphometrics and ecological exchangeability (Crandall 2006a);

(3) Reliance upon a small portion of control region mtDNA (Riddle 2006);

(4) The number of loci examined (i.e., too many), the programs used to analyze the data, and the resulting sensitivity in detecting difference (Crandall 2006a; Ramey *et al.* 2006b; Ramey *et al.* 2007, p. 3519);

(5) a specimen collection methodology which could cause contamination (Ramey *et al.* 2007, p. 3519);

(6) The statistical tests employed (Crandall 2006a; Douglas 2006; Maldonado 2006; Riddle 2006); and

(7) The criteria used and factors considered to test taxonomic validity and alternative interpretations of the data (Bradley 2006; Crandall 2006a).

Given the discrepancies between the Ramey *et al.* and King *et al.* reports, we contracted for a scientific review to analyze, assess, and weigh the reasons why the data, findings, and conclusions of the two studies differed (USFWS 2006, p. 14). Following an open and competitive bid process, we selected SEI as the contractor (USFWS 2006).

SEI assembled a panel of experts with the necessary scientific expertise in genetics and systematics (SEI 2006a, pp. 7, 56–82). The panelists reviewed, discussed, and evaluated all of the literature relevant to this issue including published literature, unpublished reports, third-party critiques, public comments, and other materials suggested by interested parties (SEI 2006a, pp. 48–55). Additionally, the panel examined and reanalyzed the raw data (SEI 2006a, pp. 8, 21) used by Ramey *et al.* and King *et al.*, including the mtDNA data, microsatellite DNA data, and original sequence chromatograms (automated DNA sequence data output recordings) (SEI 2006a, pp. 8, 23). The scientific review panel was open to the public and allowed for interactions among panel members, Dr. King, Dr. Ramey, other scientists, and the public.

In July 2006, SEI delivered a report outlining its conclusions to the Service (SEI 2006a). Although the panelists were not obligated to reach a consensus, they did not disagree on any substantive or stylistic issues (SEI 2006a, p. 9). Thus, the report represented the consensus of all three panelists, as well as the individual opinions of each panelist. The panel organized its evaluation into four sections corresponding with the different types of scientific evaluations performed, including morphology, ecological exchangeability, mtDNA, and microsatellite DNA. The panel's findings with regard to each are summarized briefly below. The full report is available for review at *http://www.fws.gov/mountain-prairie/species/mammals/preble/Prebles_SEI_report.pdf.*

Morphology: The panel found that all seven of the morphological characters examined by Krutzsch (1954, pp. 452–453) should have been reexamined in order to support Ramey *et al.*'s proposed taxonomic revision. The panel also concluded that the type specimen (the original specimen from which the description of a new species is made) of each taxon should have been included in the analysis. The panel's conclusion was that an insufficient test of the morphological definition of the Prebles had been conducted to support the synonymy of the Prebles with other subspecies (SEI 2006a, p. 41).

Ecological Exchangeability: The panel concluded that no persuasive evidence was presented regarding ecological exchangeability, and that the ecological exchangeability of the subspecies remains unknown (SEI 2006a, p. 41).

MtDNA: The panel noted that data provided by Ramey *et al.* (2005) and King *et al.* (2006b) differed in geographic sampling strategy, amount of sequence data examined, aspects of the analysis, and quality (SEI 2006a, p. 41). All of these could help explain why the two studies came to differing conclusions. However, the panel noted that the most significant difference between the two studies in terms of mtDNA was whether the Prebles shared any mtDNA haplotypes with other subspecies of meadow jumping mice. Upon review of the raw data, the panel found evidence of contamination within some of the key sequences reported by Ramey *et al.* and that the supporting data for the samples in question was of poor quality and/or quantity (SEI 2006a, pp. 23–32). The panel concluded that no reliable evidence existed of any haplotype sharing between the Prebles and neighboring subspecies (SEI 2006a, p. 42). The panel determined that if the conflicting mtDNA sequences were removed from consideration, the two studies' mtDNA data would largely agree (SEI 2006a, p. 32). The panel also suggested that because the western jumping mouse and the meadow jumping mouse are distantly related, western jumping mouse may perform poorly as an outgroup, leading to poor resolution of relationships among meadow jumping mouse subspecies. While both Ramey *et al.* and King *et al.* used western jumping mice as their outgroup, an unrooted analysis lacking these genetic points of reference showed

clearer phylogenetic structuring between the subspecies (SEI 2006a, p. 42).

Microsatellite DNA: The panel found that the two microsatellite datasets contain similar information. The panel pointed out that both the Ramey *et al.* (2005) and King *et al.* (2006b) microsatellite data, as well as Crandall and Marshall's (2006) reanalysis of these data, strongly support a statistically significant independent cluster that corresponds to the Prebles, providing support for a distinct subspecies (SEI 2006a, pp. 42–43). The panel indicated that while the microsatellite data alone did not make a strong case for evolutionary significance, in concert with the mtDNA data (discussed above), the two datasets corroborate the distinctness of the Prebles (SEI 2006a, p. 43).

The panel's overall conclusion was that the available data are broadly consistent with the current taxonomic status of the Prebles as a valid subspecies and that no evidence was presented that critically challenged its status (SEI 2006a, p. 4). In August 2006, Ramey *et al.* (2006c) submitted a statement to the Service disputing the approach and conclusions of the SEI report. Some of the most significant issues raised included: (1) Objection to the deference given to Krutzsch (1954); (2) disagreement with the suggestion that all seven morphometric characters examined by Krutzsch (1954) and the type specimen should be reexamined; (3) dispute with the assertion that Ramey *et al.*'s (2005) evaluation of ecological significance was inadequate; (4) the contention that the Prebles and neighboring subspecies remain weakly genetically differentiated; and (5) SEI's failure to develop objective standards for testing the validity of suspect subspecies. No new data or analyses were presented in this statement, and the panel previously considered most of these contentions (Ramey *et al.* 2003, 2004a, 2004b, 2005, 2006a, 2006b; SEI 2006a, 2006b, 2006c). Other evaluations of the available literature and data include Ramey *et al.* (2007), Crandall and Marshall (2006), Spencer (2006b), and Cronin (2007).

Taxonomic Conclusions

When listed in 1998, the Prebles was widely recognized as a valid subspecies by the scientific community (Hall and Kelson 1959, pp. 771–774; Long 1965, pp. 664–665; Armstrong 1972, pp. 248–249; Whitaker 1972, pp. 1–2; Hall 1981, pp. 841–844; Jones *et al.* 1983, pp. 238–239; Clark and Stromberg 1987, p. 184; Wilson and Reeder 1993, p. 499; Hafner *et al.* 1998, pp. 120–121; Wilson and Ruff 1999, pp. 666–667). At the time of listing, Krutzsch (1954) represented the best available information on the taxonomy of the Prebles (63 FR 26517, May 13, 1998). Our 1998 conclusion was consistent with Service regulations that require us to rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group (50 CFR 424.11). However, when the best available science indicates that the generally accepted taxonomy may be in error, the Service must rely on the best available science (*Center for Biological Diversity, et al.*, v. Robert Lohn, *et al.*, 296 F. Supp. 2d. 1223 W.D. Wash. 2003). Such considerations led to our February 2, 2005, proposal to delist the Prebles based upon information that questioned the subspecies' taxonomic validity (70 FR 5404).

We now determine that the best scientific and commercial data available support the conclusion that the Prebles is a valid subspecies. Specifically, the Prebles' geographic isolation from other subspecies of meadow jumping mice (Krutzsch 1954, pp. 452–453; Long 1965, pp. 664–665; Beauvais 2001, p. 6; Beauvais 2004; SEI 2006a, p. 34) has resulted in the accretion of considerable genetic differentiation (King *et al.* 2006b, pp. 4336–4348; SEI 2006a, pp. 41–43). The available data suggest that the Prebles meets or exceeds numerous, widely accepted subspecies definitions (Mayr and Ashlock 1991, pp. 43–45; Patten and Unitt 2002, pp. 26–34; SEI 2006a, p. 44). In reaching this conclusion, we have not used a presumption that we must rely on the established taxonomy in the absence of conclusive data to the contrary (see SEI report at p. 39). After a review of all available information, we have determined that the taxonomic revision for the Prebles suggested in our proposed delisting rule (70 FR 5404, February 2, 2005) is no longer appropriate.

Historical Range and Recently Documented Distribution

Generally, the Prebles' range includes portions of the North Platte, the South Platte, and the Arkansas river basins (Long 1965, p. 665; Armstrong 1972, pp. 248–249; Clark and Stromberg 1987, p. 184; Fitzgerald *et al.* 1994, p. 293; Clippinger 2002, p. 20).

At the time of listing, we described the historical range in Wyoming as including five counties (Albany, Laramie, Platte, Goshen, and Converse), but cited only two sites with recent reports of jumping mice likely to be the Prebles. We cited a study by Compton and Hugie (1993, p. 6) suggesting the subspecies might be extirpated in Wyoming and comments by the WGFD that the Prebles had likely been extirpated from most or all of its historical range in Wyoming (Wichers 1997).

At the time of listing, we assumed that most of the subspecies' current range was in Colorado. Within Colorado, the final listing rule described a presumed historical range including portions of 10 counties (Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld) and cited recent documentation of the subspecies in 7 of these 10 counties (Boulder, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld).

Since we listed the Prebles in 1998, our knowledge about distribution of the subspecies has grown substantially. Numerous trapping surveys conducted during the last 9 years in Wyoming and Colorado have documented the subspecies' presence or likely absence at locations of suitable habitat. While many recent trapping efforts have been at locations with no record of historical surveys, most have been within the presumed historical range of the Prebles or in adjacent drainages where habitat and elevation appeared suitable. Thus, the recent increase in sites of Prebles' occurrence likely represents an improvement in our understanding of the subspecies' range as a result of increased trapping effort rather than any actual expansion of the range of the Prebles.

In Wyoming, recent captures and confirmed identification have expanded our knowledge of the distribution of the Prebles to include over two dozen new plains, foothills, and montane sites, including presence west of the Laramie Mountains in the North Platte River basin and in the Upper Laramie River drainage in Albany County (Taylor 1999; USFWS 2008). Post-listing activities have identified many additional sites occupied by the subspecies. Since listing, trapping efforts in Wyoming targeting Prebles have captured jumping mice at 72 percent of sites (124 of 173 sites) (USFWS 2008). Of positive jumping mouse capture sites, 29 percent of the sites included only Prebles, 55 percent of the sites included only western jumping mice, 5 percent of the sites had both species present, and specimens from 11 percent of the successful sites were never positively identified to species. These data also reveal that the Prebles occurs in four of the five counties that we described as the likely historical range at the time of listing including Albany, Laramie, Platte, and

Converse counties. While generalized range maps (Long 1965, p. 665, Armstrong 1972, pp. 248–249, Clark and Stromberg 1987, p. 184) depicted Prebles' range extending east into Goshen County, we have no evidence that the subspecies was ever present there.

At the time of listing, we discussed how increased trapping efforts in Colorado had recently documented distribution in Elbert, Larimer, and Weld counties. We also suggested other sites where trapping should occur to determine if Prebles were present. Additional trapping since listing has expanded the documented distribution of the Prebles in Colorado to include: (1) Additional foothill and montane sites along the Front Range in Larimer, Boulder, Jefferson, and Douglas counties; (2) previously untrapped rural prairie and foothill streams in southern Douglas County and adjacent portions of Elbert County; and (3) additional prairie and foothill streams in northwestern El Paso County. Although we have identified some additional sites occupied by the Prebles, since listing over 80 percent of Colorado trapping efforts targeting Prebles have failed to capture jumping mice (as illustrated in Figure 2 below) (USFWS 2008). In 2007, 2 of 31 trapping efforts targeting new sites in Colorado resulted in captures of jumping mice. These negative trapping results suggest that the subspecies is rare or extirpated from many portions of the subspecies' historical range in Colorado. Areas where the subspecies is presumed extirpated are discussed in the Factor A discussion below.

BILLING CODE 4310–55–P

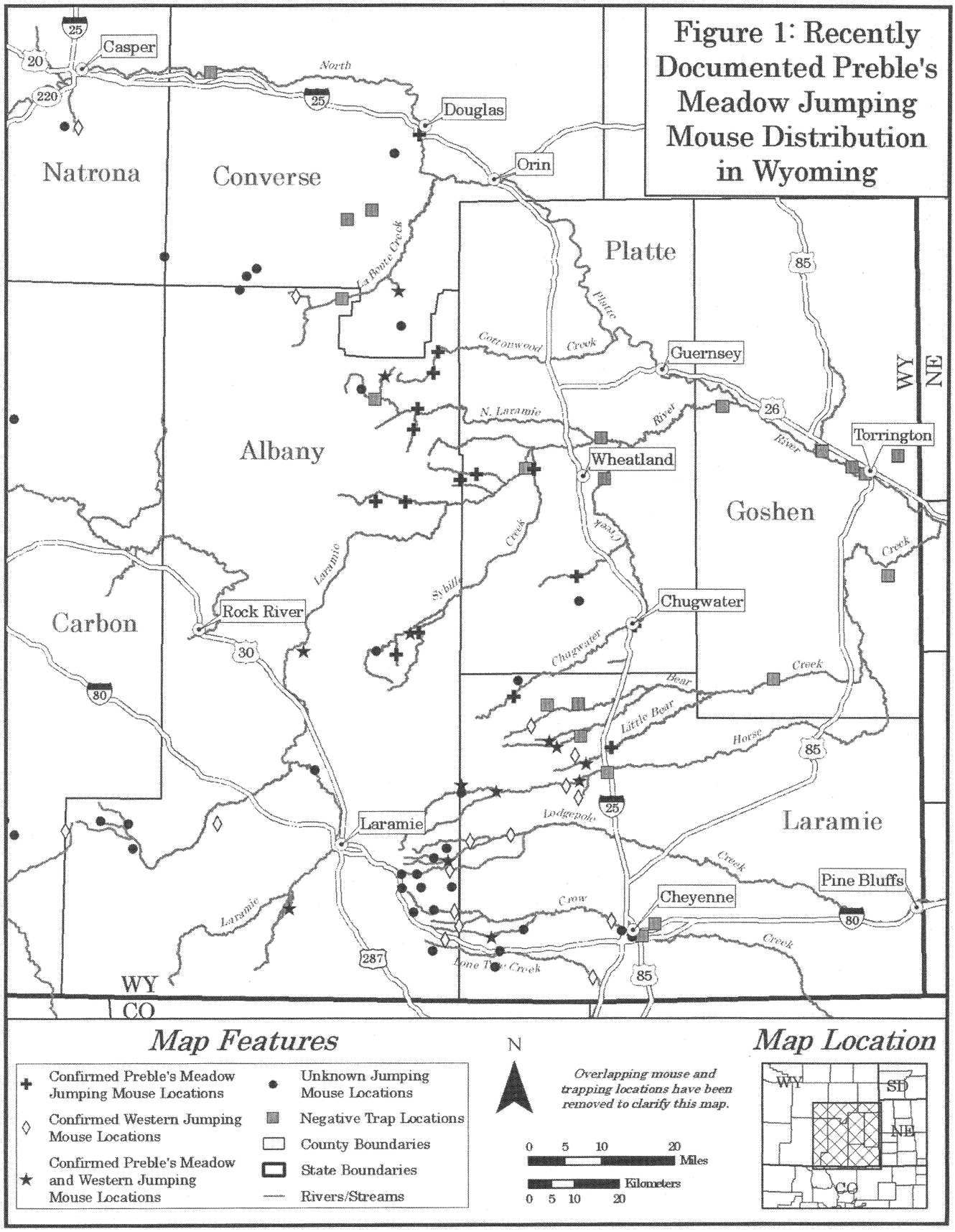
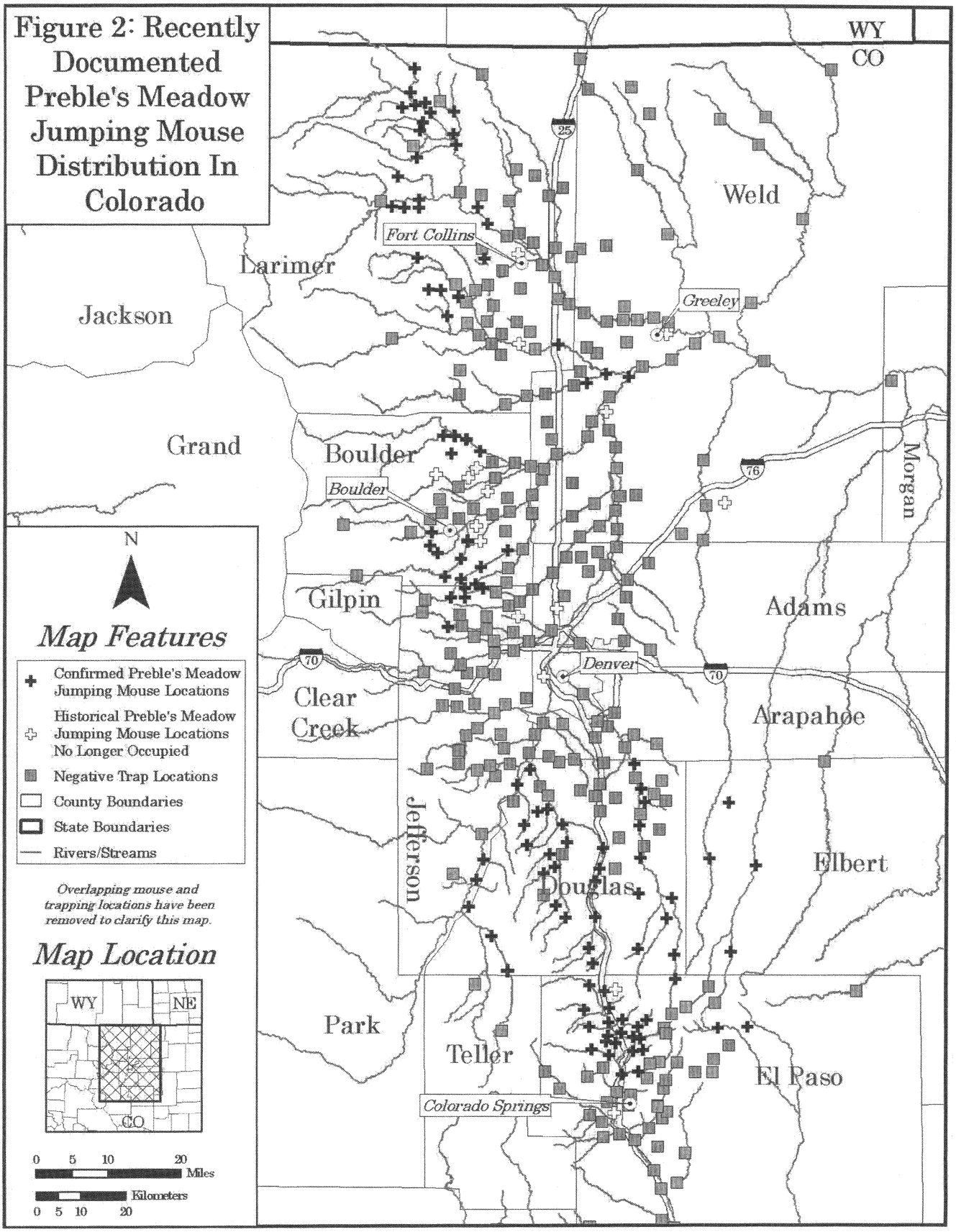


Figure 1: Recently Documented Preble's Meadow Jumping Mouse Distribution in Wyoming
Casper
Douglas
Orin
Guernsey
Torrington
Wheatland
Chugwater
Rock River
Laramie
Cheyenne
Pine Bluffs
Natrona
Converse
Platte
Albany
Goshen
Carbon
Laramie
WY
NE
CO
SD
North
La Bonte Creek
Cottonwood
Creek
Platte
N. Laramie
River
Laramie
Sybille
Chugwater
Bear
Little Bear
Horse
Lodgepole
Crow
Lone Tree Creek
Map Features
Confirmed Preble's Meadow Jumping Mouse Locations
Confirmed Western Jumping Mouse Locations
Confirmed Preble's Meadow and Western Jumping Mouse Locations
Unknown Jumping Mouse Locations
Negative Trap Locations
County Boundaries
State Boundaries
Rivers/Streams
N
Overlapping mouse and trapping locations have been removed to clarify this map.
0 5 10 20 Miles
0 5 10 20 Kilometers
Map Location



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The Prebles has now been recently documented in portions of Albany, Laramie, Platte, and Converse counties in Wyoming; and in portions of Boulder,

Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld counties in Colorado (Figures 1 and 2). The North Platte River at Douglas, Wyoming, marks the northernmost confirmed location for the Prebles. Specimens from Colorado Springs, Colorado, mark the southernmost documented location of the Prebles.

The Prebles is generally found at elevations between 1,420 m (4,650 ft) and 2,300 m (7,600 ft). At the lower end of this elevation gradient, the semi-arid climate of southeastern Wyoming and eastern Colorado limits the extent of riparian corridors and restricts the range of the Prebles (Beauvais 2001, p. 3). The Prebles is likely an Ice Age relict; once the glaciers receded from the Front Range of Colorado and the foothills of Wyoming and the climate became drier, the Prebles was confined to riparian systems where moisture was more plentiful (Fitzgerald *et al.* 1994, p. 1994; Smith *et al.* 2004, p. 293). The eastern boundary for the subspecies is likely defined by the dry shortgrass prairie, which may present a barrier to eastward expansion (Beauvais 2001, p. 3). In Wyoming, the Prebles has not been found east of Cheyenne, Laramie County (Beauvais 2001, p. 3). Habitat modeling and trapping suggest the subspecies does not occur in Wyoming's Goshen, Niobrara, and eastern Laramie counties (Keinath 2001, p. 7). In Colorado, the Prebles has not been found on the extreme eastern plains (Clippinger 2002, pp. 20–21).

At the higher elevations, discerning the status of the Prebles is complicated by the overlap in the ranges of the Prebles and the western jumping mouse (Long 1965, pp. 665–666; Clark and Stromberg 1987, pp. 184–187; Schorr 1999, p. 3; Bohon *et al.* 2005; Schorr *et al.* 2007, p. 5). Field differentiation between the Prebles and the western jumping mouse is difficult (Conner and Shenk 2003a, p. 1456). Generally, the western jumping mouse occurs in the montane and subalpine zones and the Prebles occurs lower, in the plains and foothills (Smith *et al.* 2004, p. 10). Using this information as a guide, many jumping mice were trapped and released without being conclusively identified as either a Prebles or a western jumping mouse. Western jumping mice have been verified at elevations well below the upper elevation limit of the Prebles (Smith *et al.* 2004, p. 11), leading to difficulty in making assumptions regarding identification based on elevation. Drainages where overlapping ranges have been verified include: The Glendo Reservoir, Lower Laramie, Upper Laramie, and Horse Creek drainages in Wyoming (Conner and Shenk 2003b, pp. 26–27, 34–37; Meaney 2003; King 2006a; King 2006b; King *et al.* 2006b, pp. 4351–4353); and the Cache La Poudre, Big Thompson, and Upper South Platte River drainages in Colorado (Bohon *et al.* 2005; King 2005; King 2006a; King *et al.* 2006b, pp. 4351–4353; Schorr *et al.* 2007).

Size, external morphology, dentition, skull measurements, and genetic analysis can all be used to differentiate meadow jumping mice from western jumping mice (Krutzsch 1954, pp. 351–384; Klingenger 1963, p. 252; Riggs *et al.* 1997, pp. 6–11; Conner and Shenk 2003a; Ramey *et al.* 2005, p. 332; King *et al.* 2006b, p. 4341). The following description of the Prebles' current distribution and status emphasizes locations where individual mice have been positively identified through genetic analysis or DFA (Conner and Shenk 2003a). Information regarding individual mice and capture locations can be found in Riggs *et al.* (1997, pp. 7–11, A1–A4), Conner and Shenk (2003b, pp. 31–35), and King *et al.* (2006b, pp. 4351–4353). Positive identification of individual mice is most important in areas where both the Prebles and the western jumping mouse occur. Overlap appears to occur in most of Wyoming's occupied drainages (as described further below). In Colorado, with few exceptions, jumping mice positively identified below 2,050 m (6,700 ft) have been Prebles. Between 2,050 m (6,700 ft) and 2,320 m (7,600 ft) in Colorado, Prebles and western jumping mice are known to have an overlapping distribution in the Cache La Poudre, Big Thompson, and Upper South Platte River drainages.

Below is a summary of recent (since 1980) trapping data by drainage (as defined by 8-digit USGS hydrologic units), within both Wyoming (e.g., the North and South Platte River basins) and Colorado (e.g., the South Platte River and Arkansas River basins). Although trapping data is important because it absolutely confirms the occurrence of jumping mice at particular locations, trapping data is only one of several lines of evidence we use to estimate the actual range of the subspecies. Records have been compiled by the Service (2008) in coordination with the WNDD, State of Wyoming, and CDOW. Figure 1 above illustrates all recently confirmed Prebles' capture locations in Wyoming. Figure 2 above illustrates all recent Prebles' capture locations in Colorado. Given wide areas of overlapping range in Wyoming, we require all Wyoming specimens to be confirmed as Prebles in order to be considered in our discussion below (and in Figure 1). In Colorado, jumping mice are considered Prebles in our discussion below (and in Figure 2) when identification is confirmed or, if they occur in areas below 2,050 m (6,700 ft), where western jumping mice have not been documented.

North Platte River Basin, Wyoming—In the North Platte River basin, occurrence of the Prebles has been confirmed in four Wyoming counties (Converse, Platte, Albany, and Laramie) as reported by drainage below.

The Middle North Platte drainage represents the northern extent of the reported Prebles' historic range. Jones (1981) examined one Prebles' specimen from within this drainage, trapped at Boxelder Creek, Converse County. Recent trapping surveys have been quite limited and generally at high elevations. Although several other recent jumping mice have been trapped in this drainage, these specimens have not been confirmed as Prebles.

In the Glendo Reservoir drainage, the Prebles is known from several locations, including along the North Platte River at Douglas (King 2006b), and Cottonwood Creek and its tributaries (Meaney 2003; King 2006a; King 2006b; King *et al.* 2006b, pp. 4351–4353). While the western jumping mouse also has been confirmed from the Glendo Reservoir drainage, trapping records to date suggest that the Prebles is more common.

In the Lower Laramie drainage, the Prebles has been confirmed from the Laramie River and its tributaries, including the North Laramie River, and Sturgeon, Wyman, Rabbit, and Luman creeks; as well as several locations along Chugwater Creek and its tributaries (King 2006b; King *et al.* 2006b, pp. 4351–4353). Both Prebles and western jumping mice occur in the Sybille Creek, Friend Creek and the Friend Park areas (Conner and Shenk 2003b, pp. 26–27, 34–37; King 2006a; King 2006b; King *et al.* 2006b, pp. 4351–4353). The Lower Laramie drainage appears to support coexisting Prebles and western jumping mice in multiple locations.

In the Horse Creek drainage, the Prebles has been widely documented west of Interstate Highway 25 (I–25) and at one site east of I–25. The majority of these recent captures have been made in Bear Creek and its tributaries, and in headwaters of Horse Creek and its tributaries. Both Prebles and western jumping mice inhabit multiple sites on both creeks (Conner and Shenk 2003b, pp. 26–27, 34–37; Meaney 2003; King 2006b; King *et al.* 2006b, pp. 4351–4353).

In the Upper Laramie drainage, the Prebles has been confirmed at Hutton

Lake National Wildlife Refuge (NWR) and from a site north of Laramie (Meaney 2003). Other specimens at these same sites have been confirmed as western jumping mice (Meaney 2003; King 2006a). Therefore, it appears likely that both Prebles and western jumping mice are present at multiple sites in this drainage. Based on positive identification of the Prebles from the sites mentioned above, Smith *et al.* (2004, p. 12) suggested the range of the Prebles may extend into the Upper Laramie River, Little Laramie River, Rock Creek, and possibly the Medicine Bow River. Documented occurrence of Prebles' populations in these areas would represent a significant extension of the known range of the subspecies in Wyoming.

South Platte River Basin, Wyoming—Within the Wyoming portion of the South Platte River basin, Prebles have been confirmed present, albeit possibly in low numbers, within two drainages in Laramie and Albany Counties.

In the Upper Lodgepole drainage, jumping mice have been found from several locations at and upstream of Highway 211. While at least one Prebles has been confirmed (Riggs *et al.* 1997, pp. 7–11, A1–A4), most of the captured mice have been identified as western jumping mice (Meaney 2003; King 2006a). Therefore, while this drainage supports the Prebles, its distribution may be limited.

Although historically reported from Cheyenne (Krutszch 1954), presumably from the Crow Creek drainage, Prebles' occurrence in this drainage remains uncertain. Specimens from Warren Air Force Base were assumed to be Prebles based on the elevation of 1,900 m (6,150 ft), but subsequent analyses identified only western jumping mice (Riggs *et al.* 1997, pp. 7–11, A1–A4; Conner and Shenk 2003b, pp. 26–27, 34–37; King 2006a). The only recent confirmed Prebles occurrence in this drainage comes from the South Crow Creek Reservoir area (Meaney 2003). Additional efforts have only verified western jumping mice from Middle Crow Creek, the South Fork of Middle Crow Creek, and South Crow Creek Reservoir (Meaney 2003; King 2006a). No jumping mice have been reported downstream of Cheyenne.

The Lone Tree Creek drainage was previously assumed to be inhabited by the Prebles. However, DFA analysis of existing museum specimens (Conner and Shenk 2003b, pp. 26–27, 34–37) and genetic analysis of specimens obtained from trapping efforts (Riggs *et al.* 1997, pp. 7–11, A1–A4; King 2006a), have only confirmed the presence of western jumping mice in this drainage.

South Platte River Basin, Colorado—Prebles has been recently documented within the South Platte River basin in seven counties: Larimer, Weld, Boulder, Jefferson, Douglas, Elbert, and El Paso. From the Wyoming State line south through the Denver area, little recent documentation of the Prebles exists from sites east of the foothills where most of the subspecies' historical records occur. This area largely corresponds to the Front Range urban corridor, an area experiencing continued human population growth and development (Clippenger 2002, pp. 22–26; Colorado Demography Office 2007). At higher elevation plains and foothills sites south of the Denver area, the Prebles has been documented at a number of locations where riparian habitats are still largely intact. With rare exception, all jumping mouse records verified below 2,050 m (6,700 ft) in the South Platte River drainage of Colorado have been Prebles.

In the Cache La Poudre River drainage, jumping mice have been documented on sites upstream of Fort Collins, Larimer County, at elevations consistent with known Prebles' distribution. These sites include the main stem Cache La Poudre River and its tributaries, including Young Gulch and Stove Prairie Creek, and the North Fork Cache La Poudre River and its tributaries, including Stonewall, Rabbit, and Lone Pine Creeks. Shenk and Eussen (1999, pp. 11–12) cautioned that both Prebles and western jumping mice were likely present in some of these areas. Subsequent genetic analysis confirmed both the Prebles and the western jumping mouse in Cherokee Park at 2,260 m. (7,480 ft) (King 2005, 2006b), but only Prebles have been confirmed from lower elevations, including Rabbit and Lone Pine Creeks, the Livermore Mountain area, and the North Fork of the Cache La Poudre River (Riggs *et al.* 1997, pp. 7–11, A1–A4; King *et al.* 2006b, pp. 4351–4353). Despite a number of trapping efforts, no jumping mice have been recently documented within the Fort Collins area of Larimer County or downstream on the Cache La Poudre River to its confluence with the South Platte River at Greeley, Weld County (USFWS 2008).

Within the Big Thompson drainage, the Prebles has been documented in foothills sites along Buckhorn Creek and certain of its tributaries, and on Dry Creek, in Larimer County. Three tributaries of Buckhorn Creek up to 2,240 m (7,360 ft) had Prebles; however, both Prebles and western jumping mice were confirmed from the Lakey Canyon site at 2,170 m (7,120 ft), and a mouse from the North Fork of the Big Thompson River at 2,170 m (7,120 ft) was confirmed as a western jumping mouse (King 2006a). Despite a number of trapping efforts, the Prebles has not been documented on the Big Thompson and Little Thompson Rivers through the Front Range urban corridor, but has been found on both rivers east of I–25, in Weld County.

In the Saint Vrain drainage, the Prebles has been documented along the Saint Vrain River and its tributaries, and water conveyance ditches upstream of the town of Hygiene, on two tributaries of Boulder Creek west of the City of Boulder, and along South Boulder Creek, all in Boulder County; and on upper reaches of Coal and Rock Creeks, Jefferson County. On Rocky Flats NWR, Jefferson County, the Prebles has been documented on Rock Creek, as well on nearby Walnut and Woman Creeks within the Middle South Platte-Cherry Creek drainage. Several of these locations include mice confirmed as Prebles (Riggs *et al.* 1997, pp. 7–11, A1–A4; Conner and Shenk 2003b, pp. 26–27, 34–37). Prebles' occurrence has not been documented along eastern parts of the drainage, the Saint Vrain River from Hygiene, Boulder County, downstream to its confluence with the South Platte River, along Boulder Creek from the City of Boulder east to its confluence with the Saint Vrain River, or downstream of Rocky Flats NWR on Walnut, Woman, or Dry creeks.

In the Clear Creek drainage, the Prebles has been verified in the foothills on Ralston Creek (Riggs *et al.* 1997, pp. 7–11, A1–A4), and unidentified jumping mice have been captured on two tributaries of Clear Creek at elevations consistent with Prebles' occurrence (below 2,300 m (7,600 ft)). No jumping mice have been captured on either creek downstream through the urban corridor to the South Platte River.

In the Upper South Platte drainage, the Prebles has been documented immediately upstream of Chatfield Reservoir on the South Platte River, and also well upstream on the South Platte River and its tributaries in Jefferson and Douglas Counties to near the Teller County-Douglas County line. The USFS provided a summary of Prebles' trapping efforts at 15 sites in the Upper South Platte drainage in the Pike National Forest (Bohon *et al.* 2005). Based on examination of voucher specimens, Prebles were confirmed at six sites up to 2,300 m (7,600 ft) and western jumping mice were confirmed from six sites, the lowest of which, at 2,030 m (6,660 ft), was lower than five Prebles' sites (Bohon *et al.* 2005). Schorr *et al.* (2007) also summarized co-occurrence of the Prebles and the

western jumping mouse in the same area. Also in the Upper South Platte drainage, the Prebles has been widely documented upstream of Chatfield Reservoir on Plum Creek, including occurrences on East Plum Creek, West Plum Creek, and various tributaries, all in Douglas County (Riggs *et al.* 1997, pp. 7–11, A1–A4; Conner and Shenk 2003b, pp. 26–27, 34–37; King *et al.* 2006b, pp. 4351–4353). Western jumping mice have also been confirmed in this drainage at 1,800 m (5,900 ft) and 1,950 m (6,400 ft) (Conner and Shenk 2003b, pp. 26–27, 34–37). An estimated 64 km (40 mi) of streams are occupied by the Prebles throughout the Plum Creek watershed (Pague and Schuerman 1998, p. 5). On the downstream portion of this drainage, below Chatfield Reservoir, there is no recent documentation of Prebles' presence on the South Platte River through Denver.

In the Middle South Platte-Cherry Creek drainage, Prebles have been found on Cherry Creek and its tributaries from approximately the Arapahoe County—Douglas County line, upstream to the headwaters of East and West Cherry Creeks near the Palmer Divide in El Paso County. Also within the Middle South Platte-Cherry Creek drainage, limited trapping efforts have documented the Prebles on Running Creek and a tributary, Hay Creek, in Elbert County. Based on limited genetic analysis and DFA, western jumping mice have not been confirmed from this drainage. The Prebles has not been documented downstream along Cherry Creek through Arapahoe County and Denver to the South Platte River. Because of numerous negative trapping efforts and loss of contiguous suitable habitat from development, we no longer consider the greater Denver area (including most of Denver County and portions of Adams, Arapahoe, Boulder, Broomfield, Douglas, and Jefferson Counties) to be occupied. On the South Platte River downstream from the Denver area, a single Prebles was recently captured from near the South Platte River in Milliken, Weld County, not far from the confluence of the Big Thompson River and South Platte River (Savage and Savage 2001). Northwest of Denver and widely separated from other captures in this drainage, Prebles has been documented on Walnut and Women Creeks at Rocky Flats NWR.

Farther east, Prebles has been recorded on Kiowa Creek, Elbert County. Additional trapping in suitable habitat in Elbert County would be useful to document whether the Prebles is present along significant reaches of the Middle South Platte-Cherry Creek and Kiowa Creek drainages, and on the Bijou Creek drainage, Elbert County, where it has not yet been documented. The only trapping effort to date in the Bijou Creek drainage was an unsuccessful effort in apparently suitable habitat in Arapahoe County.

Arkansas River Basin, Colorado—In the Arkansas River basin, current occurrence of the Prebles is limited largely to the Fountain Creek drainage and specifically to Monument Creek and its tributaries north of Colorado Springs. Genetic analysis and DFA have thus far confirmed no western jumping mice from within the Prebles' range in this drainage (Conner and Shenk 2003b, pp. 26–27, 34–37; King *et al.* 2006b, pp. 4351–4353). The Prebles has been well studied at the U.S. Air Force Academy (Academy) on Monument Creek and its tributaries, and has been documented farther upstream on Monument Creek and on tributaries to the east and north toward the Palmer Divide. Numerous Prebles' captures on streams in northwestern El Paso County are the result of extensive trapping that has taken place in conjunction with proposed development projects. Downstream of the Academy, numerous surveys indicate that the Prebles has little likelihood of occurrence along Monument Creek through the downtown portions of Colorado Springs. Similarly, extensive trapping with negative results suggests that the Prebles is now extirpated from Cottonwood Creek and its tributaries.

In the Chico Creek drainage, jumping mice (assumed to be Prebles as explained above) have been documented on the upper reaches of Black Squirrel Creek and on a tributary, both in El Paso County. Limited trapping efforts in potential Prebles' habitat farther to the east in the Chico Creek drainage and in the Big Sandy Creek drainage have not documented Prebles' occurrence. Downstream, to the east and south, these drainages appear to have little habitat suitable for the Prebles.

Within the Arkansas River basin south of the documented Prebles' locations, jumping mice have not been documented within southern El Paso, Pueblo, and Fremont counties, despite targeted trapping efforts (Bunn *et al.* 1995; Werner 2003).

In conclusion, according to the existing trapping records, the Prebles appears to be widespread in the North Platte River basin where trapping efforts confirm the subspecies' distribution across at least four drainages. The Prebles appears scarce within the Wyoming portion of the South Platte River basin, where trapping efforts to date provide few confirmed occurrences of the subspecies and suggest that the western jumping mouse is much more widespread. Within the Colorado portion of the South Platte River Basin, the Prebles has little likelihood of occurrence in portions of some drainages that coincide with the Front Range development corridor (areas around I–25 from Fort Collins south through the Denver metropolitan area); is more widespread in foothills and some montane areas within these same drainages; and is generally present in rural portions of drainages south of Denver. In the Arkansas River basin in Colorado, Prebles' distribution appears very limited, with confirmed occurrence largely in upper Monument Creek and some headwater tributaries.

Data limitations do not allow us to equate documented distribution with range. For example, the Prebles has been documented in two places approximately 19 km (12 mi) apart along Kiowa Creek in Elbert County, and it is reasonably likely to occur both between these sites and further downstream in the drainage, but no trapping has occurred to confirm or deny this assertion. Similarly, on Trout Creek a Prebles was documented in Douglas County near the Teller County line, and it is reasonable to assume the subspecies also may occur in Teller County. Given these data limitations, ''range'' is defined in the Conclusion of the 5-Factor Analysis section of this rule below.

Abundance

Studies designed to estimate populations of the Prebles have occurred on only a few sites. As a result, no reliable regional, Statewide, or rangewide population estimates for the Prebles have been developed. Population density and trends are not well known in Wyoming (WGFD 2005, p. 36). There are a few population estimates but little trend information for Prebles' populations in Colorado. In addition, because jumping mouse populations in a given area vary significantly from year to year (Quimby 1951, pp. 91–93; Whitaker 1972, p. 4), short-term studies may not accurately characterize abundance. In an ongoing trapping study, population highs of 24 and 69 Prebles per site were estimated for 2 control sites in 1999; subsequent trapping in 2002, during regional drought conditions, found no Prebles present at either site (Bakeman 2006, p. 11). Meaney *et al.* (2003, p. 620) estimated Prebles' populations on study sites over 4 years, noted absence of the Prebles at certain sites during some seasons, and suggested that 10 or more years of study might be necessary to

assess the full extent of population variation.

White and Shenk (2000, p. 9) summarized abundance estimates from nine sites in Colorado during 1998 and 1999 (Meaney *et al.* 2000; Kaiser-Hill 2000; Ensight Technical Services 1999, 2000, 2001; Shenk and Sivert 1999b; Schorr 2001). Since Prebles are found in linear riparian communities, abundances were estimated in number of individuals per km (or mi) of riparian corridor. Estimates of linear abundance ranged widely, from 4 to 67 mice/km (6 to 107 mice/mi) with a mean of 33 +/− 5 mice/km (53 +/− 8 mice/mi) (White and Shenk 2000, p. 9). The subsequent addition of new sites and 2 more years of data (2000–2001) provided a range of 2 to 67 mice/km (3 to 107 mice/mi) and a mean of 27 +/− 4 mice/km (44 +/− 6 mice/mi) (Shenk 2004).

The above estimates, coupled with sufficient knowledge of occupied stream miles, may provide a rough indicator of Prebles' numbers within a stream reach or drainage. The Recovery Team used the above estimate (Shenk 2004) to approximate stream miles required to support varying sized populations of the Prebles (USFWS 2003b, p. 25). Hayward (2002) cautioned that reliance on an average number of mice per length of stream to predict population sizes would result in the overestimation of actual population size for about half of all sites. Of additional concern in any assessment of Prebles' population size is the potential for including western jumping mice in the estimate (Bohon *et al.* 2005; Schorr *et al.* 2007, p. 4). This issue is of particular importance in areas where both Prebles and western jumping mice are known to occur, including most sites in Wyoming and higher elevation Colorado sites.

The Prebles' population estimates above do not include estimates for riparian corridors along mountain streams or any sites in Wyoming. In Pike National Forest, Colorado, site inspection of many streams previously mapped as Prebles' habitat revealed poorly developed or intermittent riparian vegetation surrounded by sparse uplands dominated by pine forest (Bohon *et al.* 2005). Poor trapping success even in apparently suitable habitat suggested low population densities in Pike National Forest compared to those at lower elevations (Bohon *et al.* 2005; Hansen 2006, p. 168). In studies targeting the Prebles at higher elevation riparian sites in Douglas, Jefferson, and Teller counties, Schorr et al. (2007, p. 4) reported a 0.6 percent capture rate of jumping mice over 19,500 trap nights. In Albany County, Wyoming, Griscom *et al.* (2007) reported jumping mouse capture rates of 0.5 percent on the Douglas Ranger District and 1.3 percent on the Laramie Ranger District of Medicine Bow National Forest (over 3,200 trap nights in each district). Because coexistence of the Prebles and the western jumping mouse was likely in both studies, the capture rate of the Prebles was probably significantly lower. In comparable trapping effort in high-quality habitat at lower elevations, Schorr (2001, p. 18) reported a 3.5 percent capture rate of Prebles over 14,700 trap nights at the Academy, and Meaney *et al.* (2003, p. 616) reported a 3.4 percent capture rate of Prebles over 21,174 trap nights along South Boulder Creek, Boulder County. While we think that more research is needed before definitive conclusions can be drawn regarding Prebles' abundance and security along montane streams and headwaters, it appears that these reaches support a lower density of mice than plains and foothill sites.

Population Trends

Without comprehensive population estimates for the subspecies, the only basis for trend assessment is presence or absence surveys in historically documented sites (Smith *et al.* 2004, p. 29). This presence/absence information paints a very different picture for Wyoming compared to Colorado.

In Wyoming, we now have much more information regarding Prebles' distribution than we had at time of listing, when we knew of only two occupied sites. Much of what we noted in the listing to be historical range of the Prebles in Wyoming has now been definitively found to support the subspecies. But, while many jumping mice have been confirmed as Prebles in the North Platte River basin, trapping records to date suggest the subspecies is uncommon in the South Platte River basin, with only western jumping mice confirmed present at several locations within presumed Prebles' range.

In Colorado, historical trapping records establish that the Prebles was present in a range that included major plains streams from the base of the Colorado Front Range east to at least Greeley, Weld County (Armstrong 1972, p. 249; Fitzgerald *et al.* 1994, p. 293; Clippenger 2002, p. 18). Recent trapping efforts have documented that the Prebles is rare or absent from these same areas today (Ryon 1996, p. 2; Clippinger 2002, p. 22; USFWS 2008). This pattern is especially apparent along prairie riparian corridors directly or indirectly impacted by human development. This issue is discussed further in Factor A below.

Summary of Factors Affecting the Subspecies

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting determinations. Under 50 CFR 424.11(d), we may remove the protections of the Act if the best available scientific and commercial data substantiate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error. Data error applies when subsequent investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

We may delist a species for any of the above reasons only if such data substantiate that the species is neither endangered nor threatened. Determining whether a species meets these definitions requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already protected as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following removal of the Act's protections.

Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the phrase ''significant portion of its range'' refers to the range in which the species currently exists. Range is discussed further in the Conclusion of the 5-Factor Analysis section of this proposal below. For the purpose of this analysis, we evaluate whether the currently listed subspecies should be considered threatened or endangered.

Then, we consider whether there are any portions of the subspecies' range in danger of extinction or likely to become endangered within the foreseeable future.

Foreseeable future is determined by the Service on a case-by-case basis, taking into account a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. For the purposes of this proposal, we define foreseeable future based upon a threat-projection timeframe because future development intensity and patterns are likely to be the single greatest factor contributing to the subspecies' future conservation status. As described in more detail below, human-population-growth projections extend out to 2035 in Colorado and 2036 in Wyoming. Similarly, water requirements are estimated through 2030 in Colorado and 2035 in Wyoming. A Center for the West model predicting future land-use patterns projects development changes within the range of the Prebles through 2040. Such projections frame our analysis as they help us understand what factors can reasonably be anticipated to meaningfully affect the subspecies' future conservation status. In our view, the foreseeable future for this subspecies, based on the currently available data, extends to approximately 2040. While it is likely some of the above estimates could be extrapolated out into the more distant future, development projections beyond this point are of increasingly lower value as uncertainty escalates. We also believe that not all threat factors are necessarily foreseeable over the same time horizon. When reliable data is available, we consider a longer time horizon.

The following analysis examines all five factors currently affecting, or that are likely to affect, the Prebles within the foreseeable future.

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

Introduction—Decline in the extent and quality of Prebles' habitat is the primary factor threatening the subspecies (Bakeman 1997, p. 78; Hafner *et al.* 1998, p. 122; Pague and Grunau 2000). In our 1998 final rule to list Prebles as threatened (63 FR 26517, May 13, 1998), we stated that Colorado east of the Front Range and adjacent areas of southeastern Wyoming had changed, over time, from predominantly prairie habitat intermixed with perennial and intermittent streams, and associated riparian habitats, to an agricultural and increasingly urban setting.

In our listing decision, we determined that Prebles' populations had experienced a decline and faced continued threats linked to widespread loss and fragmentation of the subspecies' required riparian habitat from human land uses including—urban, suburban, and recreational development; highway and bridge construction; water development; instream changes associated with increased runoff and flood control efforts; aggregate (sand and gravel) mining; and overgrazing (63 FR 26517, May 13, 1998). These human land-use activities affect the Prebles by directly destroying its protective cover, nests, food resources, and hibernation sites; disrupting behavior; or acting as a barrier to movement. We noted that such impacts reduced, altered, fragmented, and isolated habitat to the point where Prebles' populations may no longer persist. We also noted that patterns of capture suggested that Prebles' populations fluctuate greatly over time at occupied sites, raising questions regarding security of currently documented populations that are isolated and affected by human development.

Historical records in Colorado (pre-1980) illustrate areas of Prebles' occupancy along the Front Range within both foothill and prairie riparian corridors (Armstrong 1972, p. 249; Fitzgerald *et al.* 1994, p. 293). Between 1980 and 2005, the human population of Colorado counties within the Prebles' range increased by nearly 60 percent, from 1.7 million to 2.7 million (Colorado Demography Office 2007). As explained further below, the apparent absence of the Prebles in areas of substantial development, where trapping had previously confirmed the subspecies' presence, supports the conclusion that human land uses adversely affect Prebles' populations.

Ryon (1996) evaluated the condition of eight historical Prebles' capture sites in six Colorado counties based on vegetation structure, dominant plant species, and trapping results. Ryon reported no Prebles' captures at any of the seven sites trapped (one site no longer contained suitable habitat) (1996, p. 25). In addition, he reported that the historical sites contained fewer native species in plant communities and were lacking the multi-strata vegetation structure he observed at sites where trapping had recently confirmed Prebles' presence (Ryon 1996, p. 30). Investigations into land-use changes at the historical sites suggested that most had been directly altered in terms of habitat or had been influenced by habitat fragmentation (Ryon 1996, p. 30). Clippinger (2002, pp. 14–29) mapped and compared past (through 1972) and current (post-1972) distribution records of the Prebles in central Colorado and southeastern Wyoming based on museum specimens, published accounts, and unpublished reports. Clippinger reported that his distribution maps illustrated a loss of Prebles' populations in expanding urban and suburban areas, especially around Cheyenne, Denver, and Colorado Springs, and in general along the eastern extent of historical range (Clippinger 2002, p. 22). Note that Clippinger's reference to historical range is based on the few existing records (through 1972) documenting Prebles' occurrence. These records are focused around what is now the I–25 urban corridor and based upon our current knowledge of the subspecies do not truly represent the likely extent of the historical range of the subspecies. The apparent loss of historically occupied sites (those 17 sites where the subspecies was documented to occur prior to 1980) provides insight into human development impacts on Prebles' habitat. Only 1 of 17 of these documented historical sites of Prebles' occurrence in Colorado (Bear Creek, Boulder County) is thought to currently support the Prebles.

Prebles' populations have little likelihood of occurrence along large portions of major river and stream reaches within the subspecies' historical described range in Colorado including:

- The Cache La Poudre River within Fort Collins and downstream to its confluence with the South Platte River at Greeley, 60 km (37 mi);
- The Big Thompson River and Little Thompson River through the Front Range urban corridor east to I–25, approximately 50 km (32 mi);
- The Saint Vrain River from Hygiene to its confluence with the South Platte River, 35 km (22 mi);
- Boulder Creek from Boulder east to its confluence with the Saint Vrain River, approximately 35 km (22 mi);
- Walnut, Woman, and Dry Creeks downstream from Rocky Flats NWR to the confluence of Dry Creek and beyond to the South Platte River, 40 km (25 mi);
- Ralston Creek and Clear Creek through the urban corridor to the South Platte River, approximately 40 km (25 mi);
- The South Platte River downstream of Chatfield Reservoir through Denver to Brighton, 60 km (38 mi);
- The South Platte River downstream from Brighton to Greeley, approximately 55 km (34 mi) (one recent capture described above);

• Cherry Creek from the Arapahoe County-Douglas County line downstream through Denver to the South Platte River, 30 km (19 mi); and

• Monument Creek downstream from its confluence with Cottonwood Creek through Colorado Springs, approximately 15 km (9 mi).

In total, Prebles populations appear to have little likelihood of occurrence along 420 km (260 mi) of major river and stream reaches in and downstream of areas with concentrated human development. However, despite apparent downstream extirpations, many of these same streams continue to support Prebles populations in their upstream reaches or tributaries.

Historical losses relative to ongoing threats are relevant in predicting whether the subspecies is likely to become endangered in all or a significant portion of its current range within the foreseeable future. It appears unlikely that the Prebles can be returned to the historical localities within the Front Range urban corridor; however, we find that the subspecies' apparent local extirpation from areas of human development provides useful perspective about the potential impacts of future development within the remaining range of the Prebles. If the protections of the Act were removed, we expect these threat factors, discussed in more detail below, would continue to affect the subspecies in large portions of its current range into the foreseeable future.

For the purposes of this final rule, we reviewed and considered the best available information regarding threats within the range of the Prebles, including Ryon (1996), Bakeman (1997), Shenk (1998), Pague and Granau (2000), Clippinger (2002), and Service (2003b). We summarize these accounts below.

Following listing, The Nature Conservancy, under a contract with the Colorado Division of Natural Resources, formed a Prebles Meadow Jumping Mouse Science Team (Pague 1998). With guidance from the Science Team and following numerous meetings with scientists and stakeholders, Pague and Grunau (2000) developed a conservation planning handbook that addressed each of seven Colorado counties containing Prebles populations. The document identified key issues that stress the Prebles for all presumed threat factors operating in known or suspected Prebles' habitat, and assigned a qualitative risk assessment level to each of the identified issues. The work of Pague and Granau (2000) continues to provide important, science-based insight into threats to, and potential conservation strategies for, the Prebles in Colorado on a county-by-county basis. Habitat-related ''issues'' identified as high or very high priority in one or more counties included habitat conversion through housing, commercial, and industrial construction; travel corridor (i.e., roadway) construction; travel corridor maintenance; fragmentation of habitat and corridors; hydrological flow impairment; habitat conversion to a reservoir; bank stabilization; high impact livestock management; rock and sand extraction; invasive weeds; and catastrophic fire (Pague and Granau 2000, pp. 1–15, 2–12, 3–13, 4–14, 5–14, 6–15, 7–14). Pague (2007) provided observations updating the 2000 report. No comparable document exists for the four Wyoming counties where the subspecies occurs.

The Prebles is listed as a ''threatened'' species in Colorado by the CDOW. Colorado's Comprehensive Wildlife Conservation Strategy lists the meadow jumping mouse (including both the Prebles and *Zapus hudsonius luteus,* which occurs in extreme south-central Colorado) as a ''Species of Greatest Conservation Need,'' citing threats to habitat and range including habitat conversion (due to housing, urban, and exurban development) and habitat degradation (due to altered native vegetation and altered hydrological regime) (CDOW 2006, p. 102).

The WGFD does not list the meadow jumping mouse (including both the Prebles and *Zapus hudsonius campestris,* which occurs in northeastern Wyoming) among their list of ''mammalian species of special concern.'' The WGFD classifies the meadow jumping mouse as NSS5, indicating that it is widely distributed, population status suspected to be stable, and habitat not restricted (Freudenthal 2008). In contrast, the Wyoming Comprehensive Wildlife Plan (WCWP) lists the meadow jumping mouse as a ''Species of Greatest Conservation Need'' (WGFD 2005, p. 10). Fruedenthal (2008) noted that this listing is applied to numerous species and that it reflects relative lack of data regarding these species.

The WCWP identifies ecoregions in the State and provides a summary of ''mean habitat quality'' scores for each ecological system (or habitat) within the ecoregion (WGFD 2005, pp. 19–25). Within the three Wyoming ecoregions that include Prebles' range (Central Shortgrass Prairie, Northern Great Plains Steppe, and Southern Rocky Mountains), the two ecological systems most likely to support the Prebles (Rocky Mountain Lower Montane Foothill Riparian and Shrubland, Western Great Plains Riparian/Western Great Plains Floodplain) ranked in the lowest 20 percent in mean habitat quality relative to the State's other ecosystems (WGFD 2005, pp. 19–25). Among threats to habitat in these ecoregions are invasive plants, residential development radiating from the Cheyenne area, and recreation in the Southern Rocky Mountain region (WGFD 2005, pp. 53, 55, 56).

The direct impacts of development on the Prebles and its habitat have likely slowed since our 1998 listing because of protection afforded to the Prebles and its critical habitat rangewide under the Act. One indication of continuing adverse impacts to the Prebles and its habitat is the number of formal consultations performed to date under section 7 of the Act and the number of section 10 permits issued to date in conjunction with approved Habitat Conservation Plans (HCPs). Section 7 of the Act requires Federal agencies to consult with the Service to ensure that their actions do not jeopardize the continued existence of the subspecies or cause destruction or an adverse modification of critical habitat. Thus far, the section 7 process has been successful in preventing Federal actions from jeopardizing the continued existence of the subspecies or resulting in the destruction or adverse modification of critical habitat.

Section 10(a)(1)(B) of the Act authorizes the Service to issue permits for non-Federal actions that result in the incidental taking of listed wildlife. Incidental take permit applications must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to avoid, minimize, and mitigate the impacts of the requested incidental take.

As of June 2008, we have conducted 130 formal section 7 consultations (113 in Colorado, 17 in Wyoming) and issued 19 HCP-related incidental take permits (all in Colorado) for projects affecting the Prebles. We have authorized take for actions that did not result in jeopardy but nevertheless may result in permanent impacts to over 340 ha (840 ac) of Prebles' habitat, and temporary impacts to more than twice that amount of habitat. These projects have incorporated conservation measures or mitigation to avoid or minimize adverse impacts to the Prebles.

However, even with the protections afforded to the subspecies under section 7, we have concluded that habitat overall has continued to decline in quality and quantity, especially in Colorado. In the absence of listing, projects in Prebles' habitat would go

forward with reduced Federal oversight. Other Federal, as well as State and local regulatory mechanisms, that may provide protection for the Prebles and its habitat are evaluated under Factor D below.

Residential and Commercial Development—Clippinger (2002) assessed the impacts of residential development on the Prebles. He analyzed Colorado land-cover data compared to positive and negative trapping results for the Prebles in a GIS analysis and concluded that the likelihood of successful trapping of Prebles was reduced by either low- or high-density residential developments when the developments were within 210 m (690 ft) of the trapping sites (Clippinger 2002, pp. iv, 94). Clippinger (2002, p. iv) noted that the Prebles can be a useful indicator of environmental integrity in riparian areas and associated upland areas in the Colorado Piedmont. These data suggest that nearby development increases the risk of local extirpation of Prebles from occupied sites.

Theobald *et al.* (1997) emphasized both housing density and spatial patterns in evaluating effects of residential development on wildlife habitat. They concluded that while clustered development can decrease habitat disturbance (Theobold *et al.* 1997, p. 34), much of the Rocky Mountain West is experiencing what has been termed ''rural sprawl'' where rural areas are growing at a faster rate than urban areas (Theobold *et al.* 2001, p. 4). In Colorado, residential demand and State law encourage developers to design subdivisions with lots of at least 14 ha (35 ac) each with one house, to avoid detailed county subdivision regulations (Riebsame *et al.* 1996, p. 420). The Larimer County Master Plan (Larimer County Planning Division 1997) cites a trend toward residential properties with relatively large lots, which leads to scattered development and more agricultural land taken out of production. Where public and private lands are intermingled, private land ownership typically follows valley bottoms (Theobald *et al.* 2001, p. 5), thus rural development is likely to disproportionately affect valley-bottom riparian areas (Riebsame *et al.* 1996, p. 402), the favored habitat of the Prebles. Beyond direct impact to habitat, when ranches are subdivided, subsequent residential construction and associated disturbance can result in the disruption of wildlife movement along stream corridors (Riebsame *et al.* 1996, p. 402). Rural development disproportionately occurs around edges of undisturbed public lands and affects the conservation value of the undisturbed public lands (Hansen *et al.* 2005, p. 1900).

Human development often causes subtle effects on riparian habitat as well. Indirect effects of human settlement have resulted in declines in native trees and shrubs, greater canopy closure, and a more open understory with reduced ground cover within riparian habitat (Miller *et al.* 2003, p. 1055). An open understory does not favor the Prebles, which prefers dense ground cover of grasses and shrubs and is less likely to use open areas where predation risks are assumed to be higher (Trainor *et al.* 2007, pp. 472–476; Clippinger 2002, pp. 69, 72).

Fragmentation is another indirect impact of development occurring in proximity to Prebles' habitat. The Prebles is closely associated with narrow riparian systems that represent a small percentage of the landscape within the subspecies' range. Fragmentation of these linear habitats limits the extent and size of Prebles' populations. As populations become fragmented and isolated, it becomes more difficult for them to persist (Caughley and Gunn 1996, pp. 165–189). Major risks associated with small populations include—demographic stochasticity (an increased risk of decline in small populations due to variability in population growth rates arising from random differences among individuals in survival and reproduction within a season); environmental stochasticity (an increased risk of decline in small populations due to variation in birth and death rates from one season to the next in response to weather, disease, competition, predation, or other factors external to the population); and loss of genetic variation (a reduction in the amount of diversity retained within populations and an increased chance that deleterious recessive alleles may be expressed; the loss of diversity can limit a population's ability to respond adaptively to future environmental changes) (Caughley and Gunn 1996, pp. 165–189). These issues are discussed in greater detail in Factor E below. The Recovery Team determined that small, fragmented units of habitat will not be as successful in supporting the Prebles in the long term as larger areas of contiguous habitat (USFWS 2003b, p. 21). On a landscape scale, maintenance of dispersal corridors linking patches of Prebles' habitat may be critical to the subspecies' conservation (Shenk 1998, p. 21).

One indicator of the level of development pressure since listing is the number of development-related section 7 consultations and HCPs completed by the Service. Of the 127 formal consultations and 19 HCPs completed in Colorado, 19 section 7 consultations and 10 HCPs were specifically for residential and commercial developments with direct adverse effects to the Prebles or its habitat. Approved projects allowed for adverse impacts (permanent or temporary) in excess of 210 ha (520 ac) of Prebles' habitat. While conservation measures or mitigation in various forms have been incorporated into all permitted projects, implementation of these habitat restoration and enhancement measures has been hampered by factors such as drought or flooding. Recent development pressure has been most concentrated south of Denver, Colorado, in Douglas and El Paso counties; eight section 7 consultations and three HCPs have occurred in the Middle South Platte-Cherry Creek drainage, all south of Denver, and eight section 7 consultations and four HCPs have occurred in the Fountain Creek drainage. We also have worked with other Federal agencies and a substantial number of landowners and developers to avoid adverse impacts to Prebles' habitat, thus avoiding formal consultation or the need for HCPs. Additional planned residential and commercial development projects that would adversely affect Prebles' habitat in Colorado are continually being reviewed by the Service. Since listing, protections afforded under the Act have slowed, but not eliminated, the loss of Prebles' habitat due to residential and commercial development in Colorado. We conclude that in the absence of the protections under the Act, Prebles' habitat in Colorado and the populations it supports would be lost at a greatly increased rate from residential and commercial development.

Continued rapid development is expected along Colorado's Front Range as the human population continues to grow. The State of Colorado expects the population of counties supporting the Prebles to increase by an additional 1.5 million people from 2005 to 2035 (an increase of 69 percent), including: 100,000 in Boulder County; 284,000 in Douglas County; 43,000 in Elbert County; 371,000 in El Paso County; 154,000 in Jefferson County; 203,000 in Larimer County; and 326,000 in Weld County (Colorado Demography Office 2008). These expected increases support Pague and Grunau's (2000) conclusion that habitat conversion is a very high priority issue to the Prebles in Larimer, Weld, and El Paso counties, and a high

priority issue for the remaining counties supporting the Prebles in Colorado.

In contrast to the situation in Colorado, no formal section 7 consultations or HCPs have been sought for residential or commercial development in Wyoming. This reduced level of consultations reflects the general lack of development pressure within Prebles' habitat. This relative lack of development pressure is predicted to continue into the foreseeable future as described below.

Wyoming estimates that the population of the counties supporting the Prebles will increase by about 11,000 people from 2005 to 2020, including: An increase of 800 in Albany County; an increase of 1,500 in Converse County; an increase of 9,100 in Laramie County; and a decrease of 400 in Platte County (Wyoming Department of Administration and Information 2007). Commercially available estimates suggest counties supporting the Prebles will increase by about 18,400 people from 2006 through 2036, including: A decline of 3,700 in Albany County; an increase of 3,500 in Converse County; an increase of 18,300 in Laramie County; and an increase of 300 in Platte County (Economy.com 2007 as provided by Lui 2007).

While population growth rates provide valuable insight into development pressures, they may not provide a complete picture. For example, human population increases in Cheyenne, Fort Collins, Greeley, Longmont, the immediate Denver metropolitan area, and much of Colorado Springs are likely to have little direct impact on the Prebles because the subspecies appears to have little likelihood of occurrence within and downstream from these cities. Conversely, substantial human population increases in the Laramie Foothills of Larimer County, Colorado, or southern portions of Douglas County, Colorado, are likely to have a high impact to the Prebles. In Wyoming, given the small projected increases in the human population, we expect rural development will continue to have only small, localized impacts.

Modeling exercises also can provide some insights into future land-use development patterns. While these models have weaknesses, such as an inability to accurately predict economic upturns or downturns, uncertainty regarding investments in infrastructure that might drive development (such as roads, airports, or water projects), and an inability to predict open-space acquisitions or conservation easements, we nevertheless think that such models are useful in adding to our understanding of likely development patterns. For example, in 2005, the Center for the West produced a series of maps predicting growth through 2040 for the West including the Colorado Front Range and Wyoming (Travis *et al.* 2005, pp. 2–7). The projections for the Colorado Front Range (available at: *http://www.centerwest.org/futures/frtrng/2040.html*) illustrate significant increases in urban/suburban, low-density suburban, and exurban land uses across virtually all private lands within the Colorado portion of the Prebles' range. These projections depict that only small isolated patches of Prebles' habitat in public ownership, including headwater areas in Federal ownership, would avoid the direct impacts of residential and associated commercial development. In his review of the revised proposed rule, Travis (2008) noted that while land-use modeling and projections retain uncertainties and are not at a resolution useful for assessing habitat patterns, both the empirical record and the projections show development filling gaps along the Colorado Front Range. Although similar maps for Wyoming are older (*http://www.centerwest.org/futures/archive/development/development_wy.html*) or less refined (*http://www.centerwest.org/futures/west/2040.html*), they suggest only limited increases in development, primarily around Cheyenne. Travis (2008) called the difference between land development trends in the Colorado Front Range and those in Wyoming ''logical and real.''

Based upon known impacts to the Prebles associated with current development pressures and best available projections for future development (as described above and in relation to Factor D below), we conclude that residential and commercial development constitutes a substantial threat to the Prebles in Colorado, now and into the foreseeable future. In Wyoming, residential and commercial development is likely to be limited with only small, localized impacts to the Prebles expected. While more significant development is projected in the vicinity of Cheyenne, recent trapping efforts have not confirmed presence of Prebles in this area.

Transportation, Recreation, and Other Rights-of-Way Through Habitat—At the time of listing, the Service concluded that roads, trails, or other linear development through the Prebles' riparian habitat could act as partial or complete barriers to dispersal (63 FR 26517, May 13, 1998). These forms of development have continued to affect and fragment Prebles' habitat. Since listing, the Service has conducted 40 formal consultations under section 7 of the Act for road or bridge projects (33 in Colorado and 7 in Wyoming) resulting in permitted impacts to approximately 50 ha (125 ac) of Prebles' habitat. In addition, a formal 2005 programmatic section 7 consultation with the Federal Highway Administration for the Wyoming Statewide Transportation Improvement Program could result in 19 future highway projects with impacts to 42 ha (104 ac) of Prebles' habitat. Under the Douglas County (Colorado) Regional HCP for the Prebles, completed in May 2006, 67 approved road and bridge construction projects by Douglas County, and the cities of Parker and Castle Rock, may affect up to 122 ha (302 ac) of Prebles' habitat over a 10-year period.

One of the largest road projects is the improvement to I–25 in El Paso County, Colorado. The proposed construction will affect 10 of the eastern tributaries of Monument Creek thought to support the Prebles (Bakeman and Meaney 2001, p. 21). Impacts to the Prebles include habitat fragmentation and modification, change in population size, and behavioral impacts (Bakeman and Meaney 2001, pp. 18–20). While measures to avoid, minimize, and mitigate impacts were identified, the project will have significant cumulative effects on Prebles in the Monument Creek drainage, especially east of I–25 (Bakeman and Meaney 2001, pp. i, ii, 22–27).

With an increased human population, a high level of road construction and maintenance projects will occur; in the absence of the Act's protective measures, impacts to the Prebles and its habitat would likely be substantial. While the Act rarely stops such projects, it does promote measures to avoid, minimize, or compensate for impacts to the subspecies and helps control the level of negative impacts to the Prebles and its habitat. Pague and Grunau (2000) considered ''travel corridor construction'' to be a high-priority issue to Prebles' populations in Weld, Douglas, Elbert, and El Paso counties in Colorado.

Human-caused impacts associated with recreation include backcountry roads, trails, and campgrounds, which are often located along streams and near water (WGFD 2005, p. 56). Recreational trail systems are frequently located within riparian corridors (Meaney et al. 2002, p. 116). The development of trail systems can affect the Prebles by modifying its habitat, nesting sites, and food resources in both riparian and upland areas. Use of these trails by

humans or pets can alter wildlife activity and feeding patterns (Theobold *et al.* 1997, p. 26). Meaney *et al.* (2002, pp. 131–132) suggest fewer Prebles were found on sites with trails than on sites without trails. While temporal and spatial variation in Prebles' numbers resulted in low precision of population estimates and weak statistical support for a negative trail effect, the authors considered the magnitude of the potential effect sufficient to encourage careful management and additional research (Meaney *et al.* 2002, pp. 115, 131–132). Since the listing of the Prebles in 1998, a dozen recreational trail projects with proposed impacts to Prebles' habitat in Larimer, Boulder, Douglas, and El Paso counties, Colorado, have been addressed through section 7 consultations or HCPs. None have been addressed through section 7 in Wyoming. An additional 24 trail projects have been permitted under the Douglas County Regional HCP. As human populations continue to increase (as discussed above), we anticipate increased demand for recreational development in public open space and on conservation properties. Without protections afforded by the Act, Prebles' populations on properties free from residential and commercial development threats will still be subject to widespread threats from future recreational development and increased human use.

Many utility lines (sewer, water, gas, communication, and electric lines, and municipal water ditches) cross Prebles' habitat. Current and future utility rights-of-way through these habitats will cause habitat destruction and fragmentation from periodic maintenance and new construction. Since the listing of the Prebles, 20 utilities projects adversely affecting the Prebles and its habitat have been evaluated through section 7 consultations (16 in Colorado, 4 in Wyoming). In addition, an approved HCP with Denver Water permits impacts to 34 ha (84 ac) of Prebles' habitat at multiple sites in Colorado. While often more costly than trenching, avoidance measures such as directional drilling under riparian crossings can reduce or avoid impacts to the Prebles. If the Prebles were to be delisted, we do not anticipate that project operators would voluntarily directionally drill to avoid Prebles' habitat.

Overall, we conclude that threats related to transportation, recreation, and other rights-of-way through habitat are directly related to human population pressures. Thus, we expect these issues will have substantial impacts to Prebles' populations in Colorado, but less impacts to Prebles' populations in Wyoming.

Hydrologic Changes—Establishment and maintenance of riparian plant communities are dependent on the interactions between surface-water dynamics, groundwater, and river-channel processes (Gregory *et al.* 1991, pp. 542–545). Changes in hydrology can alter the channel structure, riparian vegetation, and valley-floor landforms (Gregory *et al.* 1991, pp. 541–542; Busch and Scott 1995, p. 287). Thus, changes in the timing and abundance of water can be detrimental to the persistence of the Prebles in these riparian habitats due to resultant changes in vegetation (Bakeman 1997, p. 79). Changes in hydrology may occur in many ways, but two of the more prevalent are the excessively high and excessively low runoff cycles in watersheds with increased areas of paved or hardened surfaces, and disruption of natural flow regimes downstream of dams, diversions, and alluvial wells (Booth and Jackson 1997, pp. 3–5; Katz *et al.* 2005, pp. 1019–1020).

Urbanization can dramatically increase frequency and magnitude of flooding while decreasing base flows (the portion of stream flow that is not surface runoff and results from seepage of water from the ground into a channel slowly over time; base flow is the primary source of running water in a stream during dry weather) (Booth and Jackson 1997, pp. 8–10; National Research Council 2002a, pp. 182–186). Infiltration of precipitation is greatly reduced by increases in impervious surfaces. The magnitude of peak flows increases in urban areas as water runs off as direct overland flow. Increased peak flows can exceed the capacity of natural channels to transport flows, trigger increased erosion, and degrade habitat (Booth and Jackson 1997, pp. 3–5). Changes in hydrology associated with urbanization can result in channel downcutting, lowering of the water table in the riparian zone, and creation of a ''hydrologic drought,'' which in turn alters vegetation, soil, and microbial processes (Groffman *et al.* 2003, p. 317). Meanwhile, reduced infiltration results in reduced groundwater recharge, reduced groundwater contributions to stream flow, and, ultimately, reduced base flows during dry seasons (National Research Council 2002a, p. 182; Groffman *et al.* 2003, p. 317). Established methods of mitigating downstream impacts of urban development, such as detention basins, have only limited effectiveness; downstream impacts are probably inevitable without limiting the extent of watershed development (Booth and Jackson 1997, p. 17).

In response to altered hydrology, stormwater-management, flood-control, and erosion-control efforts occur along many streams within the former and current range of the Prebles. The methods used include channelization; construction of detention basins, outfall structures, drop structures, riprap banks, impervious cement channels; and other structural stabilization. Structural stabilization methods designed to manage runoff and control erosion can increase the rate of stream flow, shorten channel length, narrow riparian areas, destroy riparian vegetation, and prevent or prolong the time required for vegetation reestablishment (Booth and Jackson 1997, p. 4). These impacts may affect plant composition, soil structure, and physiography of riparian systems to the point where habitat supporting the Prebles is so altered that populations can no longer persist. Pague and Grunau (2000) considered ''bank stabilization'' to be a high-priority issue for the Prebles in Weld and El Paso counties. Since the listing of the Prebles, 22 stormwater management, stream stabilization, or outfall structure projects with impact to Prebles' habitat have been addressed through formal section 7 consultations in Colorado; none have occurred in Wyoming.

The Prebles' apparent absence downstream from most areas of extensive urbanization (including Cheyenne, Wyoming, and Fort Collins, Longmont, Boulder, Golden, Denver, Parker, and Colorado Springs, Colorado) may be attributable to such changes in hydrology described above. Corn *et al.* (1995, p. 14) and Schorr (2001, p. 30) expressed concern over the integrity of protected riparian habitats on Monument Creek and its tributaries through the Academy because of development activities upstream. In 2007, all eastern tributaries of Monument Creek on the Academy experienced adverse impacts to occupied Prebles' habitat due to erosive head cutting, channel degradation, and impacts to vegetation that were attributable to regional stormwater management, and commercial and residential development (Mihlbachler 2007).

In Colorado, degraded riparian habitats have been restored, in part as mitigation for adverse impacts to the Prebles. Work to restore Prebles' habitat through a 0.86 km (0.54 mi) urban stream reach of East Plum Creek, Douglas County appears to have increased vegetation cover and Prebles' use (Bakeman 2006, pp. 4, 8). The effort

has restored connectivity of upstream and downstream riparian habitat though this previously degraded urban stream reach. Similarly, recent projects on Cherry Creek, Douglas County, have restored groundwater levels and downcut channels in or near Prebles' habitat by employing rock or sheet pile drop structures.

If we were to delist the Prebles, we believe that runoff-related impacts to riparian habitats within and downstream of development would likely increase in areas of high development, such as along Colorado's Front Range urban corridor, and that restoration of impacted riparian systems would be somewhat less likely to occur.

At the time of listing, we stated that the Prebles depended on vegetative habitat that was in turn dependent on physical factors including surface flows and groundwater. Water development and management in its various forms alters vegetation composition and structure, riparian hydrology, and flood-plain geomorphology directly, as well as through alterations to habitat located downstream; these alterations often, but not always, have adverse impacts to the Prebles (63 FR 26517 May 13, 1998). The creation of irrigation reservoirs at the expense of native wetlands is a factor that negatively affected Prebles' populations over the previous century (Fitzgerald *et al.* 1994, p. 293). Reservoirs with barren shorelines can create barriers to Prebles' movement and fragment populations along stream corridors.

Current and future reservoir construction is necessary to respond to municipal water needs. By 2030, municipal and industrial demand for water in Colorado will increase 60 percent, by 578 million cubic meters (m^3) (469,000 acre-feet (af)) yearly in the South Platte River drainage and by 41 percent, 133 million m^3 (108,000 af) yearly in the Arkansas River drainage (Colorado Water Conservation Board 2004). Even under the most optimistic scenarios, the Colorado Water Conservation Board (2004, p. 13–17) estimated a shortfall relative to municipal and industrial demands of 111 million m^3 (90,000 af) of water in the South Platte drainage and 22 million (m^3) (18,000 af) in the Arkansas drainage by 2030. The expanded storage and transport of water that will be needed to address these demands has the potential to significantly impact Prebles' habitat. Pague and Grunau (2000) considered hydrological impacts (water quality, flow regime, and groundwater) to be a high-priority issue to the Prebles in all Colorado counties supporting populations.

Since the listing of the Prebles, we have conducted two section 7 consultations for new reservoirs in Colorado, the Reuter-Hess Reservoir in Douglas County and the Pinewood Springs Reservoir in Larimer County. Through these consultations, 7 ha (17 ac) of impacts to Prebles' habitat were authorized. Three water projects currently proposed will, if developed, significantly affect Prebles' habitat including—the proposed expansions of existing Halligan and Seaman Reservoirs in the Cache La Poudre drainage, Larimer County, Colorado, and storage reallocation at Chatfield Reservoir, in the Upper South Platte drainage, Jefferson and Douglas counties, Colorado. Options being considered at Halligan Reservoir could inundate up to 4.0 km (2.5 mi) of Prebles' habitat and affect the Prebles' critical habitat at the site of the proposed dam. At Seaman Reservoir, the currently favored option would inundate about 4.0 km (2.5 mi) of Prebles' critical habitat. Options being investigated at Chatfield Reservoir have generated a preliminary estimate that up to 130 ha (330 ac) of existing Prebles' habitat, including almost 28 ha (70 ac) of critical habitat, would be inundated. These and other water projects also will result in alteration of flows that could further affect Prebles' habitat.

In Wyoming, estimates of projected water use in the Platte River Basin through 2035, range from a 38 million m^3 (31,000 af) decrease to a 90 million m^3 (73,000 af) increase (Wyoming Water Development Commission 2006, p. 10). No significant reservoir projects are currently planned within Prebles' habitat in Wyoming. While the Platte River Plan identifies ''upper Laramie River storage'' as a future storage opportunity (Wyoming Water Development Commission 2006, p. 31), potential impacts to Prebles are uncertain based on limited knowledge of the subspecies' occurrence in the drainage and uncertainty regarding the location of any future water projects.

Beyond direct effects to the Prebles and its habitat through construction or inundation, changes in flows related to water diversion, storage, and use also affect riparian habitats downstream in a variety of ways. In the foreseeable future, a number of changes in amount and timing of diversions, water uses, and return flows will affect many streams supporting the Prebles. The cumulative impacts of such changes to specific Prebles' populations, both adverse and potentially beneficial, are difficult to predict. As flows are captured or diverted, or as groundwater supplies are depleted through wells, natural flow patterns are changed, and more xeric plant communities may replace the riparian vegetation. Sediment transport is disrupted by on-stream reservoirs. Loss of sediment encourages channel downcutting, which in turn affect groundwater levels (Katz *et al.* 2005, p. 1020). The resulting conversion of habitats from moist or mesic, shrub-dominated systems to drier grass- or forb-dominated systems make the area less suitable for the Prebles.

Given the projected future demands for water, we conclude that major water development projects affecting the Prebles in Colorado would likely occur regardless of whether the subspecies remains listed. Measures to minimize and compensate for impacts specific to the Prebles and its habitat are less likely to be incorporated into project plans if the subspecies were to be delisted. Fewer and smaller projects are likely to occur in Wyoming, creating a negligible threat.

Aggregate Mining—At the time of listing, we cited alluvial aggregate mining as a threat to the Prebles. Aggregate mining is focused on floodplains, where these mineral resources most commonly occur, and specifically on the same gravel deposits that may provide important hibernation sites (63 FR 26517, May 13, 1998). Alluvial aggregate mining continues to be a threat to the Prebles in Colorado. Alluvial aggregate extraction may produce long-term changes to Prebles' habitat by removing (often permanently) shrub and herbaceous vegetation, and by altering hydrology. Often, mined pits are constructed with impervious liners and converted to water reservoirs after aggregate is removed. This conversion precludes restoration of riparian shoreline vegetation and alters adjacent groundwater flow.

Since listing, we have conducted formal consultation under section 7 of the Act regarding impacts to the Prebles at two aggregate mines in Colorado. We have worked with project proponents to avoid impacts at others. At Rocky Flats NWR, private aggregate mining activities could affect Prebles' habitat directly or through alteration of hydrology along Rock Creek. While aggregate mining continues to affect floodplains in the Colorado Front Range, many project sites are along downstream reaches of larger streams and rivers where Prebles' populations now appear absent. Pague and Grunau (2000) considered ''rock and sand extraction'' to be a high-priority issue in Weld, Jefferson, and Douglas counties. While some stream channels within the range of the Prebles, in Wyoming have historically been mined for aggregate,

including the Laramie River at Laramie and Lodgepole and Crow creeks at Cheyenne, mining is not widespread (Wyoming State Geological Survey (WSGS) 2008).

Since construction aggregates are so low in value relative to their weight, transportation costs require that aggregate sources be located as close to the point of use as possible (WSGS 2008). Therefore, threats related to aggregate mining are likely to be more intense in areas in close proximity to human development. Thus, we expect this issue will have greater impact on Prebles' populations in Colorado. Given the high cost of transporting aggregate, increased development in Colorado will not cause a significant increase in aggregate mining in Wyoming. To the extent that aggregate mining will occur in Wyoming, it is likely to continue to be in close proximity to development such as the expanding urban centers of Laramie and Cheyenne.

Oil and Gas—As a result of public comments we received, we also investigated whether oil and gas exploration and extraction poses a threat to the Prebles. A large portion of the subspecies' Wyoming range overlaps with exposed undifferentiated precambian rocks or other formations with low potential for of oil and gas development (DeBruin 2002). A GIS analysis of oil and gas potential (Anderson 1990) relative to the subspecies likely range (Beauvais 2004) indicates that approximately 79 percent of the Prebles range in Wyoming occurs in areas with low oil and gas potential. This analysis indicates that less than 1 percent of the Prebles range in Wyoming occurs in areas with high oil and gas potential, while approximately 20 percent overlap with areas of moderate oil and gas potential. Even within these moderate and high potential areas, only one oil and gas field occurs (DeBruin 2002). In addition, coalfields and the range of the Prebles have little overlap in Wyoming (DeBruin 2004, p. 2) indicating a minimal risk of Prebles habitat being altered for coal production. In Colorado, many new wells are being drilled on the plains within or to the east of the Front Range urban corridor (mostly in Weld County). Few Prebles exist in areas of current oil and gas production exploration and production. In addition, wells are usually located in upland areas away from riparian habitats supporting Prebles' populations. Based on the limited potential for development of these resources within the range of Prebles, we conclude that these activities (directly or indirectly) will not meaningfully affect the conservation status of the Prebles throughout its range now or in the foreseeable future.

Agriculture—At the time of listing we cited conclusions by Compton and Hugie (1993a; 1993b) that human activities, including conversion of grasslands to farms and livestock grazing, had adversely impacted Prebles. They concluded that development of irrigated farmland had a negative impact on Prebles' habitat, and that any habitat creation it produced was minimal (Compton and Hugie 1993a; Compton and Hugie 1993b). In general, negative trapping results suggest that the Prebles does not occur in areas cultivated for row crops. Historically, the rapid rate of native habitat conversion to row crops likely had a significant adverse impact on the Prebles. Because conversion of native habitat to row crops has become increasingly rare in both Colorado and Wyoming (U.S. Department of Agriculture 2000, Tables 2, 3, & 9), such conversions are unlikely to present a similar threat in the future in any portion of the subspecies' range.

Although pressures to increase agricultural production may result from the demand to produce biofuels, we are not aware of information that suggests this would result in meaningful decreases in the Prebles' riparian habitat in Colorado or Wyoming. We conclude that in the absence of protections afforded by the Act, only a little of the subspecies' habitat is at risk from agricultural conversion. In Wyoming, where such a scenario in Prebles' habitat appears more likely than in Colorado, we explored whether former cropland removed from production for conservation purposes is now being returned to production. For example, through the CRP, farmers and ranchers enroll eligible agricultural land in 10- to 15-year contracts and plant appropriate cover such as grasses and trees in crop fields and along streams. The plantings help prevent soil and nutrients from running into regional waterways and affecting water quality. The long-term vegetative cover also improves wildlife habitat and soil quality. Wildlife habitat provided through the CRP can be at risk when CRP contracts expire and lands are returned to agricultural production.

In Wyoming counties within the range of the Prebles, the percent of cropland enrolled in the CRP program ranges from 0 to 26 percent. CRP contracts that will eventually expire for Wyoming counties within the range of the subspecies include: 1,736 ha (4,286 ac) currently enrolled in Converse County; 38,164 ha (94,234 ac) currently enrolled in Laramie County; and 23,612 ha (58,301 ac) currently enrolled in Platte County (Farm Service Agency 2008). In Albany County, there are 5,910 hectares (ha) (14,594 acres (ac)) identified by the U.S. Department of Agriculture as ''cropland'' and none of this cropland is currently enrolled in the CRP (Farm Service Agency 2008). While some landowners may not choose to renew their contracts given current and expected demand for biofuel raw materials, these counties have not witnessed a meaningful decline in enrollment since the biofuels boom began. From 2004 to 2007, enrollment: declined 74 ha (183 ac) in Converse County; increased 778 ha (1,922 ac) in Laramie County; declined 186 ha (460 ac) in Platte County; and did not change in Albany County (Farm Service Agency 2008). These data suggest changes in enrollment are likely to have a negligible impact on the Prebles and its habitat.

The Prebles uses native grass and alfalfa hayfields that are in or adjacent to suitable riparian habitat. This juxtaposition is often the case, since hay production requires large amounts of water. Mowing of hay may directly kill or injure Prebles, reduce food supply (since many plants will not mature to produce seed), and remove cover. Late season mowing may be especially problematic, because Prebles are approaching hibernation and their nutritional needs are high (Clippinger 2002, p. 72). Additionally, hay production may preclude growth of willows and other shrubs that are important as hibernation habitat for the Prebles. Hayfields often are irrigated through ditch systems. The Prebles uses overgrown water conveyance ditches and pond edges, and may use agricultural ditches as dispersal routes (Meaney *et al.* 2003, pp. 612–613). Ditch maintenance activities may kill individual Prebles and periodically alter their habitat. Existing special regulations at 50 CFR 17.40(1) exempt certain ditch maintenance operations from take prohibitions of the Act in recognition that habitat the ditches provide is dependent on the ditches retaining their function. Prebles' populations have persisted in areas hayed for many years (Taylor 1999). Haying operations that allow dense riparian vegetation to remain in place are likely compatible with persistence of Prebles' populations.

Impacts to riparian habitat from livestock are well documented in the scientific literature (Kauffman and Krueger 1984, pp. 431–435; Armour *et al.* 1991, pp. 7–11; Fleischner 1994, pp. 629–638; Belsky *et al.* 1999, pp. 419–431; Freilich *et al.* 2003, pp. 759–765). Livestock have damaged 80 percent of

stream and riparian ecosystems in the western United States (Belsky *et al.* 1999, p 419.). Adverse impacts of grazing include changes to stream channels (downcutting, trampling of banks, increased erosion), flows (increased flow and velocity, decreased late-season flow), the water table (lowering of the water table), and vegetation (loss to grazing, trampling, and through altered hydrology) (Kauffman and Krueger 1984, pp. 432–435).

Impacts from cattle grazing to other jumping mice have been documented by Frey (2005), Giuliano and Homyack (2004), and Medin and Clary (1989). Ryon (1996, p. 3) cited livestock grazing as a contributor to the lack of structural habitat diversity he observed on historical Prebles' sites in Colorado. On a working ranch in Douglas County, Colorado, Prebles were detected within cattle exclosures, but not on grazed areas. Previous trapping had documented Prebles upstream and downstream, but not on the ranch (Ensight Technical Services 2004, p. 9). On private lands in Douglas County, Colorado, Pague and Schuerman (1998, pp. 4–5) observed a swift rate of residential land development and significant fragmentation of habitat, but noted that in some cases accompanying secession of grazing had allowed recovery of degraded riparian habitats.

In Colorado, City of Boulder lands endured intensive grazing, farming, or haying regimes until they became part of the Boulder Open Space system. Grazing and haying, used as land management tools, continue on Boulder Open Space sites currently supporting the Prebles. In their study of small mammals on Boulder Open Space, Meaney *et al.* (2002, p. 133) found no adverse effects of managed grazing on abundance of individual small mammal species or on species diversity.

There is no doubt that cattle can greatly affect vegetation, especially in times of drought; grazing practices that assure maintenance of riparian shrub cover may be a key consideration in maintaining Prebles' populations (Ensight Technical Services 2004, p. 9). Recent drought, in combination with grazing, may have had an increased effect on Prebles' habitat.

Overgrazing threats are not limited to large livestock producing operations. On subdivided ranch properties, often termed ''ranchettes,'' horses and other livestock can heavily affect the small tracts within which they are fenced (Pague and Grunau 2000, p. 1–14). In Colorado, many large ranch properties are being subdivided into ranchettes. We have concluded that this represents a widespread threat to significant areas of Colorado, where an increase in rural development is forecast in the foreseeable future. Pague and Grunau (2000) considered ''high impact livestock grazing'' to be a high-priority issue for the Prebles in Larimer, Weld, Elbert, and El Paso counties in Colorado, largely due to the projected increase in such ranchettes. Based on human growth projections, subdivision of ranches is expected to be minimal in portions of Wyoming where the Prebles exists.

In Wyoming, where large-scale commercial ranching is more prevalent in the Prebles' range than in Colorado, overgrazing is thought to occur sporadically across the landscape, most obviously where cattle congregate in riparian areas in winter and spring. Grazing has occurred within Prebles' habitat for many decades, and populations of Prebles have been documented on sites with a long history of grazing. For example, jumping mice were trapped at 18 of 21 sites on True Ranches properties (mice from 14 of these sites have since been confirmed as Prebles (King *et al.* 2006b, pp. 4351–4353)), primarily within sub-irrigated hay meadows that have been subjected to livestock grazing and hay production for approximately 100 years (Taylor 1999, p. 5).

At the time of listing we addressed overgrazing by livestock. We stated that it may cause significant impacts to Prebles' habitat, but that timing and intensity of grazing were probably important in maintaining habitat and that maintenance of woody vegetative cover could be key (63 FR 26517, May 13, 1998). Overgrazing was thought to have eliminated the Prebles from much of its former Wyoming range (Clark and Stromberg 1987, p. 185; Compton and Hugie 1993b, p. 4). Trapping efforts since listing have greatly expanded our understanding of the subspecies' range in Wyoming, showing that our assertions that grazing eliminated the Prebles from these areas were incorrect.

As suggested by Bakeman (1997, p. 79) and Pague and Grunau (2000, p. 1–17), and as supported by the examples above, grazing is compatible with Prebles when timing and intensity are appropriately managed. We now believe that agricultural operations that have maintained habitat supportive of Prebles' populations are consistent with conservation and recovery of the subspecies. In recognition of this, in 2001 we adopted special regulations at 50 CFR 17.40(1) which exempted existing agricultural activities, including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing, and harvesting, from the prohibitions of the Act. The exemption does not apply to new agricultural activities or to those that expand the footprint or intensity of the activity. We established the exemption to provide a positive incentive for agricultural interests to participate in voluntary conservation activities and to support surveys and studies designed to determine status, distribution, and ecology of Prebles, which in turn could lead to more effective recovery efforts.

The number of cattle in counties currently known to support the Prebles, in Wyoming totaled 270,000 head in 2006 (National Agriculture Statistics Service 2007). Cattle numbers appear stable in Albany, Converse, and Laramie counties, but higher than the average for the last 20 years in Platte County. Cattle numbers in Colorado counties supporting the Prebles totaled 666,000 head in 2006; 550,000 of these cattle were in Weld County (National Agriculture Statistics Service 2007). Excluding Weld, all of these Colorado counties have shown a marked downward trend in cattle numbers over the past 20 years, reflecting human development on former agricultural lands (National Agriculture Statistics Service 2007).

Overall, we expect traditional grazing operations to continue in Wyoming. Such operations have generally proven compatible with maintenance of Prebles' populations, suggesting timing and intensity have generally been managed appropriately. This management has taken place without oversight of the Act as allowed in the special regulations at 50 CFR 17.40(1). We have no reason to conclude that the management of these ranches will change in an adverse way over the foreseeable future.

Summary—Within Colorado, human land uses within the Prebles' range have destroyed, degraded, and fragmented habitat and continue to do so. While protections of the Act have avoided, minimized, and helped to compensate for direct human land-use impacts to occupied Prebles' habitat, direct and secondary impacts to riparian habitats have likely diminished the areas that are capable of sustaining Prebles' populations. Given the projected future growth rates in Colorado, and absent protections associated with Federal activities and listing under the Act, we have concluded that threats posed by human development activities discussed above would rise dramatically following delisting. Most Colorado Prebles' sites documented since listing are subject to the same level of threats discussed above for the Colorado

portion of the range in general. Documentation of these new sites does not change our conclusion as to the current and future conservation status of the subspecies in this portion of its range. Regulatory mechanisms that could help reduce such negative impacts, while currently limited, are discussed under Factor D below.

In Wyoming, the Prebles appears to be much more widely distributed than previously assumed, while current and future threats to habitat and range appear limited. At the time of listing, the Prebles was not known to exist in the North Platte River basin and known from only two sites in Wyoming's portion of the South Platte River basin (63 FR 26517). Since listing, additional distributional data has verified that the subspecies is widespread in the North Platte River basin with demonstrated occupancy in 4 drainages and at least 15 rivers or streams; we also believe the subspecies also may occur in multiple rivers or streams in a fifth North Platte drainage (the Middle North Platte). An improved understanding of the subspecies' distribution suggests that historical agricultural activities, such as grazing and haying, have had a minimal impact on the subspecies to date. In short, continuation of these long-standing activities appears supportive of existing Prebles' populations. We have no indication these agricultural practices are likely to change in the foreseeable future in ways that would affect the subspecies' long-term conservation status. A low projected human population growth rate is predicted for the four Wyoming counties occupied by the Prebles, suggesting that few development-related threats are likely in this portion of the subspecies' range into the foreseeable future. In short, the best scientific and commercial information suggests that impacts to the Wyoming portion of the subspecies' range are likely to be minor with only small and localized effects. Therefore, we conclude that present or threatened destruction, modification, or curtailment of the Prebles' habitat and range in Wyoming do not suggest that the subspecies requires listing in this portion of its range in order to sustain it for the foreseeable future.

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

The Prebles is not collected for commercial or recreational reasons and we have no information to indicate that the subspecies would be once it is delisted. Some collection of specimens occurs for scientific and educational purposes and these activities will continue to be permitted under existing state regulations in both Colorado and Wyoming once the subspecies is delisted. Although we are aware that unintentional mortalities have resulted from capture and handling of Prebles by permitted researchers, the level of take associated with this activity does not rise to the level that would affect populations of the subspecies, nor is it likely to do so once we remove the protections of the Act. Furthermore, we have no information to indicate that collection for scientific or educational reasons is it likely to become, a significant threat to the subspecies, even if the protections afforded the subspecies under Colorado and Wyoming state laws were removed (see our discussion below of Factor D).

C. Disease or Predation

At the time of listing, we had no evidence of disease causing significant impacts to the Prebles (63 FR 26517, May 13, 1998). No further evidence exists that any parasite or disease has caused a significant impact to populations. While plague relationships for most North American rodents are poorly understood, plague may interact synergistically with other natural and human-induced disturbances, increasing risk of local extirpation and rangewide extinction (Biggins and Kosoy 2001, p. 913). Plague has not been documented in the Prebles. However, Pague and Grunau (2000, p. 1–19) considered disease to be a potentially high-priority issue for the Prebles. They cited unknown resistance of the Prebles to plague and other diseases, and noted that small populations could be especially vulnerable to effects of an epizootic. Should disease materialize into a substantive issue, we believe populations in Colorado would be at higher risk because development pressures in this portion of the range are more likely to result in small, fragmented, and unsustainable populations.

At the time of listing, we addressed potential predators of the Prebles whose densities could increase in the suburban or rural environment, including striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and the domestic cat (*Felis catus*) (63 FR 26517, May 13, 1998). Increased impacts of native and exotic predators that accompany rural development can affect species viability (Hansen *et al.* 2005, p. 1899). We noted opinions that free-ranging domestic cats and feral cats locally presented a problem to Prebles' populations. Where predator populations are increased through human land uses, they may contribute to the loss or decrease of Prebles. Generally, we have found proponents of new residential developments near Prebles' habitat to be receptive to prohibitions on free-ranging cats and dogs (*Canis domesticus*) when negotiating minimization measures through section 7 of the Act. However, enforcement is often through covenants administered by homeowners' associations, with uncertain success. If the Prebles were to be delisted and Federal protection under the Act discontinued, similar covenants on new development in and near Prebles' habitat would be less likely, and existing covenants may not be as strictly enforced. Beyond previously known or anticipated predators of jumping mice, introduction of non-native bullfrogs (*Rana catesbiana*) in Colorado has resulted in predation on Prebles (Trainor 2004, p. 58). However, we have no information to suggest that predation from bullfrogs has affected Prebles' populations.

While many uncertainties remain regarding disease and predation, we believe the best available scientific and commercial data suggest that disease is most likely to only be a factor in small and fragmented populations, and that increases in predation will likely only contribute to the reduction, fragmentation, and loss of Prebles' populations when such populations are exposed to increased human presence. As noted above, increased human presence is expected to be a significant issue in Colorado and of minimal concern in Wyoming. Thus, we expect these issues have the potential to meaningfully affect Prebles' populations in developing areas of Colorado, but comparable impacts in Wyoming are not expected.

D. The Inadequacy of Existing Regulatory Mechanisms

This factor considers the regulatory mechanisms that would remain in place in the absence of the Act's protective measures. Current and likely future protections are considered. In areas where the protections of the Act are removed, the Service has no assurances that previous conservation commitments made under sections 7 or 10 of the Act will remain in place.

At the time of listing, we cited the lack or ineffectiveness of laws and regulations protecting the Prebles and its habitat (63 FR 26517, May 13, 1998). Protective measures discussed below include Federal, State, and local protections.

Federal Protections—Existing Federal laws, such as the CWA (33 U.S.C. 1251 *et seq.*), Federal Power Act (16 U.S.C.

791a *et seq.*), Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), National Forest Management Act (16 U.S.C. 1600 *et seq.*), Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), Food Security Act (16 U.S.C. 3801 *et seq.*), and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), provide limited protection for non-listed species.

Section 404 of the CWA generally requires avoidance and minimization (when practicable), and mitigation of adverse impacts to jurisdictional wetlands and waters of the United States associated with filling. Human impacts to jurisdictional wetlands may be permitted when alternatives that would avoid wetlands are found not to be practicable. Section 404 of the CWA does not apply to non-jurisdictional waters or wetlands. In these cases, activities affecting these waters or wetlands would not require Federal permits under section 404 of the CWA. More importantly, section 404 of the CWA provides no comparable safeguards for non-jurisdictional riparian and upland areas used by the Prebles.

The CWA, section 303, establishes the water quality standards and Total Maximum Daily Load (TMDL) programs. Water quality standards are set by States, Territories, and Tribes. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Colorado and Wyoming are required under section 305(b) of the CWA to complete an assessment of their surface waters. From this assessment a CWA 303(d) list of impaired water bodies is developed. These are waters that are not currently meeting their designated uses because of impairments to the waters.

The EPA encourages communities, watershed organizations, and local, state, tribal, and federal environmental agencies develop and implement watershed plans to meet water quality standards and protect water resources. These plans can include measures that will help protect riparian areas and may in some cases provide benefits to the Preble's Meadow Jumping Mouse. For example, in Wyoming the Crow Creek Watershed Plan coordinated by the Laramie County Conservation District, includes recommendations to protect riparian habitat because of the benefits for water quality (the plan is available at *http://www.lccdnet.org/waterquality/watershed%20plan/FinalPlan.pdf*). While these efforts to improve water quality have the potential to improve or protect riparian habitat, the measures are typically not mandatory and such watershed planning efforts do not encompass the range of the subspecies. Thus, the CWA provides only limited protection of habitats utilized by the Prebles and is not capable of substantially reducing threats to individual Prebles' populations or to the subspecies as a whole.

On lands administered by the USFS and BLM, the current status of the Prebles as threatened invokes management priorities in accordance with protections of the Act. If delisted, these protections would no longer apply. However, Federal land-management agencies, through their regulations, policies, and management plans, work to ensure long-term conservation of all wildlife species of concern. Of the three National Forests supporting Prebles' populations, the Medicine Bow–Routt National Forest has a forest management plan that includes standards and guidelines specific to conservation of the Prebles. The Arapahoe–Roosevelt National Forest and the Pike–San Isabel National Forest have forest plans that predate the listing of the Prebles (Warren 2007). If delisted, the Prebles would likely be considered a subspecies warranting conservation concern by Federal land-holding agencies and, as such, retain some continued degree of conservation priority.

On military installations, the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a *et seq.*) requires each facility that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP). This plan must integrate implementation of the military mission of the installation with stewardship of the natural resources found there. In both Colorado and Wyoming, this process has provided the opportunity to consider the potential impacts of military actions on the Prebles.

The Academy in El Paso County, Colorado, has an INRMP in place, a conservation and management plan, and a programmatic consultation under section 7 of the Act, which provide guidance for Air Force management decisions for certain activities that may affect the subspecies. Research on the Prebles is ongoing at the Academy; the conservation and management plan is designed to be updated as new information is collected. Warren Air Force Base in Laramie County, Wyoming, has an INRMP and a conservation and management plan. However, the base may only support the western jumping mouse. Both plans are designed to be in place for 5 years. The emphasis given to conservation of the Prebles in these plans may decline in the future if the subspecies were to be delisted.

The presence of Prebles has been documented at two of the Service's NWRs. We manage the Rocky Flats NWR, near Boulder, Colorado, in a manner consistent with conservation of the Prebles. This management is unlikely to change if the Prebles were to be delisted.

More recently, a single Prebles as well as western jumping mice have been confirmed from Hutton Lake NWR near Laramie, Wyoming. Because the subspecies was only recently documented on Hutton Lake NWR, the subspecies' needs were previously not explicitly addressed in management documents. While past management was primarily waterfowl oriented, refuge management plans have been developed to address the needs of the Prebles (Kelly 2008).

Service-approved HCPs and their incidental take permits contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for the Prebles. These measures, which include explicit standards to avoid, minimize, and mitigate any impacts to the covered (sub)species and its habitat, are designed to ensure that the biological value of covered habitat for the Prebles is maintained, expanded, or improved. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act and reflect a voluntary, cooperative approach to large-scale habitat and (sub)species conservation planning. The primary goal of such HCPs is to provide for the protection and management of habitat essential for the conservation of the (sub)species while directing development to other areas. In any HCP, permittees may terminate their participation in the agreement and abandon the take authorization set forth in the permit.

To date, we have approved 19 single-species HCPs for the Prebles, all in Colorado. Eighteen of the associated permits allow approximately 280 ha (700 ac) of permanent or temporary impact to Prebles' habitat, and preserve or enhance habitat to offset impacts. The largest of these, the approved HCP for Douglas County and the Towns of Castle Rock and Parker, allows impacts of up

to 170 ha (430 ac), in exchange for the acquisition of 24 km (15 mi) of stream (455 ha (1,132 ac) of habitat) acquired and preserved for the long-term benefit of the Prebles.

The remaining HCP, issued in January 2006, is the Livermore Area HCP in Larimer County. The planning area for this HCP includes a large portion of Larimer County, approximately 1,940 square km (750 square mi), including a Prebles' ''conservation zone'' estimated at approximately 324 km (201 mi) of stream and 8,570 ha (21,320 ac). The HCP cites protection of 114 km (71 mi) of stream, mostly on CDOW lands; however, it is not clear what proportion of these areas support Prebles. Local landowners and public agencies holding land within the boundaries of this HCP may opt for coverage under the HCP and receive take permits for activities consistent with the HCP. The Livermore Area HCP is designed to support current land uses, including ranching and farming. However, inclusion of landowners is optional, and they may choose to pursue land uses inconsistent with those specified in the HCP. Thus far, we have issued no individual permits under this HCP.

Of the two regional HCPs in development, the El Paso County effort is proceeding slowly and the Boulder County effort appears to be on hold. It is unlikely that these conservation plans would be completed or implemented if the Prebles did not remain listed under the Act.

State Protections—Under the nongame provisions of the CDOW Regulations (Chapter 10, Article IV) the Prebles currently may only be taken legally by permitted personnel for educational, scientific, or rehabilitation purposes. This regulation would remain in effect if the Prebles was delisted under the Act. In Wyoming, continued classification of the meadow jumping mouse as a ''nongame species'' under section 11 of Chapter 52 (Nongame Wildlife) of the Wyoming Game and Fish Commission regulations would protect the Prebles from takings and sales by allowing the issuance of permits only for the purpose of scientific collection. As mentioned previously in our discussion under Factor B, overutilization for commercial, recreational, scientific, or educational purposes is not now, nor is it likely to become, a significant threat to the subspecies, even if the protections afforded the subspecies under Colorado and Wyoming laws were removed.

Numerous State lands (CDOW and WFGD lands, State Park lands, State Land Board lands) and mitigation properties (such as those of the Colorado Department of Transportation) would continue to provide a measure of protection for the Prebles should it be delisted. While some of these conservation properties may have management specifically designed to preserve and enhance Prebles' habitat, others are managed more generally for wildlife habitat, for human recreation, or for multiple uses.

State programs have been available to help preserve the Prebles through the acquisition, preservation, and management of its habitat. These include the Great Outdoors Colorado Trust Fund and the Species Conservation Trust Fund. In comments to the Service, then Colorado Department of Natural Resources Commissioner, Russell George, stated that State and local initiatives could provide for conservation of the Prebles, independent of Federal oversight. He listed nearly 40 conservation projects in 5 Front Range Colorado counties where the Prebles ''may be present'' (George 2004). The conservation value of many of these projects is uncertain since most were developed without specific regard to the Prebles' distribution and its conservation.

Local Protections—At the time of listing, we pointed out that while a myriad of regional or local regulations, incentive programs, and open-space programs existed, especially in Colorado, few specifically protected the Prebles or its habitat from inadvertent or intentional adverse impacts (63 FR 26517, May 13, 1998). Many local regulations create a process of site-plan review that ''considers'' or ''encourages'' conservation of wildlife, wetlands, and other natural habitats, but have no mandatory measures requiring avoidance or mitigation of impacts. Effectiveness of local regulations in maintaining naturally functioning riparian corridors varies greatly depending on how these apparently flexible regulations are implemented. Following listing under the Act, development and other projects in and near Prebles' habitat have received increased scrutiny from local jurisdictions, often in coordination with Service authorities. Open-space acquisitions and easements also have taken the presence of the Prebles into account. It is not clear what level of interest in Prebles' conservation would continue following delisting. Local governments would likely relax review procedures for projects in known or suspected Prebles' habitat. Beyond the direct impact to Prebles' habitat, secondary impacts of development (including increased recreational use, altered flow regimes and groundwater levels, and increase in domestic predators) are unlikely to be adequately addressed. While certain local regulations are designed to conserve wetlands or floodplains on private lands, it is unlikely they would effectively control land uses (grazing, mowing, cutting, and burning) that may affect the hydrology, vegetation, and hibernacula sites on which the Prebles depends. The adequacy of such protective measures is more important within Colorado than Wyoming given the intense development pressures in the Colorado counties where the Prebles occurs.

Douglas County, Colorado, owns 14 properties that encompass 24 km (15 mi) of stream and associated riparian habitats potentially beneficial to the Prebles (Matthews 2004). Of Douglas County streams on non-Federal property within the county-mapped Riparian Conservation Zone, 105 km (65 mi), or 23 percent, are under some form of permanent protection (Matthews 2004), including 77 km (48 miles) on Plum Creek and its tributaries and 25 km (16 mi) on Cherry Creek and its tributaries (Matthews 2008). However, occurrence of the Prebles on many of these properties has not been extensively documented. For example, while there are 23.4 km (14.5 mi) of mapped riparian corridors on the large Greenland Ranch conservation property, the presence of the Prebles has been documented at only two sites. Future conservation efforts to augment protected areas and to link protection over large expanses of connected streams in Douglas County could contribute greatly to maintaining secure Prebles' populations in the Upper South Platte and Middle South Platte-Cherry Creek drainages. If the Prebles was delisted, management priorities on protected lands and direction of future conservation efforts would likely change. In order to ensure long-term management for the Prebles, the Preliminary Draft Recovery Plan suggests the Service and our partners develop and implement long-term management plans and cooperative agreements prior to delisting (USFWS 2003b, pp. iv, 33, 39, 47–47, 51–52).

Larimer County has acquired or secured easements to considerable lands, including some properties under the Laramie Foothills Project, in partnership with The Nature Conservancy, the City of Fort Collins, and the Legacy Land Trust. While conservation efforts have increased, especially in the Livermore Valley, residential development remains the largest threat to the Prebles in the county (Pague 2007). The extent to

which Prebles' populations are supported by these properties, the fate of remaining private lands in the North Fork, Cache La Poudre River and its tributaries, and the ability to link conservation lands and traditional agricultural lands supporting the Prebles along stream reaches are key to protecting the potentially large Prebles' population thought to exist in this area.

The City of Boulder, Boulder County, and Jefferson County have extensive lands protected under their open-space programs. While the extent of known Prebles' occurrences in these counties is limited compared to that documented in Larimer and Douglas counties, known populations exist on open space protected from residential and commercial development.

Overall, the CDOW examined land ownership of over 58,000 ha (143,000 ac) in Colorado they considered occupied by the Prebles and concluded 45 percent of the area was ''protected'' (i.e., in public ownership, land trust, or conservation easement) (Nesler 2008). Occupancy of land was calculated based on proximity to documented meadow jumping mouse capture locations. Captures are the result of trapping surveys, which may disproportionately target public lands easily trapped for research purposes or proposed development sites trapped for Act compliance purposes. Thus, the 45 percent statistic may not reflect the actual proportion of suitable habitat that is protected. Still it suggests some meaningful progress toward recovery of the subspecies in this portion of its range.

At the request of the Service, the CDOW conducted a similar evaluation for specific areas we consider of high importance to Prebles' conservation in Colorado. These included designated Prebles' critical habitat units and additional units of proposed critical habitat where the proposed units were excluded from the final designation due to ongoing conservation efforts (HCPs in development in Boulder, Douglas, and El Paso counties). While our proposal and designation of critical habitat units focused on lands in public ownership, which may bias the results, examination of these areas provides some perspective into potential protections in place in Colorado.

Across nine total units, lands in public ownership, land trusts, or conservation easements comprised approximately 51 percent of these areas (Kindler 2008). Percentage of lands in these categories varied greatly from unit to unit as follows:

- 45 percent of critical habitat unit SP4, which encompasses approximately 141.8 km (88.1 mi) of streams within the North Fork of the Cache La Poudre River watershed;
- 96 percent of critical habitat unit SP5, which encompasses approximately 82.4 km (51.2 mi) of streams within the Cache La Poudre River watershed;
- 64 percent of critical habitat unit SP6, which encompasses approximately 69.2 km (43.0 mi) of streams within the Buckhorn Creek watershed;
- 64 percent of proposed critical habitat unit SP8, which encompasses approximately 11.8 km (7.3 mi) of streams within the South Boulder Creek watershed;
- 13 percent of critical habitat unit SP10, which encompasses approximately 12.9 km (8.0 mi) of streams within the Ralston Creek watershed;
- 45 percent of the proposed critical habitat unit SP11, which encompasses approximately 32.1 km (19.9 mi) of streams within the Cherry Creek watershed;
- 31 percent of the proposed critical habitat unit SP12, which encompasses approximately 146.6 km (91.1 mi) of streams within the Plum Creek watershed; and
- 5 percent of the proposed critical habitat unit A1, which encompasses approximately 56.3 km (35.0 mi) of streams within the Monument Creek watershed.

Units SP4, SP12 and A1 correspond to the three large Prebles' populations in Colorado called for in the Preliminary Draft Recovery Plan. Units SP4 and SP12 demonstrate 45 percent and 31 percent in protected land use categories, respectively. The 5 percent protected in unit A1 underestimates the actual percent of this large population protected as the proposed critical habitat unit excluded the Air Force Academy. The Preliminary Draft Recovery Plan calls for documentation of these Prebles' populations, maintenance of habitat connectivity over long expanses of streams, and the elimination of future threats within these drainages. While the above percentages of lands in protected ownership categories is encouraging, existing protections do not fulfill Preliminary Draft Recovery Plan objectives, nor do they assure the future well-being of these Prebles' populations.

As discussed above, fragmentation of Prebles' habitat and resulting impacts on the future security of Prebles' populations is a significant concern. Even in drainages where lands in public ownership or private properties dedicated to conservation are relatively extensive, development of intervening private lands is likely to fragment habitat and may impact Prebles' populations. As of this writing, we have not obtained data on fragmentation within the above areas.

Many of the public ownership areas are high-elevation, montane headwater habitats. As discussed previously, such areas may have less suitable habitat that supports lower density Prebles' populations than at plains and foothill sites. Additionally, within Colorado, it appears that as elevation increases there is an increased occurrence of the western jumping mouse. Thus, in order to rely upon the contribution that these high elevation areas provide to the long-term security of the Prebles, positive identification to species and localized demographic data would be required.

Finally, public ownership may not preclude properties from human development, other land uses, or management priorities incompatible with the well-being of the Prebles. Those lands that are protected and managed in a manner that is compatible with the needs of the Prebles may be subject to secondary impacts from activities off site. Most prominent among these secondary impacts are those resulting from changes in flow regimes. Recent evidence suggests secondary impacts from development of private land upstream from the Academy (proposed unit A1) threaten the integrity of habitat present and the Prebles' population it supports.

In Wyoming, as would be expected in areas where development pressures are substantially less, the regional and local regulations affecting Prebles habitat appear to be less extensive than in the Colorado portion of its range. Currently Albany, Laramie, and Platte Counties in Wyoming have zoning regulations including the regulation of subdivision development (Reid in litt.). These and other local protections provide some protection of water resources and floodplains and reduce soil erosion. Overall, local protections in the Wyoming portion of the Prebles range appear minimal.

Reinitiated recovery planning efforts will work to further define recovery needs and coordinate progress toward these goals with State, other Federal, and local entities. While the above statistics suggest additional recovery efforts are required, the potential for protecting existing Prebles' populations and recovering the subspecies in Colorado appears high. While fewer protections are in place in Wyoming, substantially reduced threat levels (see Factor A discussion) indicates that comparable protections are not necessary in this portion of the subspecies' range.

Summary—In the absence of the Act's protective measures, Federal conservation efforts for the Prebles would be largely limited to Federal properties, where the subspecies may be maintained as a priority subspecies and conserved through existing or future management plans.

While State regulations in both Colorado and Wyoming would regulate purposeful killing of Prebles; as noted in Factors B and D above, we do not view this as a significant concern driving the subspecies' long-term conservation status. If delisted, State and local regulations would do little to conserve the Prebles or its habitat on private lands. Public land holdings, conservation easements, and other conservation efforts, past and future, could support the Prebles on specific sites.

In Colorado, the extent and pattern of conservation efforts in relation to Prebles' distribution, and the appropriate management of Prebles' habitat, would largely dictate the long-term viability of Prebles' populations.

At this time, no large populations and few medium populations, as described in the Preliminary Draft Recovery Plan, are known to exist in Colorado on contiguous stream reaches that are secure from development. Management plans that specifically address threats to the Prebles are few, and management priorities would likely change if we were to delist the subspecies. Much of the intervening private lands would likely be subject to development within the foreseeable future (this issue is described in more detail in Factor A above). If we were to delist the subspecies, given current and projected levels of protections, we believe that most Prebles' populations in Colorado would not be secure into the foreseeable future.

In Wyoming, the best available scientific and commercial information indicates that at least one large population (in the Lower Laramie drainage) and two medium populations (in the Glendo and Horse Creek drainages) occur along contiguous stream reaches that are secure from development as recommended in the Preliminary Draft Recovery Plan (USFWS 2003b, pp. 19, 22). While regulatory measures in Wyoming do not guarantee protection of these populations, such assurances are not needed because threats to the Prebles and the subspecies' habitat are limited for the foreseeable future (see Factor A discussion).

E. Other Natural or Manmade Factors Affecting the Subspecies' Continued Existence

At the time of listing, we judged this subspecies susceptible to a number of other factors, including impact from naturally-occurring events including flooding, invasive weeds and weed control programs, pesticides and herbicides, and secondary impacts associated with human-caused development (63 FR 26517, May 13, 1998). For most of these factors, we have little more information than we had at the time of listing. Additional concerns that were not considered at the time of listing include the potential for competition between the Prebles and the western jumping mouse, and future effects of changing climate on the Prebles, including its potential to heighten threats from fire and drought.

Flooding and fire are natural components of the Wyoming and Colorado foothills and plains, and Prebles' habitat naturally waxes and wanes with these events. While these natural events may affect Prebles' populations by killing individuals and by destroying riparian and adjacent upland habitat on which they depend, the effects to vegetation are often temporary. Normal flooding and fire events also may help maintain the vegetative communities that provide suitable habitat for the Prebles. An increase in impervious surfaces and denuding of vegetation caused by human activity can result in increased frequency and severity of flood events and prevent the re-establishment of favored riparian communities. While an extreme flood event has potential to eliminate an entire Prebles' population in an affected stream reach, it would be less likely to eliminate a population over an entire drainage where Prebles' occurrence extends to side tributaries and headwaters.

Periodic fire may be of value in maintaining riparian, transitional, and upland vegetation within Prebles' habitat. In a review of the effects of grassland fires on small mammals, Kaufman *et al.* (1990) found a positive effect of fire on meadow jumping mice in one study and no effect on the species in another study. Fire may regenerate decadent willow (*Salix* sp.) stands along streams and encourage higher stem densities considered more favorable to the Prebles.

Long periods of fire suppression result in fuel buildup, especially in forested areas, and can result in catastrophic fires that alter habitat dramatically, change the structure and composition of the vegetative communities, and potentially affect large numbers of Prebles or multiple populations. Following more intense fires, precipitation in a burned area may degrade Prebles' habitat by causing greater levels of flooding, erosion, and sedimentation along creeks. As habitat redevelops, it will likely be reoccupied by the Prebles, assuming that there are occupied, connected stream reaches where Prebles' populations have continued to persist.

An example of catastrophic fire in Prebles' habitat occurred in 2002. The Hayman and Schoonover fires in Jefferson and Douglas counties, Colorado, encompassed over 3,000 ha (7,500 ac) of potential Prebles' habitat, or approximately 20 percent of the potential habitat within the boundaries of Pike National Forest (Elson 2003). Approximately 342 ha (844 ac) of proposed critical habitat were burned. While riparian habitat that was lightly burned was expected to recover relatively quickly, increases in erosion and sedimentation downstream have been severe, and may continue to affect Prebles' habitat for many years. Because of severe fire-related impacts, we withdrew from the final critical habitat designation for the Prebles (68 FR 37275, June 23, 2003) a portion of Gunbarrel Creek that we had proposed as critical habitat for the subspecies before the Hayman fire. Even prior to the Hayman and Schoonover fires, Pague and Granau (2000), in their consideration of Prebles conservation in Colorado, considered catastrophic fire to be a high-priority issue for Douglas County.

Fire has the potential to affect the Prebles' populations both directly and indirectly. The intensity, extent, and location of any fire event will likely dictate the nature and severity of the impact to the Prebles. Catastrophic fire events are, by their nature, rare, but have the potential over the foreseeable future to impact any existing foothill and montane Prebles' population.

Drought is another issue that can have a significant negative effect on the Prebles. Drought lowers stream flows and the adjacent water table, in turn impacting riparian habitat on which the subspecies is dependent. Drought may exacerbate adverse impact of cattle grazing on Prebles habitat. Frey (2005, p.62) found that drought had a major influence on the status and distribution of *Zapus hudsonius luteus* in New Mexico. In 2002, a year with regional drought conditions, Bakeman (2006, p. 11) failed to capture Prebles at two sites where he had previously documented substantial populations. While Prebles populations have coexisted with

periodic drought, significant increases in frequency or severity of drought could impact the persistence of Prebles. This is likely to be a more significant factor for small and fragmented populations, while large populations with substantial tracts of suitable habitat will be better protected.

Invasive, noxious plants can encroach upon a landscape, displace native plant species, form monocultures of vegetation, and may negatively affect food and cover for the Prebles. The control of noxious weeds may entail large-scale removal of vegetation and mechanical mowing operations, which also may affect the Prebles. The tolerance of the Prebles for invasive plant species remains poorly understood. Leafy spurge (*Euphorbia esula*) may form a monoculture, displacing native vegetation and thus reducing available habitat (Selleck *et al.* 1962; Pague and Grunau 2000, p. 1–18). Nonnative species including tamarisk (*Tamarix ramosissima*) and Russian olive (*Elaeagnus angustifolia*) may adversely affect the Prebles (Garber 1995, p. 16; Pague and Grunau 2000, p. 1–18). Existing special regulations at 50 CFR 17.40(1) exempt take incidental to noxious weed control. We instituted this exemption to recognize that control of noxious weeds is likely to produce long-term benefits to native vegetation supportive of the Prebles.

It remains unknown to what extent point and non-point source pollution (sewage outfalls, spills, urban or agricultural runoff) that degrades water quality in potential habitat may affect the abundance or survival of the Prebles. From an examination of their kidney structure, it is not clear whether Prebles require drinking water from open water sources, or may obtain water through dew and their foods (Wunder 1998). Likewise, it is unknown whether pesticides and herbicides, commonly used for agricultural and household purposes within the range of the Prebles, pose a threat to Prebles directly, or through their food supply, including possible bioaccumulation.

Human-caused development creates a range of additional potential impacts (through human presence, noise, increased lighting, introduced animals, and the degradation of air and water quality) that could alter Prebles' behavior, increase the levels of stress, and ultimately contribute to loss of vigor or death of individuals, and extirpation of populations. Introduced animals associated with human development may displace, prey upon, or compete with the Prebles. Feral cats and house mice were common in and adjacent to historical capture sites where Prebles were no longer found (Ryon 1996, p. 26). While no cause-and-effect relationship was documented, the Prebles were 13 times less likely to be present at sites where house mice were found (Clippinger 2002, p. 104). We have an incomplete understanding of the mechanisms by which the breadth of human-caused development impacts Prebles' populations. However, the absence of Prebles' populations in portions of Colorado drainages where riparian habitat appears relatively favorable but human encroachment is pervasive suggests a potential cause-and-effect relationship. Cumulative impacts from a variety of factors in addition to habitat loss may contribute to local extirpations.

Colorado's Comprehensive Wildlife Conservation Strategy lists ''scarcity'' as a threat to meadow jumping mice that may lead to inbreeding depression (CDOW 2006, p. 102). Small populations can be threatened by stochastic, or random, changes in a wild population's demography or genetics (Brussard and Gilpin 1989, pp. 37–48; Caughley and Gunn 1996, pp. 165–189). A stochastic demographic change in small populations, such as a skewed age or sex ratio (for example, a loss of adult females), can negatively affect reproduction and increase the chance of extirpation. Isolation of populations may disrupt gene flow and create unpredictable genetic effects that could impact Prebles' persistence in a given area. While the susceptibility of the Prebles to such events has not been researched, the documented tendency for Prebles' numbers to vary widely over time heightens concern for small and isolated populations. Within populations, periodic lows in numbers of Prebles present more accurately reflect potential vulnerability than typical or average numbers present. Although many trapping efforts have targeted Prebles in small, isolated reaches of habitat, few have documented presence. As noted above, we have determined that populations in Colorado would be at higher risk over the foreseeable future because development pressures in this portion of the range are more likely to result in small, fragmented, and unsustainable populations.

The relative ranges, abundance, and relationship between the Prebles and the western jumping mouse are not yet clearly understood, especially in Wyoming. Recent confirmation of extensive range overlap in Wyoming and the apparent predominance of the western jumping mouse in some southern Wyoming drainages with few or no recent records of Prebles, provide reason for concern. It is unknown whether western jumping mice are actively competing with Prebles, affecting Prebles' population size, and possibly limiting distribution, or if this distribution pattern is unrelated to their interaction. Additional study of this issue would be desirable. Although questions remain, we do not have information to indicate that presence of the western jumping mouse constitutes a threat to the Prebles.

Climate change is another issue of potential concern. According to the IPCC (2007, p. 2), ''Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 2). It is very likely that over the past 50 years: cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 2). It is likely that: Heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 2). It is difficult to ascertain what impact these changes have had on the subspecies.

The IPCC (2007, p. 7) predicts that changes in the global climate system during the 21st century are very likely to be larger than those observed during the 20th century. For the next two decades, a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 7). Afterward, temperature projections increasingly depend on specific emission scenarios (IPCC 2007, p. 7). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6 to 4.0 °C (1.1 to 7.2 °F) with the greatest warming expected over land (IPCC 2007, pp. 7–9). Localized projections suggest the West may experience among the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 9). The IPCC says it is very likely that hot extremes, heat waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 8). There also is high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change (IPCC 2007, p. 8).

While these global and regional projections are the most accurate use of

the available models, we also attempted to obtain more localized predictions. Specifically, we submitted an information request for climate change projections specific to the range of the subspecies to the National Center for Atmospheric Research via their Regional Climate-Change Projections Multi-Model Ensembles program. As of this writing, we have not received a response.

Potential impacts to the Prebles from predicted future climate changes are somewhat uncertain. A trend of warming in the mountains of western North America is expected to decrease snowpack, hasten spring runoff, and reduce summer flows (IPCC 2007, p. 11). Stream-flow reductions or seasonal changes in flow due to climate change will probably cause a greater disruption in those watersheds with a high level of human development (Hurd *et al.* 1999, p. 1402). The three major river basins that support the Prebles have heightened vulnerability to the effects of climate change due to the degree of human development (particularly in Colorado), natural variability in stream flow, ratio of precipitation lost to evapotranspiration, and groundwater depletion (Hurd *et al.* 1999, p. 1404). Conflicts between human needs for water and maintenance of existing wetland and riparian habitats could be heightened. While fewer cold days and nights could result in increased vegetative yield in colder environments, increased summer heat may increase the frequency and intensity of wildfires, and areas affected by drought may increase (IPCC 2007, p. 13). Overall, it appears reasonable to assume that Prebles will be affected negatively by climate change, and that changes in stream flows and resultant effects on riparian habitats may be a key factor. Adverse impacts seem more likely in those drainages where human demand for water resources is greatest; however, we lack sufficient certainty to predict more specifically how climate change will affect Prebles' populations.

While many uncertainties remain regarding other natural or manmade factors, we believe the best available scientific and commercial data are insufficient to indicate that these factors are a threat to the long-term conservation status of the Prebles. To the extent that meaningful impacts are possible, small and fragmented mouse populations are likely to be more vulnerable.

Conclusion of the 5-Factor Analysis

As required by the Act, we considered the five potential threat factors to assess whether the Prebles is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of a species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then we list the species in its entirety. For instance, if the threats to a species are directly acting on only a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species.

Destruction and modification of habitat and the resulting curtailment of range is the most significant factor affecting the future conservation status of the subspecies. Within Wyoming, new distributional data and a better understanding of threats has altered our perception of the subspecies' status in this portion of its range. At the time of listing, the Prebles was not known to exist in the North Platte River basin and known from only two sites in Wyoming's portion of the South Platte River basin (63 FR 26517). Since listing, additional distributional data has verified that the subspecies is widespread in the North Platte River basin with demonstrated occupancy in 4 drainages (Glendo Reservoir, Lower Laramie, Horse Creek, and Upper Laramie) and at least 15 rivers or streams (North Platte River, Cottonwood Creek, Cottonwood Creek tributaries, North Laramie River, Sturgeon Creek, Wyman Creek, Rabbit Creek, Luman Creek, Chugwater Creek, Chugwater Creek tributaries, Sybille Creek, Friend Creek, Friend Park area, Bear Creek, Bear Creek tributaries, Horse Creek, and Horse Creek tributaries). Based on habitat availability, apparent historic occupancy (Jones 1981, p. 469), recent untested Zapus captures (some of which may be Prebles), and proximity to the confirmed Prebles in Douglas, Wyoming, we believe the subspecies also may occur along multiple rivers or streams in a fifth North Platte drainage (the Middle North Platte). Trapping efforts to date suggest that the subspecies may remain limited in number and distribution within the Wyoming portion of the South Platte River basin.

While abundance information is limited, the existence of large, connected areas of suitable habitat with confirmed Prebles occurrence records (USFWS 2003b, pp. iv, 29; Beauvais 2004; USFWS 2008) suggests that Wyoming supports one large population (with a June abundance of greater than 2,500 adults) and two medium-sized populations (with a June abundance of more than 500 adults). In the absence of significant threats, these large and medium populations are believed large enough to be self-sustaining. Furthermore, Wyoming's large and medium populations are distributed across three different drainages (including the Chugwater Creek portion of the Lower Laramie drainage, the Horse Creek portion of the Horse drainage, and the Cottonwood Creek portion of the Glendo Reservoir drainage), distributing risk from any one catastrophic or stochastic event.

An improved understanding of the subspecies' distribution, including the subspecies' continued occurrence in grazed portions of Wyoming, suggests that historical agricultural activities, such as grazing and haying, have had a minimal impact on the subspecies to date (as discussed in greater detail in Factor A above). In short, continuation of these long-standing activities appears supportive of existing Prebles' populations. We have no indication these agricultural practices are likely to change in the foreseeable future in ways that would affect the subspecies' long-term conservation status. A low projected human population growth rate is predicted for the four Wyoming counties occupied by the Prebles, suggesting that few development-related threats are likely in this portion of the subspecies' range into the foreseeable future.

Other factors considered included: overutilization, disease, predation, fire, flooding, drought, invasive weeds, weed control programs, pesticides, herbicides, non-point source pollution, secondary impacts associated with human development, scarcity, the potential for competition between the Prebles and the western jumping mouse, and the future effects of climate change. Although questions remain regarding some of these factors, we do not have sufficient information to indicate that any of these factors, individually or cumulatively, are a threat to the subspecies' long-term conservation status in this portion of its range. To the extent that meaningful impacts are possible, these factors are likely to be most significant to small and fragmented populations. In Wyoming, we expect these factors will continue to have only small, localized impacts on the subspecies.

Threats to the Colorado portion of range (discussed in more detail below), indicate that, in the absence of the Act's protections, most of the Colorado Prebles' populations will face a high risk of extirpation within the foreseeable future. While properties in public ownership provide some meaningful protections across portions of Colorado

(particularly in high-elevation and headwater areas), these areas are not adequate to provide for the subspecies' long-term well-being in Colorado in the absence of the Act's protections.

Based on a better understanding of distribution and threats, we find that the available data do not support the conclusion that the Prebles is likely to become endangered in the foreseeable future throughout ''all'' of its range. Overall, in the absence of the Act's protective measures, we believe the subspecies will likely remain secure and well distributed across Wyoming into the foreseeable future. Distributional data has verified that the subspecies is more widespread in the North Platte River basin of Wyoming than previously known, and we are not aware of any threats that are likely to have significant effects on the long-term conservation status of populations of Prebles in this portion of its range. We expect threats to the Wyoming portion of the subspecies' range to be minor with only small and localized effects. We believe North Platte populations are sufficiently large and widely distributed to withstand these impacts. We conclude that the lack of present or threatened impacts to the Prebles in these areas indicates that this subspecies is neither in danger of extinction, nor likely to become endangered within the foreseeable future, throughout all of its range. Thus, the Prebles does not merit continued listing as threatened throughout all of its range.

Having determined that the Prebles does not meet the definition of threatened or endangered in all of its range, we must next consider whether there are any significant portions of the subspecies' range that are in danger of extinction or are likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (U.S. Department of the Interior 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both significant and either threatened or endangered. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbances. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species overall. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons; for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This concept does not mean that any portion that provides redundancy is per se a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, we must examine each area based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the subspecies' adaptive capabilities are conserved. Specifically, we should evaluate a portion to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Based on the discussion in our 5-factor threats analysis above, we readily identified the Colorado portion of the current range of the Prebles as warranting further consideration to determine if it is a significant portion of the range that is threatened or endangered. Even with the new information confirming the extent of the range in Wyoming, the range in Colorado still constitutes a substantial portion of the current range, and the threats are largely concentrated in that portion.

We considered the question of how to define the portion of the current range that we would consider further. We concluded that it was appropriate to consider all of the current range in Colorado as a single portion of the range for the purpose of this analysis. We have determined that the Wyoming/Colorado State line is an appropriate delineation for separating the populations in the two States because the respective threats to the subspecies appear to be

significantly different in the two States. Furthermore, Prebles' populations in the Upper Lodgepole, Upper Laramie, Crow Creek, and Lone Tree Creek drainages are not known in Colorado, and Prebles' populations in the Cache La Poudre drainage are not known to occur in Wyoming. While our survey data is limited, this suggests use of the State line is unlikely to split any Prebles' populations into federally-protected and unprotected segments.

While we also considered splitting the subspecies into significant portions of the range based on river basins (i.e., only removing protections in the drainages of the North Platte River basin), it is unlikely the split between the North Platte and South Platte River basins are an appreciably more meaningful biological divide. The available information suggests that: Prebles populations are known from the headwater portions of both the Upper Lodgepole drainage within the South Platte River basin and the Horse Creek drainage within the North Platte River basin; suitable habitat from these drainages come within a few hundred meters of each other; and the habitat in this area, while not ideal for traversing, lacks an obvious physical barrier. This apparent proximity and lack of barriers suggest occasional crossing may occur. This contrasts with the areas on either side of the State line where apparently unoccupied and unsuitable habitat predominates. Furthermore, we believe using basins to divide the significant portion of range would be more difficult to administer. Thus, given that there does not appear to be any additional biological benefit to the subspecies and our assertion that the respective threats to the Prebles appear to be significantly different in the two States, we have determined that the State line represents the appropriate northern boundary for the Colorado significant portion of range.

Within Colorado, threats to the Prebles are comparable between the South Platte River basin and Arkansas River basin. Similarly, threats to the Prebles are comparable north and south of Denver. Because both of these possible partitions have a comparable status, further division of the subspecies' range between these two portions of its range in Colorado is, at present, unnecessary.

Another possibility we considered was whether smaller units might be appropriate. For example, we considered each individual drainage or each individual county. Given the best scientific and commercial information available, we concluded that such subdivisions would not result in units that would each meaningfully contribute to the representation, resiliency, or redundancy of the subspecies at a level such that its loss would result in a decrease in the ability to conserve the subspecies. In our view, only when drainages or counties are aggregated are they significant per the above definition. The most logical aggregation of drainages is basins, which are already considered above. The most logical aggregation of counties within Colorado is a north and south of Denver split, which also is already considered above. Therefore, further division of the subspecies' range within Colorado is either not appropriate or unnecessary.

To determine whether the Prebles is threatened in any significant portion of its range, we first consider how the concepts of resiliency, representation, and redundancy apply to the conservation of this particular subspecies. The Colorado portion of the range meaningfully affects resiliency in that it encompasses a high percentage of the entire range's large blocks of high quality habitat, and contributes to the species' long-term viability by allowing it to recover from disturbance and respond resiliently to environmental change. Similarly, presumed sizable populations within this portion of range are sufficiently robust to make a high contribution to the ability of the subspecies to recover from periodic disturbance. The Preliminary Draft Recovery Plan accounts for resiliency by calling for the long-term protection of a number of large and medium populations. The Recovery Team estimated that large and medium populations would require a network of 72 to 126 km (45 to 78 mi) and 14 to 26 km (9 to 16 mi), respectively, of connected streams (mainstem plus tributaries) whose hydrology supports riparian vegetation and provides Prebles' habitat (USFWS 2003b, p. 25). The Colorado portion of the range meaningfully affects resiliency in that it includes three of the four large populations and three of the five medium populations called for in the Preliminary Draft Recovery Plan (USFWS 2003b, p. 22). These recommendations may have slightly overestimated Colorado's contribution to resiliency as the Preliminary Draft Recovery Plan assumed no occupancy in the Upper Laramie drainage (which appears to be occupied and may support sizable populations) and the Middle North Platte-Casper (which may be occupied, although current occupancy has not been confirmed). Even if one assumes additional sizable populations in these Wyoming drainages, the Colorado portion of the subspecies' range offers a high level of contribution to the subspecies' resiliency.

The Colorado portion of the range meaningfully affects redundancy in that it appears to make: a high level of contribution to the total range of the subspecies; a high level of contribution to the total population of the subspecies; a medium to high level of contribution to the total suitable habitat; and a high level of contribution to the geographic distribution of the subspecies. Specifically, the Colorado portion of range includes all or substantial portions of 13 of the 19 drainages comprising the current range of the Prebles (9 of which have confirmed occupancy in Colorado). Furthermore, this portion of range includes 2 of the 3 river basins within the subspecies' range (all of the Arkansas River basin and the vast majority of the South Platte River basin) amounting to approximately half of the subspecies' potential suitable habitat. While Colorado totaled about 65 percent of the proposed critical habitat by river-mile and total acreage (67 FR 47154, July 17, 2002), this estimate may have overestimated Colorado's share of suitable habitat as recent data suggests a more widespread distribution across the North Platte River basin in Wyoming. Still, Colorado populations of Prebles are a major contributor to the total population of the subspecies and loss of the subspecies across this portion of the range would result in a substantial gap in the range of the subspecies. Collectively, this confirms that the Colorado portion of the subspecies' range offers a high level of contribution to the subspecies' redundancy.

Finally, the Colorado portion of the range meaningfully affects representation in that it makes a high level of contribution to the genetic diversity of the subspecies. The available data demonstrate that Colorado populations demonstrate genetic material substantially unique with significant differences among populations north and south of Denver. Specifically, 3 of the 4 known mtDNA control region haplotypes are limited to Colorado populations with 2 of the 4 known mtDNA control region haplotypes only occurring south of Denver (King *et al.* 2006b, p. 4358). Within the mtDNA cytochrome b region, 17 of 21 haplotypes are limited to Colorado populations, with 9 of the 21 haplotypes only occurring south of Denver (King *et al.* 2006b, p. 4359). Microsatellite DNA data also demonstrates significant divergence

within the subspecies north and south of Denver. Again, the above estimates may slightly overestimate Colorado's share of the subspecies' genetic diversity and divergence as King *et al.* (2006b, p. 4333) only analyzed 28 Wyoming specimens. Still, this confirms that the Colorado portion of the subspecies' range offers a high level of contribution to the subspecies' representation.

We conclude that the loss of the Prebles within Colorado would result in a decrease in the ability to conserve the subspecies. We have determined that, based on its importance to the conservation of the subspecies and because it contributes meaningfully to Prebles' representation, resiliency, or redundancy, the Colorado portion of the range constitutes a significant portion of the subspecies' range as described in the Act.

If we identify any portions as significant, we then determine whether in fact the species is threatened or endangered in this significant portion of its range. Within Colorado, riparian habitat has been severely modified or destroyed by human activities. With current and projected human population increases and commensurate increases in urban and rural development, road construction, and water use, the ongoing loss and modification of riparian habitat will continue in much of the Prebles' Colorado range. Even with the protections of the Act, development in Colorado has continued to affect Prebles' habitat, both directly and indirectly. The best currently available information suggests that at least half of the Prebles' current range in Colorado is on private land with potential for future development. In the absence of the Act's protections, most of this habitat could be lost or degraded within the foreseeable future. While appreciable lands in Colorado supporting the Prebles are controlled by Federal or State agencies, or have been set aside as open space by local governments, many of these areas also are likely to experience some habitat degradation in the absence of the Act's protections. Some of these areas will experience negative indirect effects from upstream development. Where conservation properties are not extensive, the Prebles' populations are likely to become small, fragmented, and unsustainable. Additional recovery efforts are required to establish and protect extensive contiguous conservation properties in Colorado.

Besides ''present or threatened destruction, modification, or curtailment of its habitat or range,'' a variety of other factors were considered including: overutilization, disease, predation, fire, flooding, drought, invasive weeds, weed control programs, pesticides, herbicides, non-point source pollution, secondary impacts associated with human development, scarcity, the potential for competition between the Prebles and the western jumping mouse, and the future effects of climate change. In general, we do not have conclusive information to indicate that these factors are, individually, a threat to the subspecies' long-term conservation status. To the extent that meaningful impacts are possible, these factors are likely to be most significant to smaller and more fragmented populations. Thus, we expect these issues could be meaningful as cumulative impacts in the Colorado portion of subspecies' range where development pressures are likely to substantially reduce and fragment populations.

Our improved understanding of the subspecies' range in Colorado does not change our conclusion as to the Prebles' status in this portion of the subspecies' range. As noted above, new data have expanded the confirmed distribution of the Prebles to include additional sites in Boulder, Douglas, El Paso, Jefferson, and Larimer counties. Most of the newly discovered sites are subject to the same level of threats discussed above. Thus, recently documented sites in Colorado do not meaningfully alter the future conservation status of the subspecies in this portion of its range.

Determining whether a significant portion of range is threatened or endangered requires a consideration of the magnitude and immediacy of threats. Growth patterns suggest continuous development radiating out from urban/suburban centers across nearly all non-protected portions of the subspecies' range within the foreseeable future. Prebles' populations closest to these urban/suburban centers will be subject to high-magnitude, imminent threats that would, in the absence of the Act's protections, extirpate populations in the near future. At present, none of Colorado's presumed large or medium populations currently face such high magnitude, imminent threats. This suggests this significant portion of range is not in danger of extinction (i.e., not currently endangered).

Prebles' populations further from these urban/suburban centers face gradually escalating threats over the foreseeable future as development's footprint expands into important suitable and occupied Prebles habitat. In the absence of the Act's protections, within the foreseeable future, most Prebles' populations will be faced with a high risk of extirpation. The available information suggests that the Cache La Poudre system may be the only drainage approaching sufficient quantity and quality of protected habitat to provide for the subspecies' long-term conservation needs. Thus, based on the best scientific and commercial information available, we find that, in the absence of the Act's protections, the Prebles is likely to become endangered within the foreseeable future throughout the Colorado portion of its range (i.e., currently threatened). That said, we believe, with continued protection and additional strategic recovery efforts, recovery will eventually be achieved in the Colorado portion of the subspecies' range.

In conclusion, the best scientific and commercial data suggest that the Prebles is not likely to become endangered in the foreseeable future throughout all of its range. We base this conclusion primarily on a lack of present or threatened impacts to the Prebles or its habitat in Wyoming. However, based on the magnitude of development threats and other pressures to the populations throughout the Colorado portion of the range, and the lack of effective regulatory mechanisms in the absence of the Act's protective measures, we conclude that the significant portion of the subspecies' range within Colorado continues to meet the definition of threatened under the Act, and should remain listed. Therefore, we are amending the listing for the Prebles to specify that the subspecies is threatened in only the Colorado portion of its range.

Determining the Boundary of the Significant Portion of the Range

In determining the boundaries of the significant portion of its range where the subspecies is threatened, we may consider factors such as whether there is a biological basis (e.g., population groupings, genetic differences, or differences in ecological setting) or differences in threats due to regulatory basis (e.g., international or State boundaries where the threats might be different on either side of the boundary) for dividing the range into finer portions and whether extinction risk is spread evenly across the range of the subspecies. Significant portion of range boundaries may consist of geographical features, constructed features (e.g., roads), or administrative boundaries at any scale when biological factors are the basis for defining the significant portion of range.

If we determine a subspecies is threatened in a specified significant portion of range, the boundaries used to

legally define the extent of a significant portion of range are identified. We used here the following principles to determine the boundaries:

(1) Boundaries enclose and define the area where threats are sufficient to result in a determination that a portion of a subspecies' range is significant, and is endangered or threatened.

(2) Boundaries clearly define the portion of the range that is specified as threatened or endangered, and may consist of geographical or administrative features or a combination of both.

(3) Boundaries do not circumscribe the current distribution of the subspecies so tightly that opportunities for recovery are foreclosed.

The scale of the boundaries is determined case-by-case to be appropriate to the size of the portion of the subspecies' range, and the availability of unambiguous geographic or administrative boundaries. As previously stated the range of the subspecies is the general area in which the subspecies can be found, including migratory corridors, seasonal habitats, and habitats used on a regular, though not necessarily seasonal, basis.

The scale at which one defines the range of a particular species is fact and context dependant. In other words, whether one defines the range at a relatively coarse or fine scale depends on the life history of the species at issue, the data available, and the purpose for which one is considering range.

The Prebles is secretive, almost never observed without trapping, and relatively rare even where present. Confirmed occupancy is based almost entirely on intensive trapping efforts, requiring hundreds of trap nights. Prebles are able to move miles along stream corridors over their lifetime (Schorr 2003), typically utilizing riparian (river) corridors. Although the subspecies commonly uses riparian vegetation immediately adjacent to a stream, other features that provide habitat for the subspecies include seasonal streams (Bakeman 1997), low moist areas and dry gulches (Shenk 2004), agricultural ditches (Meaney *et al.* 2003), and wet meadows and seeps near streams (Ryon 1996). Given records of confirmed presence and patterns of existing riparian habitat, we can draw inferences as to what we would consider occupied drainages or portions of these drainages.

To date, aside from some earlier work from the CDOW and the Colorado Natural Heritage Program, the objective of most trapping surveys has not been to document the limits of occupied habitat in Colorado. While much of the Prebles' distribution is on private lands, most trapping surveys on private lands have been conducted by consultants, based on anticipated development of the property by landowners. This has resulted in far more trapping on private lands within the expanding development corridor than on private lands in rural lands where no development is planned. Therefore, we have less assurance of current presence or potential absence of the Prebles in areas further removed from the Front Range development corridor.

Trapping can only confirm presence, not prove absence. At some sites, researchers have seen dramatic changes in estimated populations from season-to-season and year-to-year (Meaney *et al.* 2002, p. 122; Bakeman 2006, p. 4). A single trapping effort in any presumed occupied site could be unsuccessful if it corresponded to times when few or no mice are likely to be present. Prebles may move in and out of areas (individuals have been shown to move miles along stream corridors over their lifetime). In areas within the range of the subspecies, multiple trap efforts in a drainage or portions of a drainage are needed to provide strong evidence that Prebles are likely absent. Again, in many areas outside the Front Range development corridor trapping has been more limited; in some areas where presence has not been confirmed by trapping we do not believe trapping data is determinative of the Prebles' absence at particular sites, much less whole drainages or portions thereof.

As with other determinations under the Act, we do not define the current range on the basis of conclusive evidence; rather, we use the best available data. The purpose of defining range (and hence the significant portion of the range) is to set the boundaries of the protections of the Act. Therefore, defining the boundaries too narrowly may lead to the failure to protect some Prebles. On the other hand, drawing the boundaries relatively expansively will not lead to unnecessary expense on the part of the Service or the public because, as described in detail below, existing guidance on block clearance zones will remain in place. Therefore, in the context of describing the current range for the purpose of defining the scope of the listing for the Prebles, we have determined that it is appropriate to use a relatively coarse scale to capture all of the areas where the best available data, presented below, suggests the Prebles is likely to occur. As noted above, boundaries are not to circumscribe the current distribution of the subspecies so tightly that opportunities for recovery are foreclosed.

The Preliminary Draft Recovery Plan suggests maintaining at least one recovery population within each drainage (to provide resiliency, representation, and redundancy) within the existing range of the subspecies. The Preliminary Draft Recovery Plan, which represents the best available science, identifies thirteen drainages in Colorado that comprise the area significant to the conservation of the subspecies including Big Sandy, Big Thompson, Bijou, Cache La Poudre, Chico, Clear Creek, Crow Creek, Fountain Creek, Kiowa, Lone Tree-Owl, Middle South Platte-Cherry Creek, Saint Vrain, and Upper South Platte (as illustrated in Figure 3). Based on the assessments of habitat by the Recovery Team, the Preliminary Draft Recovery Plan includes these drainages as representing the current range of the subspecies on the presumption that suitable habitat and at least a small population occurs in each. An intent of the Preliminary Draft Recovery Plan is to preserve populations throughout the existing range to maximize the preservation of the remaining genetic diversity that may be present. While we recognize that information is currently lacking to confirm the presence of existing Prebles' populations in some of these drainages, we believe that, based on the availability of suitable habitat (Pague and Granau 2000, pp. 2–3, 5–3, 7–3), portions of these drainages may be occupied.

For convenience in distinguishing this boundary on-the-ground we employ latitude and longitude coordinates. We have concluded that the latitude and longitude boundaries below provide an appropriate delineation for the significant portion of the Prebles' range in Colorado. These boundaries are inclusive of all areas likely to support Prebles' populations in Colorado. As a result, all records confirming Prebles' occurrence in Colorado are captured within these boundaries. We think that it is highly unlikely that there will be discovery of currently existing Prebles' populations outside these boundaries in Colorado. Therefore, we conclude that removing protections outside these boundaries in Colorado would be of little biological consequence. Thus, based on best available data, we have identified the portion of Colorado west of 103 degrees 40 minutes West, north of 38 degrees 30 minutes North, and east of 105 degrees 50 minutes West as the significant portion of the range of the subspecies (illustrated in Figure 3).

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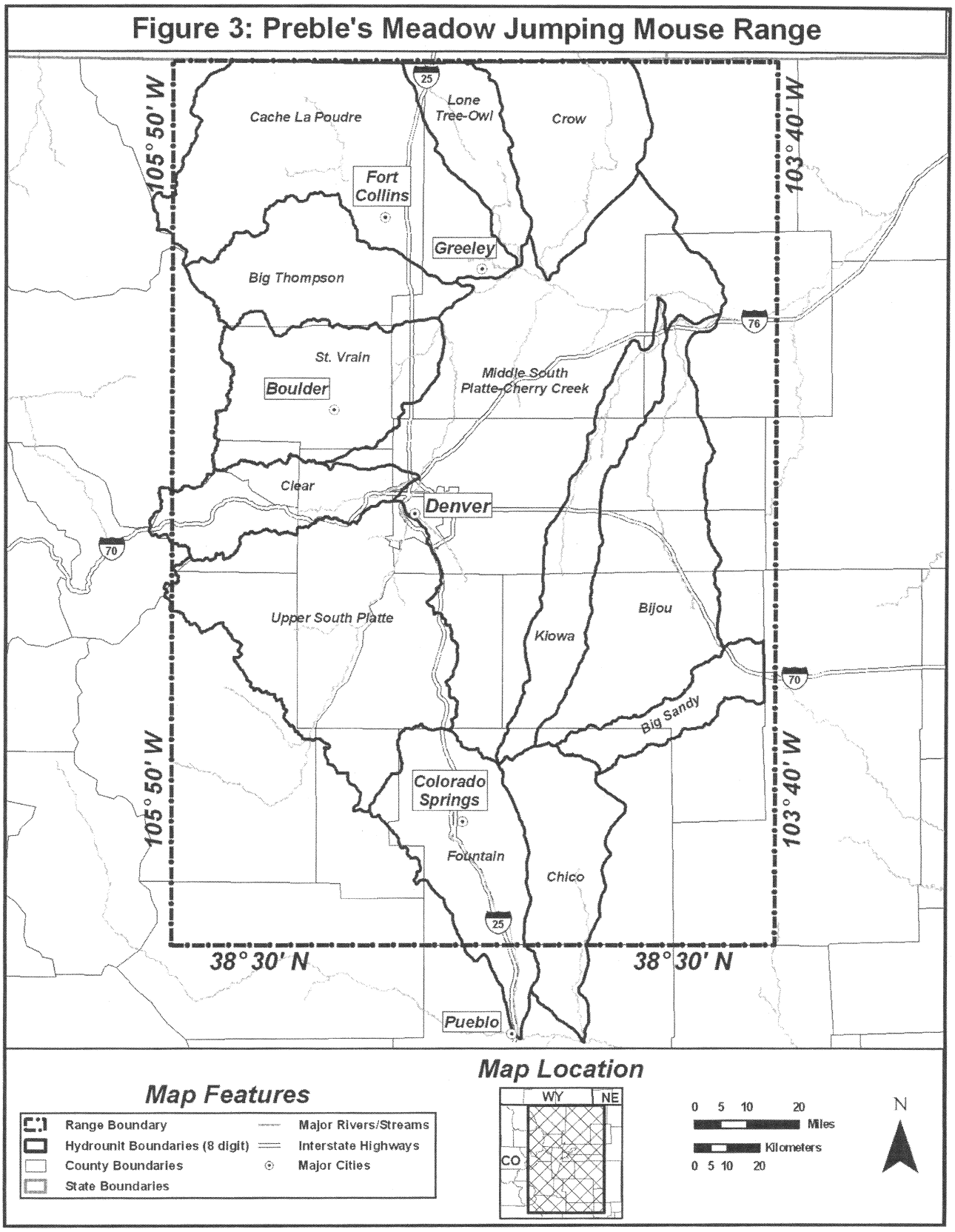

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Eastern Boundary (103 Degrees, 40 Minutes West)

This boundary is inclusive of all areas within the current Prebles' survey guidelines (east to a north-south line through Fort Morgan, Morgan County) (USFWS 2004), and also includes the eastern (downstream) extent of the Big Sandy drainage (designated in the Preliminary Draft Recovery Plan).

Southern Boundary (38 Degrees, 30 Minutes North)

This boundary is inclusive of all areas within the current survey guidelines (south including all of El Paso County) and also includes the majority of the Fountain Creek and Chico Creek drainages (designated in the Preliminary Draft Recovery Plan). Habitat in the southern portion of El Paso County is limited. The small portions of the Fountain and Chico drainages that fall outside the boundary are outside of the current survey guidelines and believed not to support the Prebles.

Western Boundary (105 Degrees 50 Minutes West)

This boundary is inclusive of elevations up to and beyond 2,316 m (7,600 ft) in the Cache La Poudre River, Clear Creek and Upper South Platte drainages and all portions of the Big Thompson and St. Vrain drainages. As such, it includes all high-elevation areas where we believe that the Prebles is likely to occur.

Administrative Processes

As part of our management of the subspecies on-the-ground within this significant portion of range area, the Service will continue to use block clearance zones to eliminate unnecessary processes (e.g., compliance with section 7 of the Act) while protecting the listed entity. In designating a block clearance zone, the Service eliminates the need for individuals or agencies to coordinate with the Service prior to conducting activities at locations within the Prebles' range when the area affected by the action is wholly contained within the designated block clearance zone. The establishment of these block clearance zones is based on the likely absence of the subspecies within the area, and little likelihood that any of the area would be of importance to the recovery of the subspecies. Block clearance zones have been approved for the Denver metropolitan area (including most of Denver County and portions of Adams, Arapahoe, Boulder, Broomfield, Douglas, and Jefferson counties) and along Monument, Cottonwood, and Sand creeks in the Colorado Springs area. While this substantially reduces the regulatory burden, should an individual Prebles be found in a block-cleared area, it would be fully protected under the Act. In addition, outside of the block clearance zone, but within the significant portion of range, we would continue to identify, on a project-by-project basis, whether surveys for the Prebles are needed based on whether suitable habitat is present within the action area of the project and results of recent trapping surveys nearby.

We considered excluding block clearance zones from the listing as outside the current range of the subspecies, but we have concluded that approach would be impractical and ill-advised. For example, Prebles' block clearance zones expand on a near annual basis. If a revision to the Code of Federal Regulations was required to achieve this revision, the process would require annual proposed and final rules. This approach would be both unwieldy from a workload perspective and result in an unnecessary delay in reducing our regulatory oversight as this process typically takes a year to complete. Furthermore, the listing backlog (i.e., a shortfall of funds that preclude the listing of species that are warranted-but-precluded from threatened or endangered status and the designation of critical habitat) would preclude relisting areas even if future information suggests the area was removed prematurely (unless emergency listing was deemed appropriate). This double standard as well as the difficult and time-consuming nature of the process suggests this approach is not realistic, not desirable, and inappropriate. As we have in the past, the Service will consider modification of the current block-clearance zones, or the addition of new zones, when the available data demonstrate such an action is appropriate.

Effects of the Rule

This action amends the listing for the Prebles by specifying that the subspecies is threatened in the Colorado portion of its range. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this subspecies in Wyoming. Federal agencies are no longer required to consult with us to ensure that any action they authorize, fund, or carry out in Wyoming would not likely jeopardize the continued existence of the subspecies or result in destruction of or adversely modify critical habitat in Wyoming. However, to the extent an activity in Wyoming would adversely affect the subspecies or critical habitat within its range listed in Colorado, consultation under section 7 would still be required. The take exemptions of the 4(d) special rule are no longer necessary and, therefore, no longer apply in Wyoming (May 22, 2001, 66 FR 28125; October 1, 2002, 67 FR 61531; May 20, 2004, 69 FR 29101). This action eliminates critical habitat (June 23, 2003, 68 FR 37275) in Wyoming.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

A complete list of all references cited herein is available upon request from the Colorado Field Office (see **ADDRESSES**).

Author

The primary authors of this document are staff located at the Colorado Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by revising the entry for ''Mouse, Preble's meadow jumping'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, Preble's meadow jumping.	*Zapus hudsonius preblei.*	U.S.A. (CO, WY) ...	U.S.A., north-central CO (that portion of Colorado west of 103 degrees 40 minutes West, north of 38 degrees 30 minutes North, and east of 105 degrees 50 minutes West).	T	636	17.95(a)	17.40(l)
*	*	*	*	*	*		*

■ 3. Amend § 17.40(l) as follows:

■ a. By revising paragraph (l)(2)(vi)(E) to read as set forth below; and

■ b. By revising paragraph (l)(4) to read as set forth below.

§ 17.40 Special rules—mammals.

* * * * *

(l) * * *

(2) * * *

(vi) * * *

(E) Any future revisions to the authorities listed in paragraphs (l)(2)(vi)(A) through (D) of this section that apply to the herbicides proposed for use within the species' range as specified in the fourth column of the table in § 17.11(h).

* * * * *

(4) *Where does this rule apply*? The take exemptions provided by this rule are applicable within the significant portion of the range of the Preble's meadow jumping mouse as specified in the fourth column of the table in § 17.11(h).

* * * * *

§ 17.95 [Amended]

■ 4. In § 17.95(a), amend the entry for ''Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)'' by removing paragraphs (4) through (7), and by redesignating paragraphs (8) through (13) as (4) through (9), respectively.

Dated: June 26, 2008.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–15141 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
July 10, 2008

Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Continuum of Care Homeless Assistance Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5220–N–01]

Notice of Funding Availability (NOFA) for the Continuum of Care Homeless Assistance Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This notice of funding availability (NOFA) establishes the funding criteria for the Continuum of Care (CoC) Homeless Assistance Program. HUD is making available approximately $1.42 billion in Fiscal Year 2008 for the program. The purpose of the CoC Homeless Assistance Program is to reduce the incidence of homelessness in CoC communities by assisting homeless individuals and families to move to self sufficiency and permanent housing.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Community Planning and Development.

B. *Funding Opportunity Title:* Notice of Funding Availability for Continuum of Care (CoC) Homeless Assistance Programs.

C. *Announcement Type:* Initial Announcement.

D. *Funding Opportunity Number:* The **Federal Register** number is FR–5220–N–01. The OMB Approval number is 2506–0112.

E. *Catalog of Federal Domestic Assistance (CFDA) Numbers:*

1. 14.235, Supportive Housing Program (SHP).
2. 14.238, Shelter Plus Care (S+C) and
3. 14.249, Section 8 Moderate Rehabilitation Single Room Occupancy (SRO).

F. *Dates:* As more full described in the body of this NOFA, CoCs and project applicants will be required to apply for the 2008 CoC competition electronically through HUD's *e-snaps* system. Because the application portion of the *e-snaps* system has not yet been launched, HUD is unable at this time to establish an application due date for the 2008 CoC competition. HUD will announce the application due date through a separate **Federal Register** notice once the *e-snaps* system is able to process funding applications. The application due date will be at least 60 days from the publication date of the **Federal Register** notice. As of today's publication, HUD anticipates an approximate application due date of September 15, 2008. Please see section IV of this NOFA for application submission and timely receipt requirements.

G. *Additional Overview Content Information:*

1. *Available Funds:* Approximately $1.42 billion is available for funding. Carried over or recaptured funds from previous fiscal years, if available, may be added to this amount.

2. *Eligible Applicants:* The program summary chart in section III.A.1 of this NOFA identifies the eligible applicants for each of the three programs under the CoC Homeless Assistance Programs.

3. *Match:* Matching funds are required from local, state, federal (as eligible) or private resources. Refer to the General Section of the SuperNOFA (73 FR 14883; March 29, 2008) for more information on this requirement.

4. *Additional Notices:*

a. To encourage transparency at all levels of the CoC planning process, once a CoC has submitted the CoC application to HUD, the CoC is required to make Exhibit 1 available to its community for inspection (i.e., by request or post on local CoC Web site) and notify community members and key stakeholders that it is available upon request.

b. Please note that all sections of the General Section of the SuperNOFA are critical and must be carefully reviewed to ensure an application can be considered for funding, with the exception of reference to the Grants.gov application process. The Continuum of Care application will be using an electronic system outside of Grants.gov. Applicants for project funding will still be required to register with Dun and Bradstreet to obtain a DUNS number, if they have not already done so, and complete or renew their registration in the Central Contractor Registration (CCR). For more information see 73 FR 23483, April 30, 2008. Applicants are still encouraged to sign up for the Grants.gov notification service as the availability of the 2008 Continuum of Care application will be released via this Web site.

Full Text Announcement

I. Funding Opportunity Description

A. Program Description

1. *Overview.* The purpose of CoC Homeless Assistance Programs is to reduce the incidence of homelessness in CoC communities by assisting homeless individuals and families to move to self-sufficiency and permanent housing. CoCs that sustain current successful interventions and advance the goal of ending chronic homelessness will be scored higher.

2. The authorizing legislation and implementing regulations for all programs covered by this NOFA are outlined on the chart in section III.A.1 of this NOFA.

3. *Changes for 2008.* This list includes all major changes to the CoC NOFA:

a. CoCs and project applicants will be required to apply for the 2008 CoC competition electronically through HUD's *e-snaps* system. *e-snaps* is not a part of *http://www.grants.gov*. To access training on *e-snaps*, see *http://esnaps.hudhre.info/training/*. If CoCs or applicants have additional questions they may contact the *e-snaps* Help Desk at *esnaps@hud.hre.info*, or by calling 1–877–6-esnaps (1–877–637–6277). More information is provided in section I.A.5.b of this NOFA.

b. CoCs were required to register their CoC in *e-snaps*, the electronic application system, prior to the beginning of the competition. For more information on the CoC registration process see 73 FR 23483; April 30, 2008.

c. CoCs may create multiple Samaritan Housing Initiative projects as long as the total amount of funding requested for all bonus projects does not exceed 15 percent of the CoC's Preliminary Pro Rata Need. For more information on the Samaritan Bonus Initiative see section I.A.4.y below.

d. HUD will continue to score CoC Homeless Assistance applications on a 100 point scale; however, the 40 need points previously allocated to projects will be redistributed into the existing point structure (see section V.A.1 of this NOFA for more information). Need will continue to be calculated through the higher of the formula that determines Preliminary Pro Rata Need or the Hold Harmless Need for the CoC.

e. As directed by Congress in the FY2008 HUD appropriation (Consolidated Appropriations Act, 2008, H.R. 2764), HUD will implement a Rapid Re-Housing for Families Demonstration Program through the 2008 CoC NOFA. This demonstration program will serve homeless households with dependent children. For more information see section I.A.4.w of this NOFA.

f. Safe Havens (SH) will no longer be given Transitional Housing (TH) or Permanent Housing (PH) classifications and grantees seeking renewal will have an opportunity through the 2008 CoC NOFA to change the classification of their project without a grant amendment. Under the newly defined Safe Haven SHP program type, any chronically homeless person entering a Safe Haven will maintain his/her status

as chronically homeless, and will therefore be eligible for entrance into Samaritan Housing Initiative projects. For more information on the characteristics of a Safe Haven see section I.A.x of this NOFA.

g. HUD is aware there has been some confusion over Shelter Plus Care (S+C) and new SRO grant amounts and is reminding grantees and applicants that S+C and new SRO grants may not exceed 100 percent of the Fair Market Rent (FMR) for the Metropolitan Statistical Area (MSA) and unit size.

h. CoCs that are in Hold Harmless Need status may seek to use the reallocation process to create new dedicated Homeless Management Information System (HMIS) projects. For more information on Hold Harmless Need status and the process for reallocating SHP renewal project funds to new permanent housing and/or HMIS dedicated projects, see section I.A.4.i of this NOFA.

i. HUD will allow only one applicant for HMIS-dedicated grants within a CoC.

j. HMIS funds contained in the Training and Technical Assistance line item of the HMIS budget may be used for travel, hotel, and per diem costs associated with the provision of technical assistance and training sessions by local HMIS staff; attendance at training sessions provided by local HMIS staff and/or outside trainers; attendance at HUD-sponsored HMIS training sessions or symposiums; attendance at HMIS vendor-sponsored user meetings; and attendance at other HMIS-related events as qualified and pre-approved by HUD Headquarters. Applicants may be asked to identify the number and type of HMIS training sessions for which they are requesting SHP funds prior to grant agreement. The approved budget will be limited to the reasonableness of travel expenses as listed in 24 CFR Parts 84 and 85.

k. HUD may, after selection and subject to funding availability and as supported by a lease or leases evidencing the rent increase, provide SHP renewal projects up to a 4% increase in the leasing line item not to exceed local FMR amounts.

l. HUD will no longer require that applicants/grantees funded for Tenant-based Rental Assistance, Sponsor-based Rental Assistance, and Project-based Rental Assistance without rehabilitation begin rental assistance within twelve (12) months of the date of HUD's grant award letter. These applicants/grantees and all other applicants/grantees must continue to meet statutory deadlines regarding the obligation of grant funds as stated in the HUD appropriations Act.

4. *Definitions and Concepts*

a. *Annual Renewal Amount.* The maximum amount that a SHP grant can receive on an annual basis when renewed. It includes funds for only those eligible activities (operating, supportive services, leasing, HMIS and administration) that were funded in the original grant (or the original grant as amended), less the unrenewable activities (acquisition, new construction, rehabilitation, and any administration costs related to these activities). It is used to calculate a CoC's Hold Harmless Need amount.

To calculate the Annual Renewal Amount (ARA) for SHP grants, add up the amount of the renewable budget line items (i.e., operating, supportive services, leasing, HMIS, and administration) for all the years of the grant being renewed, and divide by the number of years in the grant term. Any funding for acquisition, rehabilitation, new construction—and any administration costs related to these activities—is not renewable. If the grant included these activities, administrative costs may only be calculated on 5 percent of the total of the eligible leasing, operating, HMIS, and supportive services costs contained in the initial grant. For example, if the initial three-year grant was for $472,500 ($150,000 for new construction, $150,000 for operating costs, $150,000 for supportive services, and $22,500 for administration), the new construction costs, and any administration costs associated with it, would not be eligible for renewal. Thus, the total renewable amount would be $315,000 ($150,000 for operating costs, $150,000 for supportive services, and $15,000 for administration) and the ARA is $105,000 ($315,000 divided by the three-year grant term).

If the initial three-year grant was $315,000 and did not include acquisition, rehabilitation or new construction costs ($150,000 for operating costs, $150,000 for supportive services, and $15,000 for administration), the ARA would be $105,000 ($315,000 divided by the three-year grant term).

b. *Applicant.* An entity that applies to HUD for funds. See the CoC Homeless Assistance Programs Chart in section III.A.1 of this NOFA for a list of eligible entities. An applicant must submit a SF–424 (Application for Federal Assistance Form). If selected for funding, the applicant becomes the grantee and is responsible for the overall management of the grant, including drawing grant funds, distributing funds to project sponsors, overseeing project sponsors, reporting to HUD, providing performance data to the CoC for community-level analysis, and collecting information to provide the CoC with counts of the homeless through HMIS. Applicants can submit applications for projects on behalf of project sponsors, who will actually carry out the proposed project activities. Applicants can also carry out their own projects. In these cases, the applicant is responsible for both administering and managing the grant (as the grantee), and carrying out the project activities (as the project sponsor).

c. *Applicant Certification.* The form (HUD–2991), required by law, in which an applicant certifies that it will adhere to certain statutory requirements, such as the Civil Rights Act of 1964.

d. *Central Intake.* An assessment hotline, a single point of entry, a central intake facility or a centralized group of people that is standardized across the CoC and has the responsibility of assessing homeless persons as a method for screening homeless individuals and families into appropriate housing placements and service needs.

e. *Chronically Homeless Person.* An unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more OR has had at least four (4) episodes of homelessness in the past three (3) years. A disabling condition is defined as: (1) A disability as defined in section 223 of the Social Security Act; (2) a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes an individual's ability to live independently, and of such a nature that the disability could be improved by more suitable conditions; (3) a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act; (4) the disease of acquired immunodeficiency syndrome or any conditions arising from the etiological agency for acquired immunodeficiency syndrome; or (5) a diagnosable substance abuse disorder. The term ''homeless'' in this case means a person sleeping in a place not meant for human habitation (e.g., living on the streets), in an emergency homeless shelter, or in a Safe Haven as defined by HUD.

f. *Consolidated Plan.* A long-term housing and community development plan developed by state and local governments and approved by HUD (24 CFR part 91). The Consolidated Plan contains information on homeless populations and should be coordinated with the CoC plan. It can be a source of information for the Unmet Needs sections of the Housing Inventory Chart.

g. *Consolidated Plan Certification.* The form, required by law, in which a state or local official certifies that the proposed activities or projects are consistent with the jurisdiction's Consolidated Plan and, if the applicant is a state or unit of local government, that the jurisdiction is following its Consolidated Plan.

h. *Continuum of Care.* A collaborative funding and planning approach that helps communities plan for and provide, as necessary, a full range of emergency, transitional, and permanent housing and other service resources to address the various needs of homeless persons. HUD also refers to the group of service providers involved in the decision making processes as the ''Continuum of Care.''

i. *Continuum of Care Hold Harmless Need Reallocation.* A CoC whose Final Pro Rata Need is based on its Hold Harmless Need amount (see section I.A.4.l.(2) of this NOFA) may reallocate funds in whole or part from SHP renewal projects to create one or more new permanent housing projects and/or a new dedicated HMIS project. The Hold Harmless Need Reallocation process allows eligible CoCs to fund new permanent housing or dedicated HMIS projects by transferring all or part of funds from existing SHP grants eligible for renewal (that are expiring between January 1, 2009 and December 31, 2009). These new permanent housing projects may be for SHP (one, two or three years), S+C (five or ten years) and section 8 Moderate Rehabilitation (ten years). New HMIS projects may be for one, two or three years. New permanent housing projects and dedicated HMIS SHP projects being created through this process will be funded under the conditional renewal standards described in section 5.B.2.a.(iii). Like all projects submitted under the 2008 CoC NOFA, these projects must meet eligibility and quality standards established by HUD in order to be conditionally selected for funding. These reallocated funds may not be used to supplement a new Samaritan Housing Initiative project or a Rapid Re-Housing for Families Demonstration Project. This Hold Harmless Need Reallocation Process is not available to a CoC in Preliminary Pro Rata Need Status.

j. *Continuum of Care Lead Agency.* Agency or organization designated by the CoC primary decision making body to be the entity that submits the CoC application.

k. *Continuum of Care Lead Agency Contact.* Person(s) with the authority to submit the Continuum of Care Homeless Assistance Grants Competition application on behalf of the CoC, usually the Executive Director or CEO of the CoC Lead Agency.

l. Continuum of Care Need Amounts

(1) *Continuum of Care Preliminary Pro Rata Need (PPRN).* Amount of funds a CoC could receive based upon the geography that HUD approves as belonging to that CoC. To determine the homeless assistance need of a particular jurisdiction, HUD will use nationally available data, including the following factors as used in the Emergency Shelter Grants (ESG) program: data on poverty, housing overcrowding, population, age of housing, and growth lag. Applying those factors to a particular jurisdiction provides an estimate of the relative need index for that jurisdiction compared to other jurisdictions applying for assistance under the 2008 CoC NOFA. Each year, HUD publishes the PPRN for each jurisdiction. A CoC's PPRN is determined by adding the published PPRN of each jurisdiction within the HUD-approved CoC.

(2) *Continuum of Care Hold Harmless Need (HHN).* The amount of funds a CoC is eligible to receive where the ARA of all SHP grants expiring in that CoC during the period beginning January 1, 2009 and ending December 31, 2009 exceeds the PPRN for that CoC. The HHN is the amount needed to fund the expiring renewal grants for one year. To provide communities with maximum flexibility in addressing current needs, CoCs have the discretion to not fund or to reduce one or more SHP renewal project applications through the HHN Reallocation process and still receive the benefit of the hold harmless need amount if the CoC proposes to use that amount of reduced renewal funds for new permanent supportive housing or dedicated HMIS SHP projects.

(3) *Continuum of Care Final Pro Rata Need (FPRN).* The higher amount of: (1) PPRN and (2) HHN.

m. *Continuum of Care Primary Decision Making Group.* This group manages the overall planning effort for the CoC, including, but not limited to, the following types of activities: setting agendas for full Continuum of Care meetings, project monitoring, determining project priorities, and providing final approval for the CoC application submission. This body is also responsible for the implementation of the CoC's HMIS, either through direct oversight or through the designation of an HMIS implementing agency. This group may be the CoC Lead Agency or may authorize another entity to be the CoC Lead Agency under its direction.

n. *Continuum of Care Registration.* A step in the electronic application process during which time a CoC claims geography and appoints a CoC Lead Agency that will be responsible for the submission of the electronic application to HUD. See section I.A.5.b of this NOFA for a detailed explanation.

o. *Current Inventory.* A complete listing of the community's HUD- and non-HUD-funded beds and supportive services.

p. *Homeless Management Information Systems (HMIS).* An HMIS is a computerized data collection application designed to capture client-level information over time on the characteristics of service needs of men, women, and children experiencing homelessness, while also protecting client confidentiality. It is designed to aggregate client-level data to generate an unduplicated count of clients served within a community's system of homeless services. An HMIS may also cover a statewide or regional area, and include several CoCs. HMIS can provide data on client characteristics and service utilization.

q. *Homeless Person.* As defined by the McKinney Act (42 U.S.C 11302), a homeless person is a person sleeping in a place not meant for human habitation or in an emergency shelter; and a person in transitional housing for homeless persons who originally came from the street or an emergency shelter. The programs covered by this NOFA are not for populations who are at risk of becoming homeless.

r. *Housing Emphasis.* The relationship between funds requested for housing activities (i.e., transitional and permanent) and funds requested for supportive service activities. Housing emphasis will be calculated on eligible new and renewal projects within FPRN, eligible Samaritan Housing Initiative projects, eligible Rapid Re-Housing for Families Demonstration Program projects and eligible S+C renewal projects. HUD will count as housing activity all approvable requests for funds for rental assistance and approvable requests for acquisition, rehabilitation, construction, leasing and operations when used in connection with housing. HMIS costs and administrative costs will be excluded from this calculation.

s. *Match.* Grantees and project sponsors must match SHP funds provided for acquisition, rehabilitation, and new construction with an equal amount of cash from other sources. Since SHP by statute can pay no more than 75 percent of the total operating budget for supportive housing, agencies must provide at least a 25 percent cash match of the total annual operating costs. In addition, for all SHP funding

for supportive services and HMIS, applicants must provide a 20 percent cash match. This means that of the total supportive services budget line item, no more than 80 percent may be from SHP grant funds. For more information see section III.B of the General Section of the SuperNOFA.

Grantees and project sponsors must match rental assistance provided through the Shelter Plus Care Program in the aggregate with supportive services. Shelter Plus Care requires a dollar for dollar match; the recipient's match source can be cash or in kind.

Documentation of the match requirement must be maintained in the grantee's financial records on a grant-specific basis.

t. *Private Nonprofit Status.* Private nonprofit status is documented by submitting either:

(1) A copy of the Internal Revenue Service (IRS) ruling providing tax-exempt status under section 501(c)(3) of the IRS Code; or (2) documentation showing that the applicant is a certified United Way agency; or (3) a certification from a licensed CPA that no part of the net earnings of the organization inures to the benefit of any member, founder, contributor, or individual; that the organization has a voluntary board; that the organization practices nondiscrimination in the provision of assistance; and that the organization has a functioning accounting system that provides for each of the following (mention each in the certification):

(a) Accurate, current and complete disclosure of the financial results of each federally sponsored project.

(b) Records that identify adequately the source and application of funds for federally sponsored activities.

(c) Effective control over and accountability for all funds, property and other assets.

(d) Comparison of outlays with budget amounts.

(e) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the use of the funds for program purposes.

(f) Written procedures for determining the reasonableness, allocability and allowability of costs.

(g) Accounting records, including cost accounting records, which are supported by source documentation.

u. *Project Sponsor.* An entity that is responsible for carrying out the proposed project activities. A project sponsor does not submit an SF–424 (Application for Federal Assistance), unless it is also the applicant. To be eligible to be a project sponsor, the organization must meet the same program eligibility standards as applicants, as outlined in section III.A.1 of this NOFA. The only exception to this standard is under the Sponsor-based rental assistance (SRA) component of the S+C Program, where a sponsor must be a private, nonprofit organization or a community mental health agency established as a public nonprofit organization; therefore, eligible project sponsors for this component are statutorily precluded from applying for S+C funding.

v. *Public Nonprofit Status.* Public nonprofit status is documented for community mental health centers by including a letter or other document from the authorized state official stating that the applicant is organized and in good standing under state law as a public nonprofit organization.

w. *Rapid Re-Housing for Families Demonstration Program.* HUD will implement through the 2008 CoC NOFA a demonstration program for households with dependent children residing on the street or in emergency shelters as directed by Congress in the Consolidated Appropriations Act for 2008 (H.R. 2764). Through this focused effort on assisting this population, HUD will both learn more about how to best serve families who are homeless and also contribute to the research that has already been done in this area.

Each CoC may submit no more than one project under the Rapid Re-Housing for Families Demonstration Program. That project must have a grant term of three-years and may request up to 30 percent of the CoC's PPRN or $2 million, whichever is less. Grants awarded under the Rapid Re-Housing for Families Demonstration Program will be administered in accordance with the requirements of the SHP program, TH component, with the exception that the eligible activities are limited to administration, leasing (up to 18 months), and supportive services; that the grantee must participate in the evaluation phase; and that they must comply with all Rapid Re-Housing Demonstration Program requirements established in this NOFA. No more than 30 percent of the total eligible program activities (grant total minus administration costs up to five percent) may be used for supportive services, including case management. Eligible supportive services are limited to housing placement, case management, legal assistance; literacy training, job training, mental health services, childcare services, and substance abuse services. Eligible housing activities include leasing only. One household may receive leasing dollars one time for three to six months or twelve to fifteen months, as determined at the time of the assessment. Households are expected to independently sustain housing, either subsidized or unsubsidized, at the end of the leasing subsidy; therefore, it is crucial that households are appropriately assessed. The Rapid Re-Housing Demonstration program will include an evaluation phase, which will focus on determining the efficacy of the assessment process and the housing/service intervention related to how successfully households are able to independently sustain housing after receiving short-term leasing assistance.

x. *Safe Haven.* A Safe Haven is a form of supportive housing funded and administered under the Supportive Housing Program serving hard-to-reach homeless persons with severe mental illness who are on the streets and have been unwilling or unable to participate in supportive services.

All projects classified as Safe Havens (SH) must have the following characteristics:

(1) Located in a facility, meaning a structure, or structures, or clearly identifiable portion of a structure or structures;

(2) Provide 24-hour residence for eligible persons who may reside for an unspecified duration;

(3) Provide private or semiprivate accommodations;

(4) Overnight capacity is limited to no more than 25 persons;

(5) Provide low-demand services and referrals for the residents of the safe haven;

(6) Prohibit the use of illegal drugs in the facility; and,

(7) Must target homeless individuals with serious and persistent mental illness, primarily from the streets.

Safe Havens may also provide for the common use of kitchen facilities, dining rooms, and bathrooms.

New in 2008, any chronically homeless persons entering a Safe Haven, as defined by above, will maintain their chronically homeless status, and will therefore be eligible for entrance into Samaritan Housing Initiative projects.

Grantees with renewal projects submitted in 2008 that are designated as Safe Haven-Transitional Housing (SH–TH) or Safe-Haven Permanent Housing (SH–PH) will be required, in 2008, to change the classification of their project without a grant amendment. Each project that is currently designated as either a SH–TH or SH–PH will, in the 2008 application, designate itself as either Transitional Housing, Permanent Housing, or as a Safe Haven depending on its program design.

y. *Samaritan Housing Initiative.* To qualify for the Samaritan Housing

Initiative, each CoC must submit one or more new permanent housing projects under the Samaritan Housing Initiative (an initiative designed to develop permanent housing projects that serve exclusively chronically homeless persons). Each CoC shall be eligible for a Samaritan Bonus Amount up to 15 percent of the CoC's PPRN amount or $6 million, whichever is less. Samaritan Housing Initiative projects may be SHP, S+C, or SRO. For projects applying under the SHP, each project can request no more than 20% of the total of its eligible program activities (grant total minus administration costs up to five percent) for case management. Safe Havens do not qualify for the Samaritan Bonus Initiative.

Rental assistance under the S+C and section 8 Moderate-Rehabilitation programs is an eligible housing activity under the Samaritan Housing Initiative.

z. *SF–424, Application for Federal Assistance.* The application cover sheet required to be submitted by applicants requesting HUD Federal Assistance.

5. *Continuum of Care Processes*

a. *CoC Planning Process.*

(1) A CoC system is developed through a community-wide or region-wide process involving the coordination of nonprofit organizations (including those representing persons with disabilities), state and local government agencies, public housing agencies, community and faith-based organizations, other homeless providers, service providers, housing developers, private health care associations, law enforcement and corrections agencies, school systems, private funding providers, and homeless or formerly homeless persons to successfully address the complex and interrelated problems related to homelessness. The 2008 CoC NOFA emphasizes HUD's determination to integrate and align plans, including jurisdictional, state, and city ten-year plans (jurisdictional ten-year plans) encouraged by the U.S. Interagency Council on Homelessness and Consolidated Plans. These plans serve as a vehicle for a community to comprehensively identify each of its needs and to coordinate a plan for addressing them. A CoC should address the specific needs of each homeless subpopulation: those experiencing chronic homelessness, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses (these may include diagnoses of multiple physical disabilities or multiple mental disabilities or a combination of these two types), victims of domestic violence, youth, and any others. To ensure that the CoC system addresses the needs of homeless veterans, it is particularly important that CoCs involve veteran service organizations with specific experiencing in serving homeless veterans.

(2) *CoC Geographic Area.* In deciding what geographic area a CoC will cover as part of its CoC strategy, CoCs should be aware that a key factor in being awarded funding under the 2008 CoC NOFA will be the strength of a CoC process when measured against the CoC rating factors described in this NOFA. When a CoC determines what jurisdictions to include in its CoC strategy area, include only those jurisdictions that are fully involved in the development and implementation of the CoC strategy.

The more jurisdictions a CoC includes in the CoC, the larger the pro rata need share that will be allocated to the strategy area (as described in section I.A.5.a.(1) and section I.A.5.a.(2) of this NOFA). If a CoC is located in a rural county, it may wish to consider working with larger groups of contiguous counties to develop a region-wide or multi-county CoC strategy covering the combined service areas of these counties. Areas covered by CoC strategies cannot overlap.

(3) *CoC Components.* A CoC system typically consists of five basic elements, as follows:

(a) A system of outreach, engagement, and assessment for determining the needs and conditions of individuals or families who are homeless, and necessary support to identify, prioritize, and respond to persons who are chronically homeless;

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing search counselors;

(c) Transitional housing with appropriate supportive services to help homeless individuals and families prepare to make the transition to permanent housing and independent living;

(d) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families; and,

(e) Prevention strategies, which play an integral role in a community's plan to eliminate homelessness by effectively intervening for persons at risk of homelessness or those being discharged from public systems—e.g., corrections, foster care, mental health, and other institutions—so that they do not enter the homeless system. By law, prevention activities are ineligible activities in the three programs included in this NOFA but are eligible for funding under the Emergency Shelter Grants (ESG) program and many other programs.

(4) Regardless of the CoC structure and planning process, the 2008 electronic application process will require that each CoC select up to two persons, from the CoC Lead Agency, who are authorized to submit the CoC application and the project applications to HUD.

(5) Once the CoC application has been submitted and scored the CoC will receive its conditional award. This is the total amount of monies conditionally awarded to a CoC's eligible projects including, new and renewal SHP and S+C projects, new SRO Moderate-Rehabilitation projects, Samaritan Housing Initiative and Rapid Re-Housing for Families Demonstration projects.

b. *CoC Registration Process.* CoCs were required to register in the electronic database, e-snaps, prior to the beginning of the 2008 CoC competition. For more information on the CoC Registration Process see 73 FR 23483; April 30, 2008.

6. *CoC Funding* is provided through the programs briefly described below. Please refer to the CoC Homeless Assistance Programs Eligibility Chart in section III.A.1 of this NOFA for a more detailed description of each program:

a. *The Supportive Housing Program (SHP)* provides funding for the development and/or operation of transitional housing, permanent supportive housing, safe havens, and services that help homeless persons transition from homelessness to living as independently as possible. Services are also funded to assist in achieving the goal of self-sufficiency. See section I.A.4.s of this NOFA for SHP match requirements.

b. *The Shelter Plus Care (S+C) Program* provides funding for rental assistance and requires a dollar match in supportive services for every dollar of rental assistance. This gives applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities.

c. *The Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program* provides rental assistance on behalf of homeless individuals in connection with the moderate rehabilitation of SRO dwellings. The SRO Program has no match requirements.

II. Award Information

A. *Amount Allocated.* Approximately $1.42 billion is available for funding.

Carried over or recaptured funds from previous fiscal years, if available, may be added to this amount.

B. *Distribution of Funds:* HUD will not specify amounts for each of the three programs: SHP, S+C, and section 8/SRO. Instead, the distribution of funds among the three programs will depend largely on locally determined priorities and overall demand.

1. *Renewals.* HUD reserves the authority to conditionally select for one year of funding eligible SHP renewal projects that fall below the National Funding Line and would not otherwise receive funding for these projects. HUD reserves the right to establish a minimum CoC scoring threshold for these projects. The funding of these renewal projects allows homeless persons to continue to be served and move towards self-sufficiency. Not renewing these projects would likely result in the closure of these projects and displacement of the homeless people being served. Shelter Plus Care Renewals will continue to be funded outside of the competitive ranking process, as required in the 2008 Consolidated Appropriations Act (H.R. 2764).

2. *Grant Terms.* See chart in section III.A.1 of this NOFA for information on the term of assistance for each of the three CoC programs covered under the 2008 CoC NOFA.

III. Eligibility Information

A. Eligible Applicants

1. Eligible applicants for each program are those identified in the following chart:

Elements	Supportive housing	Shelter plus care	Section 8 SRO
Authorizing Legislation	Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11381.	Subtitle F of Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11403.	Section 441 of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11401.
Implementing Regulations	24 CFR part 583	24 CFR part 582	24 CFR part 882, subpart H, except that all persons receiving rental assistance must meet the McKinney-Vento definition of homelessness.
Eligible Applicant(s)	• States • Units of general local government. • Special purpose units of government, e.g., PHAs. • Private nonprofit organizations • Community Mental Health Centers that are public nonprofit organizations.	• States • Units of general local government. • PHAs.	• PHAs. • Private nonprofit organizations.
Eligible Component(s)	• Transitional housing • Permanent housing for disabled persons only. • Supportive services not in conjunction with supportive housing. • Safe Havens • Innovative supportive housing • Homeless Mgmt. Info. System (HMIS).	• Tenant-based housing • Sponsor-based housing. • Project-based housing. • SRO-based housing.	• SRO housing.
Eligible Activities. See footnotes 1, 2, and 3.	• Acquisition Rehabilitation including accessibility requirements. • New construction including accessibility requirements. • Leasing. • Operating costs. • Supportive services.	• Rental assistance	• Rental assistance.
Eligible Populations. See footnote 2.	• Homeless individuals and families.	• Homeless disabled individuals • Homeless individuals & their families.	• Homeless disabled individuals.
Populations Given Special Consideration.	• Homeless persons with disabilities. • Homeless families with children	• Homeless persons who are seriously mentally ill. • Have chronic problems with alcohol and/or drugs. • Have AIDS & related diseases	• N/A.
Initial Term of Assistance. See footnote 4.	• 2 or 3 years for new SHP • 1, 2 or 3 years for new HMIS • 1, 2 or 3 years for new reallocated projects.	• 5 years: TRA, SRA, and PRA without rehab. • 10 years SRO, and PRA with rehab.	• 10 years.

Footnote 1: Homeless prevention activities are statutorily ineligible under these programs.

Footnote 2: Persons at risk of homelessness are statutorily ineligible for assistance under these programs.

Footnote 3: Acquisition, construction, rehabilitation, leasing, and operating costs are statutorily ineligible for assistance under Shelter Plus Care and Section 8 SRO.

Footnote 4: The term of a new grant with funds for acquisition, construction or rehabilitation also includes the time to acquire the property, complete construction and begin operating the project, which may be no greater than 39 months. A one year initial term may be requested only for HMIS or hold harmless reallocated new permanent housing projects.

2. *Renewal Applicants.* An applicant is eligible to apply for renewal of a grant only if it has a signed grant agreement for the project directly with HUD for SHP or S+C programs. Project sponsors or sub-recipients are not eligible to apply for renewal of these projects. Reminder, renewal applicants must also have a DUNS number and be registered in the CCR.

B. Matching

Applicants must meet the match requirements for SHP and S+C programs. For more information on matching see section I.A.4.s of this NOFA and/or applicable program regulations.

C. Other Project Eligibility Requirements

1. *Eligible Activities.* Eligible activities for the SHP, S+C, and SRO Programs are outlined in the preceding CoC Homeless Assistance Programs Chart at Section III.A.1 of this NOFA.

2. *Threshold Requirements*

a. *Project Eligibility Threshold.* HUD will review all projects to determine if they meet the following eligibility threshold requirements. If HUD determines that these standards are not met by a specific project or activity, the project or activity will be rejected from the competition.

(1) Applicants and project sponsors must meet the eligibility requirements of the specific program as described in program regulations, and provide evidence of eligibility and capacity, and submit the required certifications as specified in this NOFA.

(2) The population to be served must meet the eligibility requirements of the specific program as described in the program regulations, and the application must clearly establish eligibility of program participants.

(3) The only persons who may be served by permanent housing projects are those who come from the streets, emergency shelters, safe havens, or transitional housing. Persons in transitional housing must have originally come from the streets or emergency shelter. As participants leave currently operating projects, participants who meet this eligibility standard must replace them.

(4) Samaritan Housing Initiative Projects and Rapid Re-Housing for Families Demonstration Projects will have additional eligibility requirements. The additional eligibility requirements for Samaritan Housing Initiative Projects are described in section I.A.4.y of this NOFA. The additional eligibility requirements for Rapid Re-Housing for Families Demonstration Projects are provided in section III.C.2.a.(12) of this NOFA.

(5) Projects that involve rehabilitation or new construction must certify that they will meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973, and the design and construction requirements of the Fair Housing Act and the accessibility requirements of the Americans with Disabilities Act, as applicable.

(6) The project must be cost-effective, including costs associated with construction, operations and supportive services with such costs not deviating substantially from the norm in that locale for the type of structure or kind of activity.

(7) For those applicants applying for the Innovative component of SHP, whether or not a project is considered innovative will be determined on the basis that the particular approach proposed is new and can be replicated.

(8) Renewal applications must be submitted as part of a CoC application.

(9) Under the Sponsor-based rental assistance S+C component, an applicant must subcontract the funding awarded with an eligible project sponsor: A private nonprofit organization or a community mental health agency established as a public nonprofit organization that owns or leases the housing where participants will reside.

(10) For the section 8 SRO program, only individuals meeting HUD's definition of homeless are eligible to receive rental assistance. Therefore, any individual occupying a unit at commencement of the unit's rehabilitation will not receive rental assistance if they return to their unit (or any other) upon completion of its rehabilitation.

(11) Applicants agree to participate in a local HMIS system when it is implemented in their community.

(12) Applicants for Rapid Re-Housing for Families Demonstration Programs must meet the following additional project eligibility thresholds.

(a) The CoC in which the applicant is applying must have centralized intake as defined in this NOFA (see section I.A.4.) for households with dependent children.

(b) The population to be served must be households with dependent children who have lived in emergency shelters or on the streets for at least seven consecutive days, must be able to independently sustain housing at the end of the short-term housing assistance, and must have at least one moderate barrier to housing. A moderate barrier to housing is defined as:

(i) A financial strain that is not ongoing and will not impact the ability to independently sustain housing once re-housed (in subsidized or unsubsidized housing);

(ii) Inadequate employment or a loss of employment. The family most appropriate for this demonstration should have, or be willing to obtain, employment that increases the income of the household to such a degree that it can independently sustain housing at the end of the short-term housing assistance;

(iii) Inadequate childcare resources;

(iv) A head of household with a low level of education or low command of the English language, but who is willing to obtain the language skills and/or education level necessary to obtain employment and maintain housing;

(v) Legal problems. HUD leaves it to the discretion of the individual communities to determine which legal problems it is able to address;

(vi) Mental health diagnosis that do not greatly impact the household's ability to independently sustain housing;

(vii) A history of substance abuse, without any active use;

(viii) Poor rental history, including up to three evictions; and,

(ix) Poor credit history.

(c) The agency must have one assessment tool that it uses to assess all families.

b. *Project Quality Threshold.* HUD will review new projects, including those requested as part of HHN Reallocation, to determine if they meet the following quality threshold requirements with clear and convincing evidence. A S+C or SHP project renewal will be considered as having met these requirements through its previously approved grant application unless information to the contrary is received. The housing and services proposed must be appropriate to the needs of the program participants and the community. HUD will assess the following:

(1) That the type, scale and general location of the housing fit the needs of the participants and that the housing is readily accessible to community amenities.

(2) That the type, scale and location of the supportive services fit the needs of the participants and the mode of transportation to those services is described.

(3) That the specific plan for ensuring clients will be individually assisted to obtain the benefits of the mainstream health, social service, and employment programs for which they are eligible is provided.

(4) How participants are helped to obtain and remain in permanent housing is described.

(5) How participants are assisted to both increase their incomes and live independently using mainstream housing and service programs is described.

(6) Applicants and project sponsors must evidence satisfactory performance for existing grant(s).

(7) For expansion projects, applicants must clearly articulate the part of the project that is the expansion.

(8) In addition to meeting the quality threshold standards above, applicants for Rapid Re-Housing for Homeless Families Demonstration projects must meet the following quality threshold standards:

(a) The applicant's experience in forming relationships with landlords and maintaining an affordable housing stock is described.

(b) The type, scale, and general location of the centralized intake meets the needs of the participants is provided.

(c) The specific plan for assessing households with dependent children and for ensuring that all households are placed in appropriate housing is described.

(d) The applicant's connection with mainstream, community based social services is described.

(e) The applicant and project sponsors must evidence satisfactory performance for existing projects serving homeless households with dependent children and existing Rapid Re-Housing for Families projects.

c. *Project Renewal Threshold.* A CoC must consider the need to continue funding for projects expiring in calendar year 2009. HUD will not fund competitive renewals out of order on the priority list except as may be necessary to achieve statutory, regulatory or NOFA funding requirements as detailed in this NOFA. It is important that SHP renewals and S+C non-competitive renewals meet minimum project eligibility, capacity and performance standards identified in this NOFA or they will be rejected from consideration for either competitive or non-competitive funding.

d. *Civil Rights Thresholds:* Applicants and the project sponsors must be in compliance with the threshold requirements of the General Section of the SuperNOFA.

3. *Program Requirements*

a. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing when providing housing and housing related services for classes protected under the Fair Housing Act. As successful applicants you required to certify that they will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101), and will affirmatively further fair housing. You are also required to comply with the program regulations regarding affirmatively furthering fair housing. Instead of the actions for affirmatively further fair housing in the General Section of the SuperNOFA, successful applicants must affirmatively further fair housing by requiring each project sponsor to (a) adopt actions and procedures and maintain records of the implementation of the actions and procedures taken to affirmatively further fair housing; (b) make information available on the existence and location of facilities and services that are accessible to persons with a disability; and (c) ensure that reasonable steps are taken to inform all eligible persons on the availability of the project so that they may apply for the housing or services provided.

b. *Local Resident Employment.* To the extent that any housing assistance (including rental assistance) funded through the 2008 CoC NOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement) or housing construction, then it is subject to section 3 of the Housing and Urban Rehabilitation Act of 1968, and the implementing regulations at 24 CFR Part 135. Section 3, as amended, requires that economic opportunities generated by certain HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

c. *Relocation.* The SHP, S+C, and SRO programs are subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). These requirements are explained in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Also see General Section of the SuperNOFA.

d. *Environmental Reviews.* All CoC assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. Conditional selection of projects under the CoC Homeless Assistance competition is subject to the environmental review requirements of 24 CFR 582.230, 583.230 and 882.804(c), as applicable. The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease (under S+C/TRA where participants are required to live in a particular structure or area as described in section III.C.3.g(3)(a) of this NOFA), repair, dispose of, demolish or construct property for a project under this CoC NOFA, or commit or expend HUD or local funds for such eligible activities, until the responsible entity has completed the environmental review procedures required by Part 58 and the environmental certification and Request for Release of Funds (RROF) have been approved or HUD has performed an environmental review under Part 50 and the recipient has received HUD approval of the property. The expenditure or commitment of Continuum of Care assistance or non-federal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration. If the program receiving HUD assistance is exclusively for the provision of services and none of the above stated activities are included, and the services provided meet the requirements of an exemption or exclusion listed at 24 CFR 58.34 or 58.35(b), the responsible entity may determine and record that no further environmental review is required, citing the appropriate exemption or exclusion.

e. *Expiring/Extended Grants.* If a SHP or S+C grant will be expiring in calendar year 2009, or if a S+C Program grant has been extended beyond its original five-year term and is projected to run out of funds in FY 2009, a grantee may apply for a renewal under the 2008 CoC NOFA to receive continued funding. Generally, if a renewal project is not awarded funding in 2008, then the project will not be allowed to extend its grant to apply in the 2009 competition.

f. *Promoting Energy Efficiency and Energy Star.* In keeping with the Administration's policy priority of promoting energy efficient housing while protecting the environment, applicants applying for new construction or rehabilitation funding, who maintain housing or community facilities or provide services in those facilities, are encouraged to promote energy efficiency and are specifically

encouraged to purchase and use Energy Star-labeled products. Refer to the General Section of the SuperNOFA for detailed information about this policy priority.

g. *Program-Specific Requirements.* Please be advised that where an applicant for the SHP funding is a state or unit of general local government that utilizes one or more nonprofit project sponsor(s) to administer the homeless assistance project(s), administrative funds provided as part of the SHP grant must be passed on to the nonprofit organization(s) in proportion to the administrative burden borne by them for the SHP project(s). HUD will consider states or units of general local government that pass on at least 50 percent of the administrative funds made available under the grant as having met this requirement. This requirement does not apply to either the SRO Program, since only PHAs administer the SRO rental assistance, or to the S+C Program, since paying the costs associated with the administration of these grants is ineligible by regulation.

New this year, HUD will award funds to rehabilitate leased property. However, certain conditions must be met during Technical Submission and, if they are not met, the award will be withdrawn. The recipient must have a lease for 25 or more years with a landowner that is not the applicant, the project sponsor, a parent or affiliated organization and must submit it to HUD for approval. The landowner must execute and record against the land the lease and the HUD form Use and Repayment Covenant. Under certain circumstances, where the useful life of the improvements is greater than 25 years, the recipient may be required to repay the residual value of the improvements.

(1) *SHP—New Projects:*

(a) Please note that applicants for new grants can request 2 or 3 years worth of funds for operating, supportive services and leasing costs and that the grant term will be the 2 or 3 years requested. However, if an applicant also requests funds for acquisition, construction or rehabilitation, the grant term will be the 2 or 3 years, plus the time to acquire the property, complete construction and begin operating the project (no greater than 39 months). The two exceptions to this rule are: (1) New permanent housing projects and HMIS projects proposed under HHN Reallocation may request one year of funding; and (2) new HMIS projects may request one year of funding.

(b) *HUD will require recordation of a HUD-approved use and repayment covenant* (a form may be obtained from the field office) for all grants of funds for acquisition, rehabilitation or new construction. The covenant will enforce the use and repayment requirements found at section 423(b)(1) and (c) of the McKinney-Vento Act and must be approved by HUD counsel before execution and recordation. Proof of recordation must be provided to HUD counsel before funds for rehabilitation or new construction may be drawn down.

(c) All project sponsors must meet applicant eligibility standards as described in section III.A.1 of this NOFA. As in past years, HUD will review project sponsor eligibility as part of the threshold review process. Project sponsors for new projects are required to submit evidence of their eligibility with the application.

(2) *SHP—Renewal Projects*

(a) For the renewal of a SHP project, applicants from a CoC whose final FPRN is based on PPRN may request funding for one (1), two (2) or three (3) years; whereas applicants from a CoC whose FPRN is based upon HHN may request funding for only one (1) year.

(b) The total request for each renewable project cannot exceed the Annual Renewal Amount received in the current grant for that project. Because capital costs cannot be renewed, grants being renewed whose original expiring award included ''hard'' development costs (acquisition, new construction, and rehab) may only renew eligible line items and cannot exceed five percent to be used for administration costs. For more information on the Annual Renewal Amount see section I.A.4.a of this NOFA.

(c) HUD will recapture SHP grant funds remaining unspent at the end of the previous grant period when it renews a grant.

(3) *S+C—New Projects*

(a) A project may not include more than one component, e.g., combining Tenant-based Rental Assistance (TRA) with Sponsor-based Rental Assistance (SRA) is prohibited within the same grant. Under the TRA component, in order to help provide supportive services or for the purposes of controlling housing costs, a grantee may require participants to live in a particular structure for the first year of assistance or to live in a particular area for the entire rental assistance period. Where this option is exercised, an environmental review and clearance must be performed prior to any commitment to lease a particular structure or unit for participant occupancy as described in section III.C.3.d of this NOFA, Environmental Reviews.

(b) *S+C/SRO Component.* If an applicant is a state or a unit of general local government, that applicant must subcontract with a public housing agency to administer the S+C assistance. Also, no single project may contain more than 100 units.

(c) *S+C SRA Component.* Project sponsors must submit proof of their eligibility to serve as a project sponsor.

(d) Requested amounts must be based on the applicable 2008 FMRs and cannot exceed 100 percent of the FMR.

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the relevant subparts of the implementing regulations at 24 CFR Part 35, such as subparts A, B, J, and R apply to activities under this grant program.

(4) *S+C Renewal Projects.* HUD encourages the consolidation of appropriate S+C renewal grants when the grants are under the same grantee, have the same component and expire in the same year. However, renewal requests for expiring S+C grants that have not yet been combined should submit separate project applications (Exhibit 2) as individual renewal grants. Where the grantee wishes to consolidate the renewal grants, this action will be subsequently accomplished by the field office at the point of renewal grant agreement execution. The field office will receive instructions for this process in the S+C Operating Procedures guidance for 2008 awards.

(a) For the renewal of a S+C project, including S+C/SROs, the grant term will be one (1) year, as specified by Congress. For S+C grants having been awarded one year of renewal funding in 2007, the number of units requested for renewal this year must not exceed the number of units funded in 2007. As is the case with SHP, HUD will recapture S+C grant funds remaining unspent at the end of the previous grant period when it renews a grant. The one-year term of non-competitively awarded S+C renewal projects may not be extended.

(b) For the first time renewal of S+C rental assistance that is Tenant-based (TRA), Sponsor-based (SRA), or Project-based (PRA), an applicant may request up to the amount determined by multiplying the number of units under lease at the time of the application for renewal funding by the applicable 2008 Fair Market Rent(s) by 12 months. For S+C grants awarded one-year of renewal funding in 2007, the number of units requested for renewal this year may not exceed the number of units funded in 2007. For first-time S+C/SRO renewals,

the number of units must not exceed the number of units under grant agreement and Housing Assistance Payment (HAP) contract.

Current FMRs can be found at *http://www.huduser.org.* Requested amounts must be based on the applicable 2008 FMRs and cannot exceed 100 percent of the FMR.

(c) Under the FY 2008 HUD Appropriations Act, eligible S+C Program grants whose terms are expiring in 2009 and S+C Program grants that have been extended beyond their original five-year terms but which are projected to run out of funds in 2009, will be renewed for one year provided that they are determined to be needed by the CoC. These projects must also demonstrate that applicants and project sponsors meet eligibility, capacity and performance requirements described in this NOFA. Non-competitive S+C renewals should be submitted by the application deadline. A CoC's FPRN does not include S+C renewals since these projects are being funded outside of the competition.

(d) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the relevant subparts of the implementing regulations at 24 CFR Part 35, such as subparts A, B, J, and R apply to activities under this grant program.

(5) *Section 8 Moderate Rehabilitation SRO Program—New Projects.* As an applicant, the following limitations apply to the section 8 SRO program:

(a) SRO assistance may not be provided to more than 100 units in any structure.

(b) Under 24 CFR 882.802, applicants that are private nonprofit organizations must subcontract with a public housing agency to administer the SRO assistance.

(c) Under 24 CFR 882.802, rehabilitation must involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade conditions to comply with HUD's physical condition standards in 24 CFR Part 5, subpart G.

(d) Under section 441(e) of the McKinney-Vento Act and 24 CFR 882.805(d)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. This cost limitation applies to eligible rehabilitation costs that may be compensated for in the Housing Assistance Payments (HAP) contract rents. For purposes of Fiscal Year 2008 funding, the cost limitation is raised from $21,000 to $21,500 per unit to take into account increases in construction costs during the past 12-month period.

(e) The SRO Program is subject to the Federal standards at 24 CFR Part 882, subpart H.

(f) Individuals assisted through the SRO Program must meet the definition of homeless individual found at section 103 of the McKinney-Vento Act.

(g) Resources outside the program pay for the rehabilitation, and rehabilitation financing. The rental assistance covers operating expenses of the SRO housing, including debt service for rehabilitation financing. Units may contain food preparation or sanitary facilities or both.

(h) Requested amounts must be based on the applicable 2008 FMRs and cannot exceed 100 percent of the FMR.

(6) *Section 8 Moderate Rehabilitation SRO Program—Renewals.* This NOFA is not applicable to the renewal of funding under the section 8 SRO program. The renewal of expiring section 8 SRO projects is not part of the competitive CoC application process. Rather, expiring section 8 SROs will be identified at the beginning of the applicable year by the public housing agency and HUD field office. One-year renewal funds for expiring section 8 SRO HAP contracts will be provided by HUD under a separate, non-competitive process. For further guidance on section 8 SRO renewals, please contact the local HUD field office.

IV. Application and Submission Information

A. Addresses To Request Application Package

The electronic system will provide a submission summary that lists the elements required to complete the application. A CoC will not be able to submit an application to HUD until all required elements are completed. The application may be accessed at *http://www.hud.gov/esnaps.*

An applicant may obtain a copy of the General Section of the SuperNOFA and this NOFA online at *http://www.hud.gov/offices/adm/gov/fundsavail.cfm.* Please note that all sections of the General Section of the SuperNOFA are critical and must be carefully reviewed to ensure an application can be considered for funding, with the exception of reference to the Grants.gov application process. The Continuum of Care program will be using an electronic system outside of *Grants.gov.* Applicants will still be required to register with Dun and Bradstreet, if they have not already done so, and complete or renew their registration in the Central Contractor Registration (CCR). Applicants are still encouraged to sign up for the Grants.gov notification service as the availability of the 2008 Continuum of Care application will be released via this Web site.

B. Content and Form of Application Submission

The only option for submitting a viable application under this NOFA is to submit the entire Continuum of Care application, with all of its projects. Each application will consist of one Continuum of Care Exhibit (Exhibit 1) and submissions from one or more applicants and project sponsors (Exhibits 2). HUD will not accept any projects not connected to a community-wide or region-wide CoC. The General Section of the SuperNOFA contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable state or unit of general local government.

1. Continuum of Care Application Submission Requirements

a. A completed application for a CoC will include one Exhibit 1 (CoC) and any number of Exhibits 2, depending on the number of projects and the type of programs proposed for funding. For example, if your CoC is proposing five SHP Renewal projects and one S+C New project, then the CoC would submit one Exhibit 1 and six Exhibits 2.

b. Each CoC must submit the entire CoC application. The application will include the following parts, which will be submitted electronically either through a database or as an uploaded attachment (For more information see the Training on *e-snaps* at *http://esnaps.hudhre.info/training/*):

(1) Exhibit 1 Charts, Narratives and Attachments, including:

(a) HUD–40090–1: the CoC plan with all charts completed as applicable;

(b) HUD–27300, America's Affordable Communities Initiative/Removal of Regulatory Barriers with supporting documentation;

(c) HUD–2994–A, You Are Our Client! Grant Application Survey (optional).

(2) Applicant Documents, including:

(a) SF–424 Application for Federal Assistance. Submit one SF–424 for each applicant applying for one or more projects in the CoC. Each SF–424 must also include the applicant's DUNS number. Please see the General Section of the SuperNOFA for more information on obtaining a DUNS number and CCR Registration.

(b) The SF–424 Supplement, Survey on Ensuring Equal Opportunities for Applicants, is for private nonprofit applicants only and completion/submission of this survey is voluntary.

(c) Documentation of Applicant Eligibility. All applicants must attach documentation of eligibility as defined in the chart in section III.A.3 of this NOFA. Also see section I.A.8.m & o of this NOFA for information on the documentation required to validate non-profit status.

(d) SF–LLL, Disclosure of Lobbying of Activities, must be attached as applicable.

(e) Applicant Code of Conduct. All applicants for HUD funding must have a Code of Conduct on file with HUD. An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a Code of Conduct. An applicant who previously submitted an application and included a copy of its code of conduct *will not* be required to submit another copy if the applicant is listed on HUD's Web site: *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm*, and if the information has not been revised. An applicant not listed on the Web site must attach a copy of its Code of Conduct with its FY2008 CoC application. An applicant must also include a copy of its Code of Conduct if the information listed on the above Web site has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). See the General Section of the SuperNOFA for additional information on Code of Conduct requirements.

(f) HUD 40090–4, Applicant Certifications.

(3) Exhibit 2 Charts, Narratives and Attachments, including:

(a) HUD–40090–2: the Project application with charts and narratives completed as applicable;

(b) Only sponsors for new projects must include information related to eligibility as defined in the chart in section III.A.3 of this NOFA. See also section I.A.8.n of this NOFA for information on the documentation required to validate sponsor eligibility.

(b) HUD–96010, Program Outcome Logic Model must be attached for each project (for Logic Model instructions, see the General Section of the SuperNOFA);

(c) HUD–2880, Applicant/Recipient Disclosure/Update Report must be attached for each project; and;

(d) HUD–2991, Certification of Consistency with Consolidated Plan.

C. Submission Dates and Times

1. Application Deadline Date

a. HUD strongly suggests that CoCs require applicants applying for one or more projects to submit completed electronic Exhibit 2 project application(s) to the CoC on or before August 15, 2008 to allow for ample time for the CoC to review and process these applications prior to the submission deadline.

b. Each CoC must submit its completed application to HUD on or before 4 p.m. EDT on the deadline date. At 4:01 p.m. EDT the electronic system will be closed. The deadline is during business hours so that CoCs may access Help Desk resources until the application system is closed.

c. CoCs must print a copy of the Submission Summary before closing their browser after the CoC application has been submitted to HUD. This is your receipt of submission and proof of compliance with the submission deadline. Applicants whose applications are determined to be late, who cannot provide HUD with a record of submission that verifies the application was submitted prior to the submissions deadline date and time will not receive funding consideration.

d. HUD strongly suggests that each CoC and all project applicants utilize the ''Export to PDF'' functionality of *e-snaps* to print a hard copy of all submission documents for their records.

D. Intergovernmental Review

Not Applicable.

E. Funding Restrictions

Not Applicable.

F. Other Submission Requirements

1. Waiver of Electronic Submission Requirements. The regulatory framework of HUD's electronic submission requirement is the final rule established in 24 CFR 5.1005. CoCs seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. HUD's regulations allow for a waiver of the electronic submission requirement for good cause. For the 2008 Continuum of Care competition, HUD is defining good cause as follows: (1) There are no computers that could be used by applicants and/or the CoC Lead Agency that are newer than 5 years anywhere within the CoC, or (2) there are no computers that could be used by applicants and/or the CoC Lead Agency anywhere within the CoC, or (3) there is no Internet access that could be used by applicants and/or the CoC Lead Agency anywhere within the CoC. HUD will grant waivers only at the CoC level and not at the individual project applicant level, and only to CoCs that were validated by HUD during the required CoC Registration process. If the waiver is granted, the Office of Special Needs Assistance Programs' response will include instructions on how many copies of the paper application must be submitted, as well as where to submit them. CoCs that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. Therefore, CoCs seeking a waiver of the electronic submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. CoCs should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that if a CoC finds it cannot submit its application electronically and must seek a waiver of the electronic grant submission requirement, it should submit the waiver request to the Office of Special Needs Assistance Programs no later than 30 days after the publication date of this NOFA. To expedite the receipt and review of such requests, CoCs may fax their written requests to Ann Marie Oliva, Director, at *(202) 401–0805*. If HUD does not have sufficient time to process the waiver request, a waiver will not be granted. Paper applications received without a prior approved waiver and/or after the established deadline will not be considered.

V. Application Review Information

A. Criteria

1. Criteria for Scoring the CoC Application

HUD will award up to 100 points as follows:

a. *CoC Housing, Services, and Structure:* HUD will award 14 points based on the extent to which a CoC's application demonstrates:

(1) The existence of a coordinated, inclusive, and outcome-oriented community process, including organizational structure(s) and decision-making processes for developing and implementing a CoC strategy;

(2) That this process includes nonprofit organizations (such as veterans service organizations, organizations representing persons with disabilities, faith-based and other community-based organizations, and other groups serving homeless and other low-income persons), state and local

governmental agencies, public housing agencies, housing developers and service providers, school systems, law enforcement, hospital and medical entities, funding providers, private businesses and business associations, jurisdictional ten-year planning bodies, and homeless or formerly homeless persons;

(3) That the CoC has a process in place to achieve fair and impartial project review and selection, with representation and input from diverse parties such as those outlined under Criteria for Application Review (See section V.B.1 of this NOFA);

(4) That a well-defined and comprehensive strategy has been developed which addresses the components of a CoC system (i.e. , outreach, intake and assessment, emergency shelter, transitional housing, permanent supportive housing, and prevention), and that the strategy has been designed to serve all homeless subpopulations in the community (e.g., seriously mentally ill, persons with multiple diagnoses, veterans, persons with HIV/AIDS), including those persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and,

(5) A CoC has created, maintained, and built upon a community-wide inventory of housing and services for homeless families and individuals (both HUD and non-HUD funded); identified the full spectrum of needs of homeless families and individuals; and coordinated efforts to fill gaps between the current inventory and existing needs. The coordinated effort must appropriately address all aspects of the continuum, especially permanent housing.

b. *Homeless Needs and Data Collection:* HUD will award 24 points based on the extent to which a CoC's application demonstrates an understanding of the number of homeless individuals and families within the CoC and their needs, and the progress in the planning, implementation and operation of an HMIS system covering at a minimum all street outreach, emergency shelters and transitional housing programs so that a reliable, unduplicated count of homeless persons on the street and in shelters may be conducted. CoCs are cautioned to carefully read HUD guidance on the timing, and acceptable methods, for conducting Sheltered and Unsheltered Point-in-Time (PIT) counts to ensure maximum points. Waivers of the PIT standard for FY 2008 must be received by the submission deadline. To request a waiver, send a written request to 451 7th St., SW., Room 7262, Washington, DC 20410, Attn: Michael Roanhouse.

c. *CoC Strategic Planning:* HUD will award 16 points based on the extent to which a CoC's application demonstrates:

(1) The existence of, and alignment with, a performance-based 10-year strategy for ending chronic homelessness that establishes specific action steps to achieve the five objectives listed in section VI.B.1.a, with measurable achievements. It should be integrated with other ten-year plans in the community to eliminate chronic homelessness (if applicable), the local HUD Consolidated Plan, and other state and local plans related to homelessness;

(2) The Continuum's progress in working with the appropriate local government entity to develop and implement a discharge policy for persons leaving publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in persons entering the homeless system;

(3) Proposes projects that are consistent with identified unmet needs;

(4) Provides estimates of renewal funds needed through 2013 for SHP and S+C projects; and,

(5) Demonstrates leveraging of funds requested under this NOFA with other resources, including private, other public, and mainstream services and housing programs for proposed projects and ongoing efforts.

d. *CoC Performance:* HUD will award 28 points based upon the CoC's progress in reducing homelessness, including chronic homelessness. CoC Performance will be measured by demonstrating:

(1) That the CoC has taken specific action steps and made progress toward achieving its goals;

(2) That the CoC has increased the number of permanent housing beds for the chronically homeless and made progress toward eliminating chronic homelessness;

(3) Program participants' success in moving to and maintaining permanent housing as reported in the most recent Annual Progress Report (APR);

(4) The extent to which participants successfully become employed and access mainstream programs. These measures emphasize HUD's determination to assess grantees' performance in the prior program year and to determine if they are meeting the overall goal of the homeless assistance grants under which they are funded. Both housing and supportive services-only projects will be assessed;

(5) That the CoC has no unexecuted grants awarded prior to 2007;

(6) That projects within the CoC have policies and practices in place to hire, and have hired, low and very-low income employees and subcontractors under Section 3 of the Housing and Urban Development Act of 1968;

(7) That projects within the CoC incorporate energy-efficiency measures in the design, construction, rehabilitation, and operation of housing or community facilities; and,

(8) The Removal of Regulatory Barriers to Affordable Housing: As provided for in the General Section of the SuperNOFA, HUD will award up to 2 points, within the 28 points for this rating factor, based on the extent to which the CoC's application demonstrates a local plan and/or existing policy to remove regulatory barriers to the production of affordable housing. Applicable activities include the support of state and local efforts to streamline processes, eliminate redundant requirements, statutes, regulations, and codes that impede the availability of affordable housing. The response (one questionnaire per CoC) should be submitted for consideration as a completed HUD Form 27300, Questionnaire for HUD's Removal of Regulatory Barriers. The Continuum should submit the questionnaire for the local jurisdiction where the majority of its CoC assistance will be provided. The completed questionnaire must include appropriate documentation, where requested, and identify a point of contact.

e. *Emphasis on Housing Activities:* HUD will award 18 points based on the relationship between funds requested for housing activities (i.e., transitional and permanent) and funds requested for supportive service activities among renewed projects. HUD will count as housing activity all approvable requests for funds for rental assistance and approvable requests for acquisition, rehabilitation, construction, leasing and operations when used in connection with housing. HMIS costs and administrative costs will be excluded from this calculation. CoCs are not required to have 100 percent housing activities to receive the full 18 points for this scoring criteria.

2. *Criteria for Scoring of Rapid Re-Housing for Families Demonstration Projects.* All projects applying for the Rapid Re-Housing for Families Demonstration Program will be considered for funding based upon the following review, ranking, and

conditional selection process. HUD will award up to 100 points (as described below) and add this score to the CoC score to determine the project's final score.

a. Applicant Experience in Operating Rapid Re-Housing for Families Projects: HUD will award up to 25 points based upon the applicant's ability to demonstrate:

(1) Previous, specific agency and staff experience operating Rapid Re-Housing projects for homeless households with dependent children and/or agency and staff experience operating traditional housing programs for homeless households with dependent children.

(2) That performance for previous projects serving households with dependent children and/or Rapid Re-Housing for Families projects was measured.

b. Assessment Process: HUD will award up to 20 points based upon the applicant's ability to demonstrate:

(1) Appropriate criteria for determining whether a family is eligible for the demonstration project (see section III.C.2.a.(11) of this NOFA).

(2) The types of services and referrals that will be made to households based upon the assessment, regardless of whether the family is eligible for the demonstration program, is described.

(3) A single homeless family assessment tool (that is attached to the application) that is used across the entire CoC.

c. Applicant Relationship with Mainstream Community Social Services: HUD will award up to 15 points based upon an applicant's ability to demonstrate that it has a variety of mainstream, community-based social services with which it routinely connects, including any with which it has Memorandums of Understanding or formal agreements.

d. Applicant Ability to Maintain an Affordable Housing Stock: HUD will award up to 15 points based upon an applicant's ability to demonstrate:

(1) A formalized process for providing outreach to local landlords that is already used across the CoC.

(2) A process through which the applicant already maintains relationships with local landlords.

(3) A formalized protocol for dealing with conflicts between landlords and program participants.

(4) A system in place to locate landlords for participation in the project and to track the units that may be leased with grant funds (i.e., a Web-based housing locator, distribution list).

e. CoCs Centralized Intake for Households with Dependent Children: HUD will award up to 20 points based upon an applicant's ability to demonstrate that centralized intake (see section I.A.4.d of this NOFA) exists for households with dependent children within the CoC that is well advertised to the community and easily accessible by households with dependent children.

f. CoCs HMIS Bed Coverage Rate for Households with Dependent Children: HUD will award up to 5 points on a sliding scale for a CoCs HMIS coverage of emergency shelters serving households with dependent children. Full points will be awarded if a CoC has a bed coverage rate (the total number of emergency shelter beds for households with dependent children entered into the HMIS as listed in the Housing Inventory Chart divided by the total number of year-round emergency shelter beds for households with dependent children from the Housing Inventory Chart—not including the total number of beds provided by domestic violence providers) of at least 65 percent for emergency shelters serving households with dependent children. In the case of a tie between projects, preference will be given to those communities who participated in AHAR 3.

h. Geographic Diversity. HUD has determined that geographic diversity is an appropriate consideration in selecting projects for the Rapid Re-Housing for Families Demonstration Program. To this end, HUD reserves the right to fund eligible project(s) with the highest total score in each of the 10 HUD regions. In making this determination, HUD will also consider population to ensure that urban and rural communities are selected.

B. CoC and Project Review and Selection Process

1. Review, Rating, and Ranking

Two types of reviews will be conducted—selection criteria rating for the overall CoC application and threshold review for applicants and projects. Applicant and Sponsor Eligibility and Capacity as well as Project Eligibility and Project Quality are threshold reviews. Threshold reviews are explained in section III.C.2 of this NOFA, which covers eligible applicants and projects. The projects will then be ranked nationally from highest to lowest.

(a) HUD may employ rating panels to review and rate all or part of CoC applications according to the rating criteria in sections V.A.1 and V.A.2 above. See the General Section of the SuperNOFA for more information on rating panels.

(b) *Threshold Review: Applicant and project sponsor eligibility, capacity and quality.* HUD will review project applications to ensure that the applicant and project sponsor meet the eligibility and capacity standards outlined in this Section. If HUD determines these standards are not met, the project will be rejected from the competition. General information on eligibility, capacity and performance standards is below. For more detailed information regarding eligibility, capacity and performance standards see section III.C.3.g(4)(c) of this NOFA.

(i) Applicants must be eligible to apply for the specific program. See section III.A.1 of this NOFA.

(ii) Applicants and project sponsors must demonstrate ability to carry out the project(s). With respect to each proposed project, this means that, in addition to knowledge of and experience with homelessness in general, the organization carrying out the project, its employees, or its partners, must have the necessary experience and knowledge to carry out the specific activities proposed, such as housing development, housing management, and service delivery.

(iii) If an applicant or the project sponsor is a current or past recipient of assistance under a HUD McKinney-Vento Act program, there must have been no delay in meeting applicable program timeliness standards (see section VI.B.3 of this NOFA) unless HUD determines that the delay in project implementation was beyond the applicant's or the project sponsor's control, there are no serious unresolved HUD monitoring findings, and no outstanding audit findings of a material nature regarding the administration of the program.

2. Conditional Selection and Adjustments to Funding

a. *Conditional Selection Priorities.*

(i) HUD will fund all eligible one-year Shelter Plus Care renewal projects.

(ii) HUD will competitively fund up to $23.75 million in Rapid Re-Housing for Families.

(iii) HUD will fund all SHP renewal projects and HMIS new projects for at least one year if they are within a CoC's Final Pro Rata Need (HUD has determined that the Congressional goal of enhancing homeless data collection at the CoC level is best achieved by assisting CoCs seeking dedicated Homeless Management Information Systems (HMIS) to receive Supportive Housing Program funds. To this end, HUD reserves the right to fund, for at least one year, lower-rated eligible dedicated HMIS projects. HUD also reserves the right to establish a

minimum CoC scoring threshold for these projects).

(iv) HUD intends to fund at least 4,000 beds for chronically homeless persons in projects serving 100 percent CH (could include Samaritan Initiative projects, reallocated projects and other new projects submitted by CoCs in PPRN status).

(v) After meeting the funding priorities of section V.B.2.a.i–iv of this NOFA, HUD will proceed to competitively fund by projects in rank order by CoC score. When CoC scores are tied, HUD will apply tie breaking rules described in section V.B.3.2.c of this NOFA. SHP, SPC and SRO new projects and the remaining terms of renewal projects will be conditionally selected until all funds are expended. To be eligible for funding, all projects must be within the CoCs Final Pro Rata Need.

b. *Adjustments to Funding:* HUD may also be required to adjust the selection of competitive projects as follows:

(i) The FMRs used in calculating award amounts for Shelter Plus Care and/or SRO applications will be those in effect at the time the grants are approved, which may be higher or lower than those in effect at the time of application. This only applies to projects requesting 100 percent of FMR in Exhibit 2.

(ii) *Thirty Percent Permanent Housing Requirement.* Local priorities notwithstanding, the FY 2008 HUD Appropriations Act requires that not less than 30 percent of this year's Homeless Assistance Grants appropriation, excluding amounts provided for renewals under the S+C Program, must be used to fund projects that meet the definition of permanent housing. Safe Havens will not count towards the permanent housing requirement. Projects meeting the definition of permanent housing are:

(1) New and renewal projects under SHP that are designated as permanent housing for homeless persons with disabilities. HUD will award no less than 30 percent of the total FY 2008 Homeless Assistance Grants application, excluding amounts for S+C renewals, for permanent housing projects unless an insufficient number of approvable permanent housing projects are submitted; (2) New S+C projects; and (3) SRO projects.

In order to meet this permanent housing funding requirement and stay within the total funding amount available, initially selected Supportive Services Only (SSO) and non-permanent housing projects will be deselected, if necessary, to add an adequate number of permanent housing projects, even if they are lower scoring housing projects. HUD will, if necessary, first proceed to de-select new SSO projects, initially selected, starting with lowest scoring new projects and proceeding to higher scoring new SSO projects initially selected. If the funding line is still exceeded, HUD will proceed to de-select the lowest scoring new non-permanent housing projects initially selected and proceed to higher scoring new non-permanent housing projects. Finally, if the funding line is still exceeded HUD will proceed to de-select SSO and then other non-permanent housing renewal projects until sufficient permanent housing projects are within the funding line.

(iii) *Geographic Diversity.* HUD has determined that geographic diversity is an appropriate consideration in selecting homeless assistance projects in the competition. HUD believes that geographic diversity can be achieved best by awarding grants to as many CoCs as possible. To this end, in instances where any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa does not have at least one funded CoC, HUD reserves the right to fund eligible project(s) with the highest total score in the CoC.

(iv) *Distribution of Selections.* In accordance with section 429 of the McKinney-Vento Act, HUD will award Supportive Housing Program funds as follows: Not less than 25 percent for projects that primarily serve homeless families with children; not less than 25 percent for projects that primarily serve homeless persons with disabilities; and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After projects are rated and ranked, based on the factors described above, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked projects in order to achieve these minimum percentages.

In accordance with section 463(a) of the McKinney-Vento Act, at least 10 percent of competitive S+C funds will be awarded for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Single Room Occupancy (provided there are sufficient numbers of approvable projects to achieve these percentages). After projects are rated and ranked, based on the factors described above, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked projects in order to achieve these minimum percentages.

In accordance with section 455(b) of the McKinney-Vento Act, no more than 10 percent of the assistance made available for S+C in any fiscal year may be used for programs located within any one unit of general local government. In accordance with section 441(c) of the McKinney-Vento Act, no city or urban county may have SRO section 8 projects receiving a total of more than 10 percent of the assistance made available under this program. HUD is defining the 10 percent availability this fiscal year as $10 million for S+C and $10 million for section 8 SRO. However, if the amount awarded under either of these two programs exceeds $100 million, then the amount awarded to any one unit of general local government (for purposes of the S+C Program) or city or urban county (for the purposes of the section 8 SRO Program) cannot exceed 10 percent of the actual total amount awarded for that program.

(v) *Funding Diversity.* HUD reserves the right to reduce the amount of a grant, if necessary, to ensure that no more than 10 percent of assistance made available under this NOFA will be awarded for projects located within any one unit of general local government or within the geographic area covered by any one Continuum of Care.

If HUD exercises a right it has reserved under this NOFA, that right will be exercised uniformly across all applications received in response to this NOFA.

c. *Tie-breaking Rules.* HUD will break ties among CoCs with the same total score by comparing scores received by the projects for each of the following scoring factors, in the order shown: Overall CoC score, CoC Housing, Services and Structure, CoC Strategic Planning, CoC Performance, CoC Enrollment and Participation in Mainstream Programs, Housing Emphasis, and Housing and Employment Performance. The final tie-breaking factor is the priority number of the competing projects on the applicable CoC priority list(s).

3. Corrections to Deficient Applications

HUD reserves the right to respond to both unanticipated system defects, ambiguities, and technical difficulties in application submissions through a flexible implementation of its authority to cure application deficiencies through callbacks and written inquires seeking clarification and additional information. HUD will exercise the authority for curing deficiencies as stated in the General Section of the SuperNOFA, if

needed, on a consistent and uniform basis for all CoCs and applicants. HUD will expect responses to callbacks and inquiries to be returned in an expedited manner, generally within 14 days of receiving a HUD request. Upon proper publication in the **Federal Register**, HUD reserves the right to extend the competition deadline for good cause related to technical difficulties in the implementation of *e-snaps*.

VI. Award Administration Information

A. Award Notices

1. Action on Conditionally Selected Applications

HUD will notify conditionally selected applicants in writing. HUD may subsequently request them to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review; a copy of the organization's Code of Conduct; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. HUD will notify SHP, SRO, S+C and S+C/SRO applicants of the deadline for submission of such information. If an applicant is unable to meet any conditions for fund award within the specified timeframe, HUD reserves the right not to award funds to the applicant and add them to funds available for the next competition.

2. Applicant Debriefing

See the General Section of the SuperNOFA for applicant debriefing procedures.

3. Appeals Process

Applicants may appeal the results of HUD's review and selection process if they believe a HUD error has occurred. Appeals must be submitted in writing to the Assistant Secretary for Community Planning and Development and must state what HUD error the applicant believes has occurred.

B. Administrative and National Policy Requirements

1. Administrative and Other Program Requirements

a. The Government Performance and Results Act (GPRA) requires Federal agencies to measure the performance of their programs. HUD captures this information not only from monitoring visits and APRs, but also on the data gathered in annual competitions. For example, the description of methods used in determining the project priority order submitted in Exhibit 1 provides verification that projects are performing satisfactorily and are effectively addressing the needs for which they were designed. HUD's homeless assistance programs are measured in 2008 by the objective to ''end chronic homelessness and to move homeless families and individuals to permanent housing.'' This objective has a number of measurable indicators, five of which relate directly to the Continuum of Care homeless assistance programs. These five indicators, as described below, will be collected in Exhibit 1:

(1) At least 415 functioning CoC communities will have a functional Homeless Management Information System (HMIS) by Fiscal Year 2008.

(2) The percentage of formerly homeless individuals who remain housed in HUD permanent housing projects for at least 6 months will be at least 71.5 percent.

(3) The percentage of homeless persons who have moved from HUD transitional housing into permanent housing will be at least 63.5 percent.

(4) The employment rate of persons exiting HUD homeless assistance projects will be at least 19 percent.

b. To achieve this objective and each of these measurable indicators, HUD needs your community's help. The emphasis in this year's competition on housing chronically homeless persons, helping clients access mainstream service programs and jobs, and implementing HMIS are all aligned with this GPRA objective and its performance indicators.

c. Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.'' Please see the General Section of the SuperNOFA for further information.

d. Procurement of Recovered Materials. Please see the General Section of the SuperNOFA for further information.

e. Please reference the General Section of the SuperNOFA for other administrative requirements.

2. Sanctions

Should HUD determine, in its sole discretion, that sufficient evidence exists to confirm that the entity responsible for convening and managing the CoC process in a community has failed to follow locally established or accepted procedures governing the conduct of that process or has failed to provide for a fair process, including a project priority selection process that gives equal consideration to projects proposed by nonprofit organizations, HUD reserves the authority to impose sanctions up to and including a prohibition on that entity and the individuals comprising that entity from participating in that capacity in the future. In making this determination, HUD will consider as evidence court proceedings and decisions, or the determinations of other independent and impartial review bodies. This authority cannot be exercised until after a description of procedural safeguards, including an opportunity for comment and appeal, and the specific process and procedures for imposing a prohibition or debarment, have been published in the **Federal Register**.

3. Timeliness Standards

The FY 2008 HUD appropriations act requires HUD to obligate all FY 2008 CoC homeless assistance funds by September 30, 2010, except for $5,000,000 which is available until expended. All obligated funds will remain available for expenditure until September 30, 2015, except for ten-year projects which remain available until expended.

The applicant is expected to initiate the approved projects promptly in accordance with section VI.B.3 of this NOFA. In addition, HUD will take action if the grantee fails to satisfy the following timeliness standards:

(1) *SHP:* HUD will deselect an award if the grantee does not demonstrate site control within one (1) year of the date of its grant award letter, as required by the McKinney-Vento Act (see 42 U.S.C. 11386(a)(3)) and implemented in program regulations at 24 CFR 583.320(a). HUD may deobligate SHP funds if the following additional timeliness standards are not met:

(a) Construction activities do not begin within eighteen (18) months of the date of HUD's grant award letter and be completed within thirty-six (36) months after that notification.

(b) Activities that cannot begin until construction activities are completed, such as supportive service or operating activities that will be conducted within the building being rehabilitated or newly constructed, do not begin within three (3) months after construction is completed.

(c) All activities that may proceed independent of construction activities, including HMIS and supportive services, do not begin within twelve (12) months of the date of HUD's grant award letter. HUD may deselect or terminate a grant agreement if the grantee is not in compliance with this requirement. HUD may reduce a grant

agreement term to one (1) year where implementation delays have reduced the amount of funds that reasonably can be used in the original term.

(2) *S+C Except SRO Component.* HUD may deselect an award or deobligate S+C funds if an applicant/grantee does not meet the following timeliness standards:

(a) For Project-based Rental Assistance with rehabilitation, the applicant/grantee must complete the rehabilitation within twelve (12) months of the date of HUD's grant award letter.

(3) *Section 8 Moderate Rehabilitation SRO Program and SRO Component of the S+C Program.* For the section 8 SRO program and the SRO component of the S+C program projects awarded under this NOFA, the Annual Contributions Contract (ACC) must be executed no later than September 30, 2010. The rehabilitation work must be completed and the HAP contract executed within twelve (12) months of execution of the Annual Contributions Contract. HUD may reduce the number of units or the amount of the annual contribution commitment if, in HUD's determination, the Public Housing Agency fails to demonstrate a good faith effort to adhere to this schedule.

C. Reporting

1. Once conditionally selected applications advance to full award and execution of a grant agreement, grantees are required to submit an Annual Performance Review (APR) and a completed Logic Model showing outputs and outcomes achieved for the year to both HUD Headquarters and the respective Field Office each year. Grantees must also respond to the management questions contained in the Logic Model. Completed Logic Models may be submitted to *SNAPS_LOGIC_MODEL@hud.gov*. Questions regarding the logic model submission process can be sent to *SNAPS_LOGIC_MODEL_QUESTIONS@hud.gov*. HUD will post Frequently Asked Questions about the Logic Model on *http://www.hudhre.info.*

In addition, applicants must report race and ethnicity data for beneficiaries of HUD programs in conformity with form 27061 HUD Race and Ethnic Data Reporting Form. CoC applicants may report this data as part of their Annual Performance Report submission to HUD.

Also, Grantees who expend $500,000 or more in a year in Federal awards are reminded they must have a single or program-specific audit for that year in accordance with the provisions of 24 CFR part 45 and OMB Circular No. A–133.

2. *Section 3 Reporting Regulations.* Pursuant to 24 CFR 135.3(a)(2), the section 3 requirements apply to housing and community development assistance that is used for housing rehabilitation, housing construction and other construction. Grantees doing any of these activities must submit HUD–60002 to the Office of Fair Housing and Equal Opportunity (FHEO) at the time they submit their APR to the Office of Special Needs Assistance Programs. This form may be completed electronically at *http://www.hud.gov/offices/fheo/section3/section3.cfm.*

VII. Agency Contacts

A. For Further Information

Individuals may contact the HUD Field Office serving their area, at the telephone number shown in the General Section of the SuperNOFA, or individuals may contact the NOFA Information Center at 1–800–483–8929. Individuals who are hearing- or speech-impaired should use the Information Relay Service at 1–800–877–8339 (these are toll-free numbers).

B. For Technical Assistance

HUD will make appropriate resources available for technical assistance related to the new electronic application in FY 2008. Specifically, HUD will make available an electronic application Help Desk at 1–877–6ES–NAPS (1–877–637–6277) or *via* e-mail at *esnaps@hudhre.info.* To address technical or other questions, HUD Field Office staff also will be available to help citizens identify organizations in the community that are involved in developing the CoC system. HUD staff and contractors cannot provide CoCs and applicants with guidance that will result in a competitive advantage for any CoC or project applicant.

Following conditional selection of applications, HUD staff will be available to assist selected applicants in clarifying or confirming information that is a prerequisite to the offer of a grant agreement or Annual Contributions Contract by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of a CoCs application pertinent to HUD's funding decision.

C. Satellite Broadcast

HUD will hold one or more information broadcasts via satellite for potential applicants to learn more about the program and preparation of the application. Viewing of these broadcasts, which will provide critical information on the application process, is highly recommended. For more information about the date and time of the broadcast, individuals should consult the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

VIII. Other Information

A. Paperwork Reduction Act

The information collection requirements contained in this document have been submitted for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and the OMB approval number is 2506–0112. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 196 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

B. Findings and Certifications

1. Environmental

This NOFA provides funding under, and does not alter the environmental requirements of 24 CFR parts 582 and 583 and subpart H of 24 CFR part 882. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). For environmental review of activities funded under this NOFA, see the requirements described at section III.C.3.d above.

Dated: July 1, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

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Federal Register

Vol. 73, No. 133

Thursday, July 10, 2008

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
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Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, JULY

37351–37774 1
37775–38108 2
38109–38306 3
38307–38882 7
38883–39212 8
39213–39568 9
39569–39856 10

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8272 38297
(Proc. 7912 of 6/29/2005 See: Proc. 8272) 38297
(Proc. 8213 of 12/20/2007 See: Proc. 8272) 38297
(Proc. 8240 of 4/17/2008 See: Proc. 8272) 38297

Executive Orders:
13467 38103
EO 10450 of 4/27/1953 (see: EO 13467) 38103
EO 10577 of 11/23/1954 (see: EO 13467) 38103
EO 10865 of 2/20/1960 (see: EO 13467) 38103
EO 12171 of 11/19/1979 (Amended by: EO 13467) 38103
EO 12333 of 12/4/1981 (see: EO 13467) 38103
EO 12829 of 1/6/1993 (see: EO 13467) 38103
EO 12958 of 4/17/1995 (see: EO 13467) 38103
EO 12968 of 8/2/1995 (Amended by: EO 13467) 38103
EO 13381 of 6/27/2005 (Revoked by: EO 13467) 38103

Administrative Orders:
Memorandums:
Memorandum of June 26, 2008 37351

5 CFR
532 39213

7 CFR
301 37775
989 38307
1216 39214

Proposed Rules:
253 38155

9 CFR

Proposed Rules:
71 38343
94 37892

10 CFR

Proposed Rules:
430 38159

12 CFR
575 39216

14 CFR
39 .....37353, 37355, 37358, 37775, 37778, 37781, 37783, 37786, 37789, 37791, 37793, 37795, 38311, 38883, 38885, 38887, 38889, 38891, 38893, 38895, 38898, 38900, 38905, 39569, 39570, 39572, 39574, 39577, 39579, 39580, 39583
71 .....37797, 38109, 38313, 38314, 39220, 39221
97 37360

Proposed Rules:
39 .....37898, 37900, 37903, 38160, 38346, 38933, 38935, 38937, 39627, 39628
71 37905

15 CFR
336 39585
745 38908
774 38908
902 39587

16 CFR
305 39221

17 CFR
30 39226
210 38094
228 38094
229 38094
249 38094

Proposed Rules:
210 39526
229 39526
230 37752
240 .....37752, 39182
249 39526

18 CFR
37 39092

19 CFR
201 38316
210 38316

21 CFR
312 39588
314 39588
530 38110
600 39588
601 39588
1310 39611

22 CFR

Proposed Rules:
304 39270

25 CFR

Proposed Rules:
293 37907

26 CFR

1 .....37362, 37797, 38113, 38910, 39227, 39614
25.....37362
26.....37362
31.....37371
53.....37362
55.....37362
156.....37362
157.....37362
301 .....37362, 37804, 38915
602.....37371, 39227

Proposed Rules:

1 .....37389, 37910, 38162, 38940, 39270, 39630
26.....37910
301.....37910

28 CFR

Proposed Rules:

32.....39632

29 CFR

4003.....38117

Proposed Rules:

4001.....37390
4022.....37390
4044.....37390

30 CFR

938.....38918

Proposed Rules:

250.....39376
285.....39376
290.....39376
948.....38941

31 CFR

Ch. V.....37536

32 CFR

706.....38921

Proposed Rules:

199.....38348
726.....38350

33 CFR

100.....39233, 39235
110.....38922, 38924
117.....37806, 37809
165 .....37809, 37810, 37813, 37815, 37818, 37820, 37822, 37824, 37827, 37829, 37833, 37835, 38120

Proposed Rules:

165.....38951

34 CFR

Proposed Rules:

674.....37694
682.....37694
685.....37694

36 CFR

Proposed Rules:

2.....39272
7.....38954
1195.....38352, 38353

37 CFR

201.....37838
202.....37838
203.....37838
204.....37838
205.....37838
211.....37838

Proposed Rules:

1.....38027

38 CFR

Proposed Rules:

21.....37402

39 CFR

Proposed Rules:

111.....39272, 39273

40 CFR

50.....39235
51.....39235
52 .....37840, 37841, 37843, 37844, 38122, 38124, 38328, 39237
53.....39235
58.....39235
62.....38925
63.....37728
81.....38124
86.....38293
174.....37846
180 .....37850, 37852, 39240, 39247, 39251, 39256, 39261, 39264
261.....37858
266.....37858

Proposed Rules:

52 .....38163, 38353, 39275
55.....38356
62.....38954

42 CFR

Proposed Rules:

405.....38502
409.....38502
410.....38502
411.....38502
414.....38502
415.....38502
424.....38502
485.....38502
486.....38502

44 CFR

67.....38132

47 CFR

1.....37861, 37869
32.....37882
36.....37882
43.....37861, 37869
54.....37882
64.....38928
73 .....38138, 38139, 38331, 39269, 39623

Proposed Rules:

1.....37911
27.....38955
43.....37911
73.....38361

48 CFR

Proposed Rules:

516.....39275
552.....39275

49 CFR

571.....38331

Proposed Rules:

171.....38361
173.....38164, 38361
177.....38164
178.....38361
523.....37922
531.....37922
533.....37922
534.....37922
536.....37922
537.....37922
571.....38372

50 CFR

17.....39506, 39790
622.....38139
635.....38144
648 .....37382, 38340, 39587, 39624
660.....39625
679.....38931, 39626

Proposed Rules:

17.....38956, 39639
27.....39272
404.....38375
622.....38387
648.....39643

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 10, 2008

AGRICULTURE DEPARTMENT

Farm Service Agency

Guaranteed Loans; Number of Days of Interest Paid on Loss Claims; published 6-10-08

COMMERCE DEPARTMENT

International Trade Administration

Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act (2006)

Imports of Certain Cotton Shirting Fabric; published 7-10-08

FEDERAL COMMUNICATIONS COMMISSION

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television; published 7-10-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Pratt & Whitney Canada Corp. (P&WC) Models PW305A and PW305B Turbofan Engines; published 6-25-08

TREASURY DEPARTMENT

Internal Revenue Service

Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property; published 7-10-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Importation of Baby Squash and Baby Courgettes from Zambia; comments due by 7-15-08; published 5-16-08 [FR E8-10920]

Importation of Horses, Ruminants, Swine, and Dogs:

Remove Panama from Lists of Regions Where Screwworm is Considered to Exist; comments due by 7-15-08; published 5-16-08 [FR E8-10918]

Importation of Tomatoes from Souss-Massa, Morocco; comments due by 7-15-08; published 5-16-08 [FR E8-10923]

AGRICULTURE DEPARTMENT

Forest Service

Request for Comment; Availability:

Regulatory Flexibility Act Assessment; Locatable Minerals Operations; comments due by 7-17-08; published 6-17-08 [FR E8-13446]

CIVIL RIGHTS COMMISSION

Supplemental Standards of Ethical Conduct for Employees of the United States Commission on Civil Rights; comments due by 7-14-08; published 6-13-08 [FR E8-13170]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries in the Western Pacific; Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium; comments due by 7-14-08; published 5-30-08 [FR E8-12127]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Defense Federal Acquisition Regulation Supplement:

Excessive Pass-Through Charges; comments due by 7-14-08; published 5-13-08 [FR E8-10666]

DEFENSE DEPARTMENT

Federal Acquisition Regulation:

Contractor Compliance Program and Integrity Reporting; comments due by 7-15-08; published 5-16-08 [FR E8-11137]

Federal Acquisition Regulation; FAR Case 2007018, Organizational Conflicts of Interest; comments due by 7-18-08; published 6-18-08 [FR E8-13724]

Privacy Act; Systems of Records; comments due by 7-18-08; published 5-19-08 [FR E8-11140]

Transporter Proof of Delivery; comments due by 7-18-08; published 5-19-08 [FR E8-11124]

ENERGY DEPARTMENT

Assistance Regulations; comments due by 7-15-08; published 5-16-08 [FR E8-11005]

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 7-14-08; published 5-15-08 [FR E8-10898]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania:

Determination of Attainment of the Fine Particle Standard; comments due by 7-14-08; published 6-13-08 [FR E8-13340]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Intent to delete the Fourth Street Abandoned Refinery Site from the National Priorities List; comments due by 7-14-08; published 6-13-08 [FR E8-13371]

Naphthalene Risk Assessments; Availability, and Risk Reduction Options; comments due by 7-14-08; published 5-14-08 [FR E8-10830]

National Oil and Hazardous Substances Pollution Contingency Plan:

National Priorities List; comments due by 7-14-08; published 6-13-08 [FR E8-13366]

National Priorities List; comments due by 7-14-08; published 6-13-08 [FR E8-13369]

National Priorities List Update; comments due by 7-14-08; published 6-13-08 [FR E8-13338]

Pesticide Tolerances:

Cyproconazole; comments due by 7-14-08; published 5-14-08 [FR E8-10829]

Protection of Stratospheric Ozone:

Revision of Refrigerant Recovery Only Equipment Standards; comments due by 7-18-08; published 6-18-08 [FR E8-13754]

Protection of Stratospheric Ozone; Revision of Refrigerant Recovery Only Equipment Standards; comments due by 7-18-08; published 6-18-08 [FR E8-13749]

FEDERAL COMMUNICATIONS COMMISSION

Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, etc.; comments due by 7-17-08; published 7-2-08 [FR E8-14875]

Promoting Diversification of Ownership in the Broadcasting Services; comments due by 7-15-08; published 5-16-08 [FR E8-11043]

FEDERAL RESERVE SYSTEM

Truth in Lending; comments due by 7-18-08; published 5-19-08 [FR E8-10242]

Truth in Savings; comments due by 7-18-08; published 5-19-08 [FR E8-10243]

FEDERAL TRADE COMMISSION

Privacy Act; Systems of Records; comments due by 7-14-08; published 6-12-08 [FR E8-13111]

GENERAL SERVICES ADMINISTRATION

Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council; comments due by 7-18-08; published 6-18-08 [FR E8-13724]

Federal Acquisition Regulation:

Contractor Compliance Program and Integrity Reporting; comments due by 7-15-08; published 5-16-08 [FR E8-11137]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare Program:

Revisions to the Medicare Advantage and Prescription Drug Benefit Program; comments due by 7-15-08; published 5-16-08 [FR 08-01244]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Defining Small Number of Animals for Minor Use Designation; comments due by 7-16-08; published 3-18-08 [FR E8-05385]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage Regulations; Port of New York; comments due by 7-14-08; published 5-14-08 [FR E8-10706]

Crewmember Identification Documents; comments due by 7-14-08; published 5-14-08 [FR E8-10707]
Escort Vessels in Certain U.S. Waters; comments due by 7-14-08; published 4-15-08 [FR E8-07935]
Safety Zone:
Patchogue Bay, Patchogue, NY; comments due by 7-14-08; published 6-12-08 [FR E8-13143]
Safety Zones:
Festival of Sail San Francisco, San Francisco, CA; comments due by 7-14-08; published 6-13-08 [FR E8-13268]

HOMELAND SECURITY DEPARTMENT
Privacy Act of 1974: Implementation of Exemptions; US-VISIT Technical Reconciliation Analysis Classification System (TRACS); comments due by 7-16-08; published 6-16-08 [FR E8-13386]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Draft Bexar County Karst Invertebrates Recovery Plan; comments due by 7-15-08; published 5-16-08 [FR E8-10996]
Endangered and Threatened Wildlife and Plants:
90-Day Finding on a Petition To List the Ashy Storm-Petrel (Oceanodroma homochroa); comments due by 7-14-08; published 5-15-08 [FR E8-10790]
Initiation of Status Review for the Northern Mexican Gartersnake (Thamnophis eques megalops); comments due by 7-14-08; published 5-28-08 [FR E8-11756]
Proposed Removal of Erigeron Maguirei from the Federal List of Endangered and Threatened Plants; Availability of Post-Delisting Monitoring Plan; comments due by 7-15-08; published 5-16-08 [FR E8-09282]
Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear; comments due by 7-14-08; published 5-15-08 [FR E8-11144]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
West Virginia Regulatory Program; comments due by 7-16-08; published 6-16-08 [FR E8-13456]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License; comments due by 7-17-08; published 6-2-08 [FR E8-11855]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council; comments due by 7-18-08; published 6-18-08 [FR E8-13724]
Federal Acquisition Regulation:
Contractor Compliance Program and Integrity Reporting; comments due by 7-15-08; published 5-16-08 [FR E8-11137]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness Directives:
Airbus Model A300, A310, and A300-600 Series Airplanes; comments due by 7-17-08; published 6-17-08 [FR E8-13566]
Airbus Model A330 Airplanes; and Model A340 200 and -300 Airplanes; comments due by 7-14-08; published 6-17-08 [FR E8-13568]
APEX Aircraft Model CAP 10 B Airplanes; comments due by 7-14-08; published 6-13-08 [FR E8-13319]
Boeing Model 767-200 and -300 Series Airplanes; comments due by 7-14-08; published 6-17-08 [FR E8-13579]
DG Flugzeugbau GmbH Model DG-500MB Powered Sailplanes; comments due by 7-14-08; published 6-13-08 [FR E8-13324]
Engine Components Inc. Reciprocating Engine Cylinder Assemblies; comments due by 7-18-08; published 5-19-08 [FR E8-11116]
Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes; comments due by 7-14-08; published 6-13-08 [FR E8-13322]
Proposed Establishment of Class E Airspace:
Eek, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11968]
Venetie, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11969]
Proposed Revision of Class E Airspace:
Gulkana, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11976]
Kake, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11973]
Kivalina, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11978]
Prospect Creek, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11972]
Red Dog, AK; comments due by 7-14-08; published 5-29-08 [FR E8-11971]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Proposed Decisions to Grant Exemptions:
Average Fuel Economy Standards; Passenger Automobile Average Fuel Economy Standards; comments due by 7-17-08; published 6-17-08 [FR E8-13505]

TRANSPORTATION DEPARTMENT
Pipeline and Hazardous Materials Safety Administration
Hazardous Materials Transportation; Registration and Fee Assessment Program; comments due by 7-14-08; published 5-5-08 [FR E8-09815]

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Waybill Sample; comments due by 7-18-08; published 6-26-08 [FR E8-13677]

TREASURY DEPARTMENT
Internal Revenue Service
Determination of Minimum Required Pension Contributions; comments due by 7-14-08; published 4-15-08 [FR 08-01133]
Regulations Under Section 2642(g); comments due by 7-16-08; published 4-17-08 [FR E8-08033]

VETERANS AFFAIRS DEPARTMENT
VA Veteran-Owned Small Business Verification Guidelines; comments due by 7-18-08; published 5-19-08 [FR E8-10489]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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CORRECTION

In the **List of Public Laws** printed in the *Federal Register* on July 1, 2008, H.R. 2642, Public Law 110–252, was printed incorrectly. It should read as follows:

H.R. 2642/P.L. 110–252

Supplemental Appropriations Act, 2008 (June 30, 2008; 122 Stat. 2323)

Last List July 2, 2008

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