AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

7–16–08 Wednesday
Vol. 73 No. 137 July 16, 2008

Pages 40715–40938

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, August 12, 2008
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 73, No. 137

Wednesday, July 16, 2008

Agriculture Department
See Commodity Credit Corporation
See Forest Service
See National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Intent to Revise and Extend, 40830–40831
National Agricultural Research, Extension, Education, and Economics Advisory Board; Appointment of Members, 40831

Antitrust Division
NOTICES
National Cooperative Research and Production Act (1993):
Cooperative Research Group On Development and Evaluation of a Gas Chromatograph Testing Protocol, 40882
Open DeviceNet Vendor Association, Inc., 40882
Out Of Home Video Advertising Bureau, Inc., 40882–40883
Semiconductor Test Consortium, Inc., 40883
Pursuant To The National Cooperative Research And Production Act (1993):
Information Card Foundation, 40883

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Emergency Transportable Housing Advisory Committee; Meeting, 40802

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40876–40877
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Correction, 40877–40878

Coast Guard
RULES
Safety Zone:
100th Anniversary Chicago to Mackinac Race Fireworks, Lake Huron, Mackinac Island, MI, 40742–40745
Mackinac Bridge Birthday Fireworks, Lake Huron, St. Ignace, MI., 40740–40742
Transportation Worker Identification Credential Implementation in the Maritime Sector:
Hazardous Materials Endorsement for a Commercial Driver's License, 40739–40740
PROPOSED RULES
Anchorage Regulations:
Port of New York, 40800–40802

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 40852–40854

Commodity Credit Corporation
NOTICES
Funds availability:
Emerging Markets Program, 40832–40834
Foreign Market Development Cooperator Program, 40835–40837
Market Access Program, 40837–40839
Quality Samples Program, 40839–40841
Technical Assistance for Specialty Crops Program, 40841–40843

Copyright Office, Library of Congress
PROPOSED RULES
Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries, 40802–40813

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 40854–40857
Meetings:
National Assessment Governing Board, 40858–40859

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Industrial Equipment; Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment, 40770–40791
NOTICES
Electric Transmission Congestion Study, 40859

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Illinois, 40748–40750
Wyoming, 40750–40752
Approval and Promulgation of Implementation Plans:
New Jersey, 40752–40754
Exemption from the Requirement of a Tolerance:
Bacillus thuringiensis Cry 1A.105 protein, 40756–40760
Bacillus thuringiensis Modified Cry1Ab Protein, 40760–40764
Revisions to the California State Implementation Plan:
Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District, 40754–40756
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans, etc.:
Pennsylvania, 40813–40824

Revisions to the California State Implementation Plan:
Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District, 40813
NOTICES
Ambient Air Monitoring Reference and Equivalent Methods:
Designation of a New Reference Method, 40866–40867
Certain New Chemicals; Receipt and Status Information, 40867–40870
Meetings:
Environmental Financial Advisory Board, 40870
Reregistration Eligibility Decisions:
Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide, 40871–40873
Tetramethrin, 40870–40871

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 40873

Federal Aviation Administration
RULES
Airworthiness Directives:
International Aero Engines AG (IAE) V2500 Series Turbofan Engines, 40715–40719
Establishment of Class E Airspace:
Emporium, PA, 40719
Fort Collins, CO, 40719–40720
Establishment of Colored and VOR Federal Airways; Alaska, 40720–40721
Establishment of Low Altitude Area Navigation Routes (T-Routes):
Sacramento and San Francisco, CA, 40721–40722
NOTICES
IACC technical specifications for the World Aeronautical Chart series, 40906–40907
Meetings:
RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast, 40907–40908
RTCA Special Committee 220/Automatic Flight Guidance and Control, 40907

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40873–40874
Meetings:
Advisory Committee on Diversity for Communications in the Digital Age, 40874–40875

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 40875

Federal Energy Regulatory Commission
NOTICES
Applications:
Birch Power Company; BPUS Generation Development LLC, 40860–40861
Brookfield Power Piney & Deep Creek, LLC, 40861–40862
Canyon Creek Compression Co., 40862
City of Holyoke Gas and Electric, 40862–40863
Augusta Canal Authority, 40859–40860
Hydrodynamics, Inc., 40863–40864
Hydro Green Energy, LLC, 40863
Idaho Power Co., 40864–40865
Utah Independent Power, 40865–40866

Federal Highway Administration
NOTICES
Environmental statements; Availability, etc.:
Seattle, King County, WA, 40908

Federal Maritime Commission
NOTICES
Agreements Filed, 40875
Ocean Transportation Intermediary License Applicants, 40876

Federal Reserve System
NOTICES
Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities, 40876

Foreign Assets Control Office
NOTICES
Supplemental Identification Information of Two Entities Designated Pursuant to Executive Order (13224), 40912

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Flathead National Forest, Flathead County, MT; Kalispell Line Valve 5 to 6 Loop Natural Gas Pipeline Project, 40843–40845
Status of Travel Management Planning and Providing Access for Subsistence Purposes within the USDA Forest Service, Alaska Region, 40845

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

Interior Department
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Amendments to the Section 7216 Regulations; Disclosure or Use of Information by Preparers of Returns; Correction, 40738–40739
Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent; Correction, 40739
Determining the Amount of Taxes Paid for Purposes of Section 901, 40727–40738
PROPOSED RULES
Amendments to the Section 7216 Regulations; Disclosure or Use of Information by Preparers of Returns; Correction, 40799–40800
Determining the Amount of Taxes Paid for Purposes of Section 901, 40792–40793
Employer Comparable Contributions to Health Savings Accounts and Requirement of Return for Filing of the Excise Tax, 40793–40799
Guidance Under Sections 642 and 643 (Income Ordering Rules); Correction, 40793
Tax Return Preparer Penalties; Correction, 40914

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental Impact Statements; Availability, etc.:
USIBWC Tijuana River Flood Control Project in San Diego County, CA, 40880–40881

International Trade Administration
NOTICES
Aerospace Supplier Development Mission to China, 40846–40848
Continuation of Antidumping Duty Order:
Silicon Metal from the Russian Federation, 40848–40849
Manufacturing and Technology Trade Mission to Australia, 40849–40850
North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews:
Motion to Terminate Panel Review, 40851

Justice Department
See Antitrust Division
NOTICES
Consent Decrees:
Premier Industries, Inc., 40881
Settlement Agreements:
ASARCO LLC, et al., 40881–40882

Labor Department
NOTICES
Delegation of Authorities and Assignment of Responsibilities:
Chief Human Capital Officer and Others, 40934–40937

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 40879–40880
Meetings:
Utah Resource Advisory Council; Conference Call, 40880

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40908–40909
Environmental Impact Statements; Availability, etc.:
Calypso LNG L.L.C., Liquefied Natural Gas Deepwater Port License Application, 40909–40911

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Agricultural Statistics Service
NOTICES
Advisory Committee on Agriculture Statistics; Invitation for Nominations, 40846

National Highway Traffic Safety Administration
NOTICES
Grant of Petition for Decision of Inconsequential Noncompliance:
Nissan North America, Inc., 40911–40912

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 40878–40879
National Heart, Lung, and Blood Institute, 40879

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone off Alaska:
Northern Rockfish in the Gulf of Alaska, 40765–40766
Pacific Ocean Perch in the Gulf of Alaska, 40766
Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska, 40764–40765
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper-Grouper Fishery off the Southern Atlantic States; Amendment (14), 40824–40829
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 40851
South Atlantic Fishery Management Council, 40851–40852

Nuclear Regulatory Commission
PROPOSED RULES
Consideration of Petition in Rulemaking Process:
Christine O. Gregoire, Governor of the State of Washington, 40767–40770
NOTICES
Receipt and Availability of Application:
Yucca Mountain; Correction, 40883–40884

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Miscellaneous Amendments; Correction, 40914

Reclamation Bureau
PROPOSED RULES
Regulating the Use of Lower Colorado River Water Without an Entitlement, 40916–40932

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Boston Stock Exchange, Inc., 40884–40886
Chicago Board Options Exchange, Inc., 40886–40888
Depository Trust Co., 40888–40890
Financial Industry Regulatory Authority, Inc., 40890–40893 40892–40893
Fixed Income Clearing Corp., 40893–40895
International Securities Exchange, LLC, 40895–40898
NASDAQ Stock Market LLC, 40898–40902
National Securities Clearing Corp., 40902–40903

Small Business Administration
NOTICES
Action Subject to Intergovernmental Review Under Executive Order (12372), 40903–40904
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40904–40905

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40905

Culturally Significant Objects Imported for Exhibition Determinations:
Art in the Age of Steam; Europe, America and the Railway (1830-1960), 40905–40906
Meetings:
Advisory Committee on Historical Diplomatic Documentation, 40906

Statistical Reporting Service
See National Agricultural Statistics Service

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

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

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

U.S. Customs and Border Protection
RULES
Technical Corrections to Customs and Border Protection Regulations, 40722–40727

Veterans Affairs Department
RULES
Supplemental Statement of the Case, 40745–40748
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40912–40913

Separate Parts In This Issue

Part II
Interior Department, Reclamation Bureau, 40916–40932

Part III
Labor Department, 40934–40937

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

Proposed Rules:

71 40767
431 40770

14 CFR

39 40715
71 (4 documents) 40719, 40720, 40721

19 CFR

0 40722
4 40722
7 40722
12 40722
18 40722
24 40722
101 40722
103 40722
115 40722
123 40722
134 40722
141 40722
177 40722
181 40722

26 CFR

1 40727
301 (2 documents) 40738, 40739

Proposed Rules:

1 (3 documents) 40792, 40793, 40914
20 40914
25 40914
26 40914
31 40914
40 40914
41 40914
44 40914
53 40914
54 (2 documents) 40793, 40914
55 40914
56 40914
156 40914
157 40914
301 (2 documents) 40799, 40914

33 CFR

105 40739
165 (2 documents) 40740, 40742

Proposed Rules:

110 40800

36 CFR

Proposed Rules:

1190 40802
1191 40802

37 CFR

Proposed Rules:

201 40807
255 40807

38 CFR

19 40745
20 40745

40 CFR

52 (4 documents) 40748, 40750, 40752, 40754
174 (2 documents) 40756, 40760

Proposed Rules:

52 (2 documents) 40813
81 40813

43 CFR

Proposed Rules:

415 40916

49 CFR

172 40914

50 CFR

679 (3 documents) 40764, 40765, 40766

Proposed Rules:

622 40824

Rules and Regulations

Federal Register

Vol. 73, No. 137

Wednesday, July 16, 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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28058; Directorate Identifier 2007–NE–08–AD; Amendment 39–15610; AD 2008–14–15]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D5 turbofan engines. This AD requires removing certain No. 4 bearing oil system components from service at the next shop visit or by an end date determined by the engine model. This AD results from instances of oil loss from the No. 4 bearing compartment. We are issuing this AD to prevent heat damage to high-pressure turbine (HPT) and low-pressure turbine (LPT) critical life limited hardware such as the HPT stage 1–2 airseal. Damage to the HPT stage 1–2 airseal could cause uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective August 20, 2008.

ADDRESSES: 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: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7758; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D5 turbofan engines. We published the proposed AD in the **Federal Register** on July 9, 2007 (72 FR 37126). That action proposed to require removing certain No. 4 bearing oil system components from service at the next shop visit or by an end date determined by the engine model.

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.

Requests To Change Compliance Schedule

Three commenters, Air Transport Association, United Airlines, and Jet Blue Airways ask that we change the compliance:

- To require removing the parts only when they access the No. 4 bearing compartment, or
- For engines that don't require access to the No. 4 bearing compartment at the next shop visit, to permit them to defer removing the parts to the subsequent shop visit, but not later than June 30, 2011.

The commenters state that changing the compliance times will avoid an undue burden of forcing every engine visit to access the No. 4 bearing compartment and will avoid aircraft-on-ground situations due to lack of spare parts.

We don't agree. We developed the compliance requirements to maintain an acceptable level of safety for the entire V2500 fleet. Revising the compliance requirements will result in having to accelerate the program in order to maintain the same level of safety. That will most likely have an adverse impact on the fleet, due to forcing additional engine removals. The engine manufacturer, IAE, has also stated that a sufficient supply of spare parts exists to handle incorporation within the compliance requirements of the AD, including unexpected shop visit situations. However, operators who have special conditions may propose alternate compliance schedules, if they can show that the alternate compliance schedules provide an acceptable level of safety. We didn't change the AD.

Request To Address Design Deficiencies in the HPT Stage 1–2 Airseal

One commenter, Jet Blue Airways, asks us to revise the AD to address design deficiencies in the HPT Stage 1–2 airseal as a contributor to HPT distress, rather than attributing the root cause of all HPT Stage 1–2 airseal distress to oil in the turbine. The commenter states that one of the reported ''confirmed instances of oil loss'' in the turbine is inaccurate. One investigation, which was categorized as an ''oil in turbine'' event, revealed no substantive evidence of oil loss in the turbine, or thermal oil ignition that could have caused the dimensional defects in the HPT Stage 1–2 airseal. It is not beyond reasonable speculation that, of the remaining 23 events, some percentage was incorrectly stated as related to ''No. 4 bearing compartment oil loss.''

We don't agree. We have been involved in the manufacturer's Engineering Investigations for each of the subject ''oil in turbine'' (OIT) events, and agree with the manufacturer's conclusions. Due to the operating conditions surrounding the No. 4 bearing compartment, it can be extremely difficult, following engine operation, to detect either evidence of oil loss, or thermo oil ignition. The investigation concluded that the HPT Stage 1–2 airseal distress experienced is a result of thermo oil ignition and not due to design deficiencies in the HPT

Stage 1–2 airseal. The investigation also concluded that measurement of specific HPT Stage 1–2 airseal dimensions is a reliable method of determining if oil ignition has occurred. We did not change the AD.

Request To Eliminate the Requirement To Incorporate ''OIT Package 2''

The same commenter, Jet Blue, asks us to revise the AD to eliminate the requirement to incorporate the ''OIT Package 2'' for compliance. The ''OIT Package 2'' includes mainly external hardware revisions to eliminate ''oil traps'' in the oil scavenge tubes for the No. 4 bearing compartment that may adversely impact oil scavenge capability. The commenter states ''To our knowledge, no V2527–A5 engine incorporating the modification standards of 'OIT Package' have been found with the reported defects or suspected of No. 4 bearing compartment loss.''

We don't agree. We have reviewed the results of the Engineering Investigation of the No. 4 bearing compartment oil loss events, and agree with the manufacturer's conclusions that all hardware identified in Tables 1, 2, and 3 of this AD contribute to the root cause of insufficient oil scavenging from the No. 4 bearing compartment. We didn't change the AD.

Request To Revise the NPRM To State a Significant Economic Impact

The same commenter, Jet Blue, asks us to revise the AD to state that the proposed rule would have a significant economic impact. The commenter states that the modification would cost more than $8,000,000 for its fleet.

We don't agree. In order for us to categorize an AD as a ''significant economic impact'' to operators, the total cost of the AD must exceed $100,000,000 per year. We based our economic assessment for this AD on actual hardware replacement cost (using the manufacturer's spare parts pricing), the estimated number of work-hours (at $80 per hour) required to comply with the AD, and the estimated number of shop visits per year. Based on those figures, we estimate the cost of the proposed AD to U.S. operators to be $45,037,165 per year, which is below the $100,000,000 threshold criterion. We didn't change the AD.

Request To Incorporate IAE Service Bulletin V2500–ENG–72–0541 Into the AD

The same commenter, Jet Blue Airways, requests that we revise the AD to incorporate IAE Service Bulletin (SB) V2500–ENG–72–0541 into the AD. The commenter states that tracking all of the individual parts listed in the AD, especially from parts that are not serialized, is cumbersome and beyond reasonable and customary standards.

We don't agree. Due to the complexity of the various IAE SBs, we determined that it would be clearer to list in the AD, only the parts that operators must remove from service. We list IAE SB V2500–ENG–72–0541 in the Related Information section of the AD. That SB provides specific instructions and the current replacement part information. Listing only the parts that the operators must remove from service also provides operators with increased flexibility for installing other approved parts not listed in the IAE SB. However, we have added a statement in the Compliance section of the AD that states ''If you have accomplished IAE Service Bulletin V2500–ENG–72–0541, Revision 4, dated March 12, 2008, you have complied with this AD.''

Request To Correct Certain Information in the AD

One commenter, IAE, asks us to correct certain information in the Compliance section of the AD.

We agree. We have:

- Corrected the part number (P/N) for the Seal Assembly, No. 4 Bearing, Front, in Table 2 of the AD, from P/N 2A0853 to P/N 2A2055.
- Deleted P/N 2A0830–01, Tube, Scavenge, No. 4 Bearing Assy, from Table 2 of the AD.
- Deleted P/N 2A1949–01, Tube, Scavenge, No. 4 Bearing Assy, from Table 2 of the AD.
- Deleted P/N 5R8111, Tube A/O Oil, No. 4 Bearing Scav Dif Case to Bif Panel, from Table 2 of the AD.
- Added paragraph (j) for V2525–D5 and V2528–D5 engines stating that with HPT stage 1 rotor assembly, P/Ns 2A9521–002 and 2A9621–002, the stage 1 HPT hub metering plug, P/N 2A3182, does not need to be removed.
- Replaced IAE Service Bulletin V2500–ENG–72–0541, Revision 1, dated February 26, 2007, in the Related Information paragraph, with IAE Service Bulletin V2500–ENG–72–0541, Revision 4, dated March 12, 2008.

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 with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 686 engines installed on airplanes of U.S. registry. Of those 686 engines, the operators of nineteen V2500–A1 engines, thirty –A5 engines and twenty-one –D5 engines have already complied with the requirements in this AD.

COSTS OF COMPLIANCE PER YEAR BY ENGINE MODEL

Engine model	Number of engines per year	Total labor cost per year	Total parts cost per year	Total cost per year
V2500–A1	33	$355,080	$7,230,564	$7,585,644
V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5	142	1,368,880	35,790,816	37,159,696
V2525–D5, V2528–D5	5	15,400	276,425	291,825

Based on these figures, we estimate the total cost of this AD to U.S. operators to be $45,037,165 per year.

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, 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 adding the following new airworthiness directive:

2008–14–15 International Aero Engines AG (IAE): Amendment 39–15610. Docket No. FAA–2007–28058; Directorate Identifier 2007–NE–08–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 20, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D5 turbofan engines with a part listed by part number (P/N) in this AD installed. These engines are installed on, but not limited to, Airbus A319, A320, A321, and McDonnell Douglas MD–90 airplanes.

Unsafe Condition

(d) This AD results from instances of oil loss from the No. 4 bearing compartment. We are issuing this AD to prevent heat damage to high-pressure turbine (HPT) and low-pressure turbine (LPT) critical life limited hardware such as the HPT stage 1–2 airseal. Damage to the HPT stage 1–2 airseal could cause uncontained engine failure and damage to the airplane.

Compliance

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

V2500–A1 Engines

(f) For V2500–A1 engines, remove the parts listed by P/N in the following Table 1 of this AD at the next shop visit after the effective date of this AD but not later than November 30, 2008. The ATA chapter reference of the IAE V2500–A1 engine manual (E–V2500–1IA) contains information on removing the parts.

TABLE 1.—V2500–A1 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A0830–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A1949–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A2028–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A0830–001	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A2274–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–33	2A0853	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2055	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–35	2A0892–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A0891–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A0594	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A1040	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2181	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A0884	Seal Air, HPT Stage 1.
72–45–13	2A1203	Seal Air, HPT Stage 1.
72–45–13	2A0884–001	Seal Air, HPT Stage 1.
79–22–49	5R8111	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5R8138	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	6A5367	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.

TABLE 1.—V2500–A1 PARTS TO BE REMOVED—Continued

ATA chapter reference	P/N	Nomenclature
79–22–49	5A9083	Tube A/O Oil—No. 4 Brg Discon to Discon.
79–22–49	5A9084	Tube A/O Oil—No. 4 Brg Discon to Scav Valve.
79–22–49	5A8573	Tube A/O Oil—Press 'T' To Pressure Transducer.
79–23–51	1648MK2	Scavenge Valve.

V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Engines

(g) For V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 engines, remove the parts listed by P/N in the following Table 2 of this AD at the next shop visit after the effective date of this AD but not later than June 30, 2011. The ATA chapter reference of the IAE V2500–A5 engine manual (E–V2500–1IA) contains information on removing the parts.

TABLE 2.—V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, AND V2533–A5 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–33	2A2055	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–35	2A0892–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A0891–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A0594	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A1040	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2354	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A3182	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A1352	Seal Air, HPT Stage 1.
72–45–13	2A3032	Seal Air, HPT Stage 1.
79–22–49	5R8138	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	6A5367	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5A9083	Tube A/O Oil—No. 4 Brg Discon to Discon.
79–22–49	5A9084	Tube A/O Oil—No. 4 Brg Discon to Scav Valve.
79–22–49	5A8573	Tube A/O Oil—Press 'T' To Pressure Transducer.

(h) For V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 engines with HPT stage 1 rotor assembly, P/Ns 2A9521–002 and 2A9621–002, the stage 1 HPT hub metering plug, P/N 2A3182, does not need to be removed.

V2525–D5 and V2528–D5 Engines

(i) For V2525–D5 and V2528–D5 engines, remove the parts listed by P/N in the following Table 3 of this AD at the next shop visit after the effective date of this AD but not later than June 30, 2011. The ATA chapter reference of the IAE V2500–D5 engine manual (E–V2500–3IA) contains information on removing the parts.

TABLE 3.—V2525–D5 AND V2528–D5 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.

TABLE 3.—V2525–D5 AND V2528–D5 PARTS TO BE REMOVED—Continued

ATA chapter reference	P/N	Nomenclature
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A3182	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2354	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A1352	Seal Air, HPT Stage 1.
72–45–13	2A3032	Seal Air, HPT Stage 1.

(j) For V2525–D5 and V2528–D5 engines with HPT stage 1 rotor assembly, P/Ns 2A9521–002 and 2A9621–002, the stage 1 HPT hub metering plug, P/N 2A3182, does not need to be removed.

Previous Credit

(k) If you have accomplished IAE Service Bulletin V2500–ENG–72–0541, Revision 4, dated March 12, 2008, you have complied with this AD.

(l) After the effective date of this AD, do not install any part that has a P/N listed in this AD.

Alternative Methods of Compliance

(m) 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

(n) International Aero Engines Service Bulletin No. V2500–ENG–72–0541, Revision 4, dated March 12, 2008, pertains to the subject of this AD.

(o) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7758; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(p) None.

Issued in Burlington, Massachusetts, on July 2, 2008.

Peter A. White,

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

[FR Doc. E8–15686 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0275; Airspace Docket No. 07–AEA–15]

Establishment of Class E Airspace, Emporium, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date, correction.

SUMMARY: This action confirms the effective date and corrects an error in the airport name listed in a direct final rule published in the **Federal Register** January 30, 2008, that established Class E controlled airspace at Emporium, PA (73 FR 5432) Docket No. FAA–2007–0275.

DATES: Effective 0901 UTC, July 16, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

History

The FAA published a direct final rule with request for comments in the **Federal Register** January 30, 2008, (73 FR 5432) Docket No. FAA–2007–0275. In that rule, airspace was established to serve a landing site at the local High School, however, after publication, an error was discovered in the name used for the heliport. The correct name should have read ''Cameron County Junior/Senior High School Heliport''. This action corrects this error.

Confirmation of Effective Date

The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment were received within the comment period, the regulation would become effective on April 10, 2008. No adverse comments were received, and thus this notice also confirms that effective date.

Correction

■ Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** dated January 30, 2008 (73 FR 5432, **Federal Register** Docket No. FAA–2007–0275, on page 5433, column 3, line 42 and line 50), is corrected to read:

Cameron County Junior/Senior High School Heliport.

* * * * *

Issued in College Park, GA, on April 25, 2008.

Mark A. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–15549 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0336; Airspace Docket No. 08–ANM–4]

Establishment of Class E Airspace; Fort Collins, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Fort Collins-Loveland Municipal Airport, Fort Collins, CO. Controlled airspace is necessary to accommodate Instrument flight rules (IFR) operations from this airport located in mountainous terrain and enable positive control at Fort Collins-Loveland Municipal Airport, Fort Collins, CO. This will enhance the safety and management of aircraft operations at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 8, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Fort Collins-Loveland Municipal Airport, Fort Collins, CO (73 FR 26048). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Fort Collins, CO. Controlled airspace is necessary to enhance the safety of IFR aircraft operations at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM CO E2 Fort Collins, CO [New]

Fort Collins-Loveland Municipal Airport, CO
(Lat. 40°27′07″ N., long. 105°00′41″ W.)

Within a 5-mile radius of Fort Collins-Loveland Municipal Airport.

* * * * *

Issued in Seattle, Washington, on July 1, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–16192 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0092; Airspace Docket No. 07–AAL–18]

Establishment of Colored and VOR Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes four Federal airways in the National Airspace System (NAS) to replace four non-part 95 routes in Alaska. The routes consist of three Very High Frequency Omnidirectional Range (VOR) Federal airways, and one Low/Medium Frequency (L/MF) Colored Federal airway in Alaska. The conversion of these non-part 95 routes would change uncharted nonregulatory airways requiring special aircrew authorization to Federal Airways, thus adding to the instrument flight rules (IFR) airway and route infrastructure in Alaska. The addition of these routes improves the management of air traffic operations and thereby enhances safety. A minor change to the description of V–619 also is being made.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish four Federal Airways in

Alaska (73 FR 15685). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal. No comments were received in response to the NPRM. Based on further analysis of Air Traffic Control requirements, this rule incorporates the inclusion of two additional intersections along V–619. The description of V–619 will include the intersections of the Port Heiden 044° radial and the Saldo 200° radial and the Dillingham 099° radial. With the exception of editorial changes, and the change described above, this amendment is the same as that proposed in the NPRM.

Colored Federal airways and VOR Federal airways are published in paragraph 6009 and 6010, respectively, of FAA Order 7400.9R signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways and VOR Federal airways listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing three VOR Federal airways designated V–351, V–414, V–619 and one Colored Federal airway designated Amber 6 (A–6), in Alaska. The FAA is taking this action for the following reasons: (1) The conversion of these uncharted nonregulatory routes to Federal airways adds to the IFR airway and route infrastructure in Alaska; (2) pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitude information; (3) this amendment establishes controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) the addition of these routes improves the management of air traffic operations and thereby enhances safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it will enhance aviation safety in the state of Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6009(c) Amber Federal Airways.

* * * * *

A–6 [New]

St. Marys, AK, NDB; to North River, AK, NDB

* * * * *

Paragraph 6010(b) VOR Federal Airways.

* * * * *

V–351 [New]

From Port Heiden, AK, NDB/DME; to Dillingham, AK, VOR/DME

* * * * *

V–619 [New]

From Port Heiden, AK, NDB/DME; via the INT of Port Heiden, AK, NDB/DME 044° and Saldo, AK, NDB 200° bearings; to Saldo, AK, NDB; to the Dillingham, AK, VOR/DME 099° radial/47° DME; to Dillingham, AK, VOR/DME

* * * * *

V–414 [New]

From Gambell, AK, NDB/DME; to Kukuliak, AK, VOR/DME

* * * * *

Issued in Washington, DC, on July 2, 2008.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–15934 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0037; Airspace Docket No. 07–AWP–6]

Establishment of Low Altitude Area Navigation Routes (T–Routes); Sacramento and San Francisco, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of four low altitude Area Navigation (RNAV) T-routes, designated T–257, T–259, T–261 and T–263, in the Sacramento and San Francisco, CA, terminal areas until September 25, 2008. The FAA is taking this action to allow additional time for processing and charting.

DATES: *Effective Date:* The effective date of 0901 UTC, July 31, 2008, is delayed to 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group,

Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 30, 2008, the FAA published in the **Federal Register** a final rule establishing four low altitude T-routes in the San Francisco terminal area (73 FR 31021). This rule was originally scheduled to become effective July 31, 2008; however, a need for additional internal processing requires a delay in the effective date until September 25, 2008.

The Rule

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes RNAV T–Routes at Sacramento and San Francisco, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

■ The effective date of the final rule, Docket FAA–2008–0037; Airspace Docket 07–AWP–6, as published in the **Federal Register** on May 30, 2008 (73 FR 31021), is hereby delayed until September 25, 2008.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, on July 2, 2008.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–15932 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 0, 4, 7, 12, 18, 24, 101, 103, 115, 123, 134, 141, 177, and 181

[CBP Dec. 08–25]

Technical Corrections to Customs and Border Protection Regulations

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

ACTION: Final rule.

SUMMARY: Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. Through this review process, CBP discovered a number of discrepancies. This document amends various sections of title 19 of the Code of Federal Regulations to remedy those discrepancies.

DATES: The final rule is effective July 16, 2008.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Regulations and Rulings, Office of International Trade, (202) 572–8836.

SUPPLEMENTARY INFORMATION:

Background

It is the policy of Customs and Border Protection (CBP) to periodically review its regulations (title 19 of the Code of Federal Regulations) to ensure that they are as accurate and up-to-date as possible so that the importing and general public are aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain corrections are necessary affecting parts 0, 4, 7, 12, 18, 24, 101, 103, 115, 123, 134, 141, 177, and 181 of the CBP regulations (19 CFR parts 0, 4, 7, 12, 18, 24, 101, 103, 115, 123, 134, 141, 177, 181).

Discussion of Changes

Part 0 of the CBP regulations (19 CFR 0), concerning transferred or delegated authority, is being amended to replace all references to ''Customs regulations'' with ''CBP regulations''. This is consistent with the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) in 2003 and the subsequent renaming of the agency as U.S. Customs and Border Protection by DHS on March 31, 2007 (*see* 72 FR 20131, dated April 23, 2007).

Certain specific authorities for part 4 of the CBP regulations (19 CFR part 4), concerning vessels in foreign and domestic trades, and coastwise procedures, are being amended to reflect the reorganization and re-codification of Title 46, United States Code (U.S.C.), pursuant to Pub. L. 109–304, 120 Stat. 1632 (October 6, 2006). Title 46 includes the coastwise laws (generally, the Jones Act and the Passenger Vessel Services Act), as well as other navigation laws that are administered by CBP. The re-codification does not change the substance of these laws, but merely reorganizes them. Accordingly, the outdated citations to the former Appendix to Title 46 in the specific authorities for part 4 are being removed, and the new citations to Title 46 are being added.

Part 4 of the CBP regulations contains references to the Great Lakes endorsement of the Certification of Documentation issued by the U.S. Coast Guard. Section 12107 of Title 46, United States Code (46 U.S.C. 12107), which pertained to the Great Lakes endorsement of U.S. vessel documentation laws, was repealed by Pub. L. 104–324, Title XI, § 1115(a), 110 Stat. 3972 (Oct. 19, 1996). Accordingly, the outdated references to the Great Lakes endorsement are being deleted from §§ 4.0(c), 4.60(b)(2), 4.80(a)(2), 4.80(d), 4.82(c), 4.87(a), 4.88(a), 4.90(d), and 4.92. In addition, § 4.80(e), relating to restrictions on coastwise trade, is being amended to reflect amendments to the first and second provisos to 46 U.S.C. App. 883 (first proviso now found at 46 U.S.C. 12132(a), and second proviso now found at 46 U.S.C. 12101(a) and 12132(b)) affected by § 1120(e) of Pub. L. 104–324.

Sections 7.2 through 7.4 of the CBP regulations (19 CFR 7.2–7.4), relating to customs relations with U.S. insular possessions, are being amended in this document to replace references to the ''United States Customs Service'' and ''Customs'' with ''U.S. Customs and Border Protection'' and ''CBP'', respectively, consistent with the

nomenclature changes effected by the transfer of CBP to the DHS.

Section 12.38 of the CBP regulations (19 CFR 12.38), involving the labeling requirements for shipments of liquor, contains a typographical error in the reference to ''18 U.S.C. 1263 214''. This document amends § 12.38 to reflect the correct statutory citation, which is ''18 U.S.C. 1263''.

Section 12.104b(a) of the CBP regulations (19 CFR 12.104b(a)) contains a table listing the State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO). As the State Party of Colombia, in the table, is misspelled, this document amends § 12.104b(a) to correct the spelling error.

Section 18.7(a) of the CBP regulations (19 CFR 18.7(a)), involving reporting requirements upon the arrival of any portion of an in-bond shipment at the port of exportation, contains an error in the parenthetical expression in the first sentence. The conjunction ''and'' is missing between the words ''document'' and ''any''. This document amends § 18.7(a) to correct the error to make clear that the carrier is required to submit the in-bond document and any related carnet.

Section 24.3a(c)(1) of the CBP regulations (19 CFR 24.3a(c)(1)), concerning the determination of the rate of interest to be charged on overdue CBP bills, is being amended in this document to reflect that the applicable interest rates are determined by the Internal Revenue Service and published by CBP on a quarterly basis, rather than on a semiannual basis as this provision currently provides.

Section 24.3a(d)(1) of the CBP regulations (19 CFR 24.3a(d)(1)) provides for notification to the principal of bills from CBP and sets forth those elements that normally appear on billing notices. Currently, the regulation provides that the principal is to be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. In order to remedy the situation where notifications are repeatedly returned to CBP for non-delivery, § 24.3a(d)(1) is being amended to state that when a notification is returned to CBP because of an incorrect mailing address, the billing may be stopped. Section 24.3a is also being updated in this document by replacing references to ''Customs'' with ''CBP''.

Section 24.24(e) of the CBP regulations (19 CFR 24.24(e)), concerning the procedures for making quarterly payments and supplemental payments of harbor maintenance fees and for requesting refunds of such fees, contains incorrect mailing addresses in paragraphs (e)(1)(ii), (e)(2)(iii), and (e)(4)(i). The mailing addresses are being updated to reflect the Indianapolis, Indiana address to which payments should be sent. It is noted that payments sent to an outdated address will be automatically forwarded to the correct address. The mailing address in § 24.24(e) to which requests for refunds of harbor maintenance fees are to be sent is also being updated. In addition, § 24.24(e) is being amended by replacing references to ''Customs'' and ''U.S. Customs Service'' with ''CBP'' and ''U.S. Customs and Border Protection'', respectively.

Section 24.24(g) of the CBP regulations (19 CFR 24.24(g)), concerning the maintenance of documentation necessary for Customs to verify the accuracy of fee computations, is being amended in this document to correct an outdated office name and mailing address.

Section 101.6 of the CBP regulations (19 CFR 101.6), pertaining to the hours of business for CBP offices, contains a list of national holidays in paragraph (a). This list is being updated in this document by adding the national holiday honoring the birthday of Martin Luther King, Jr. on the third Monday in January. This federal holiday was enacted by Congress in 1983 (*see* 5 U.S.C. 6103). Section 101.6 is also being amended in this document by replacing references to ''Customs'' and ''Commissioner of Customs'' with ''CBP'' and ''Commissioner of Customs and Border Protection'', respectively.

Section 103.31(e) of the CBP regulations (19 CFR 103.31(e)), providing for access to information on vessel manifests and summary statistical reports, and for the submission of written requests for manifest data on magnetic tapes, is being amended in this document to reflect the change in the agency name and to correct outdated office names, addresses and phone numbers. In addition, as CBP no longer issues magnetic tapes but instead uses CD–ROMs, this document also amends § 102.31(e) to reflect this current technology.

Section 115.6(c) of the CBP regulations (19 CFR 115.6(c)), regarding the designated certifying authority for containers and road vehicles for international transport, is being amended to update the address of the National Cargo Bureau, Inc.

The specific authority for § 123.2 of the CBP regulations (19 CFR 123.2), relating to penalties for failure to report arrival from Mexico or Canada or for proceeding without a permit, is cited as ''19 U.S.C. 1460''. However, that provision was repealed by Pub. L. 99–570, title III, § 3115(b), 100 Stat. 3207–82 (October 27, 1986). Accordingly, part 123 of the CBP regulations (19 CFR part 123) is being amended in this document to reflect the correct authority citation for § 123.2, which is 19 U.S.C. 1459.

Paragraphs (a) and (b) of § 134.3 of the CBP regulations (19 CFR 134.3(a) and (b)), concerning the delivery and redelivery requirements applicable to imported goods that are not properly marked with their country of origin, is being amended in this document by replacing references to ''Customs'' with ''CBP''. Section 134.3(b) is also being amended to correct a typographical error at the beginning of the second sentence by replacing the lower case ''a'' with an upper case ''A''.

In § 141.102(a) of the CBP regulations (19 CFR 141.102(a)), regarding when the payment of internal revenue taxes for cigars and cigarettes is not required, the cross-reference to ''§ 11.2(a)'' should properly read ''§ 11.2a''. This document amends § 141.102(a) accordingly.

Section § 177.21 of the CBP regulations (19 CFR 177.21), regarding the issuance of country-of-origin advisory rulings and final determinations for Government procurement purposes, contains outdated citations to the ''Federal Procurement Regulations (41 CFR part 1–6)'' and the ''Defense Acquisition Regulations (32 CFR section VI)''. These regulations were re-codified and moved to Title 48 of the Code of Federal Regulations. The re-codification does not change the substance of these laws, but merely reorganizes them. This document amends § 177.21 to reflect that the Federal Acquisition Regulations are found in chapter 1 of Title 48, and the Defense Acquisition Regulations are found in chapter 2 of Title 48.

Section 181.93(a) of the CBP regulations (19 CFR 181.93(a)) is being amended in this document to reflect the change in the agency name, as well as to update the addresses to which NAFTA advance ruling requests should be sent.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document merely conform to existing law and regulation, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP

finds that good cause exists for dispensing with the requirement for a delayed effective date.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Executive Order 12866

These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

19 CFR Part 0

Transferred or Delegated Authority, Departments of the Treasury and Homeland Security.

19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Coastal zone, Coastwise trade, Common carriers, Customs duties and inspection, Freight, Imports, Inspection, Landing, Maritime carriers, Merchandise, Shipping, Vessels.

19 CFR Part 7

Customs duties and inspection, Imports, Insular possessions, Reporting and recordkeeping requirements.

19 CFR Part 12

Cultural property, Customs duties and inspection, Entry of merchandise, Imports, Labeling, Licensing, Liquor, Marking.

19 CFR Part 18

Bonds, Common carriers, Customs duties and inspection, Exports, Merchandise in transit, Reporting and recordkeeping requirements, Transportation in bond.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Reporting and recordkeeping requirements.

19 CFR Part 101

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Electronic filing, Exports, Freedom of Information, Imports, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 115

Containers, Customs duties and inspection, Freight, International conventions, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Customs duties and inspection, Imports, International boundaries (Land border), Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Government procurement, Reporting and recordkeeping requirements, Rulings, Trade agreements.

19 CFR Part 181

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

Amendments to CBP Regulations

■ For the reasons set forth above, parts 0, 4, 7, 12, 18, 24, 101, 103, 115, 123, 134, 141, 177, and 181 of the CBP regulations (19 CFR parts 0, 4, 7, 12, 18, 24, 101, 103, 115, 123, 134, 141, 177, and 181) are amended as set forth below.

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

■ 1. The authority citation for part 0, CBP Regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

§ 0.1 [Amended]

■ 2. In § 0.1, paragraph (a)(1) is amended by removing the words ''Customs regulations'' each place they appear in the first sentence and adding, in their place, the words ''CBP regulations''.

§ 0.2 [Amended]

■ 3. In § 0.2, the section heading and paragraph (a) are each amended by removing the words ''Customs regulations'' and adding, in their place, the words ''CBP regulations''.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 4. The general authority citation for part 4, CBP regulations, continues to read, and the specific authority citations for certain sections within part 4 are revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. 60101;

* * * * *

Section 4.3 also issued under 19 U.S.C. 288, 1441;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. 12139, 12151;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511–14513, 14701, 14702, 60301–60306, 60312;

Section 4.21 also issued under 19 U.S.C. 1441; 46 U.S.C. 60301–60310, 60312;

* * * * *

Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458; 46 U.S.C. 60107;

* * * * *

Section 4.61 also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55115–55117, 55119;

* * * * *

Section 4.66 also issued under 46 U.S.C. 60105;

Section 4.66a also issued under 33 U.S.C. 1321; 46 U.S.C. 60105;

* * * * *

Section 4.68 also issued under 46 U.S.C. 44101–44106;

* * * * *

Section 4.74 also issued under 46 U.S.C. 60105;

Section 4.75 also issued under 46 U.S.C. 60105;

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II, § 211;

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 12101, 12120, 12132,

55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.81a also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 60308;

Section 4.83 also issued under 46 U.S.C. 60105, 60308;

Section 4.84 also issued under 46 U.S.C. 12118;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

* * * * *

Section 4.96 also issued under 46 U.S.C. 12101(a)(1), 12108, 55114;

* * * * *

§ 4.0 [Amended]

■ 5. In § 4.0, paragraph (c) is amended:

■ a. By removing the words ''(3) Great Lakes endorsement (generally, entitles a vessel to engage in the coastwise trade on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employments for which another endorsement is not required),'' in the second sentence;

■ b. By removing the parenthetical numbers ''(4)'' and ''(5)'' in the second sentence and adding in their place the parenthetical numbers ''(3)'' and ''(4)'', respectively; and

■ c. By removing the words '', Great Lakes,'' in the fourth sentence.

§ 4.60 [Amended]

■ 6. Section 4.60 is amended by removing paragraph (b)(2) and by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively.

■ 7. Section 4.80 is amended by revising paragraphs (a)(2), (d), and (e) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) * * *

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise endorsement.

* * * * *

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 12118), shall be used in any trade other than the coastwise and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 through 923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 50501), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built or documented under the laws of the United States, will have the right to engage in such trade if it:

(1) Thereafter has been sold foreign in whole or in part or placed under foreign registry, unless such vessel is 200 gross tons or less (as measured under chapter 143 of title 46, United States Code); or

(2) Has been rebuilt, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States.

* * * * *

§ 4.82 [Amended]

■ 8. In § 4.82, paragraph (c) is amended by removing the words ''unless the vessel is properly operating under a document with Great Lakes license endorsement'' in the first sentence.

§ 4.87 [Amended]

■ 9. In § 4.87, paragraph (a) is amended by removing the words ''or, where appropriate, a Great Lakes license''.

§ 4.88 [Amended]

■ 10. In § 4.88, paragraph (a) is amended by removing the words ''or, where appropriate, a Great Lakes license''.

§ 4.90 [Amended]

■ 11. In § 4.90, paragraph (d) is amended by removing the words ''or, where appropriate, a Great Lakes license''.

§ 4.92 [Amended]

■ 12. Section 4.92 is amended by removing the words ''or Great Lakes'' in the first sentence.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

■ 13. The authority citation for part 7, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.2 [Amended]

■ 14. In § 7.2, paragraph (c) is amended by removing the words ''United States Customs Service'' in the first sentence and adding, in their place, the words ''U.S. Customs and Border Protection''.

§ 7.3 [Amended]

■ 15. In § 7.3, paragraph (f)(1) is amended by removing the words ''Customs Form 3229'' in the first sentence and adding in their place the words ''CBP Form 3229''.

§ 7.4 [Amended]

■ 16. Section 7.4 is amended by removing the word ''Customs'' each place it appears and adding, in its place, the term ''CBP''.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 17. The general authority citation for part 12, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 12.38 [Amended]

■ 18. Section 12.38 is amended by removing the number ''214''.

§ 12.104b [Amended]

■ 19. In § 12.104b, paragraph (a) is amended in the ''State Party'' column by removing the word ''Columbia'' and adding, in its place, the word ''Colombia''.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

■ 20. The general authority citation for part 18, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;

* * * * *

§ 18.7 [Amended]

■ 21. In § 18.7, paragraph (a) is amended by adding the word ''and'' between the

words ''document'' and ''any'' in the parenthetical text in the first sentence.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 22. The general authority citation for part 24, CBP regulations, continues to read as follows:

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

* * * * *

■ 23. In § 24.3a:

■ a. The section heading and paragraphs (a) and (b) are amended by removing the word ''Customs'' each place it appears and adding, in its place, the term ''CBP'';

■ b. Paragraph (c)(1) is revised;

■ c. Paragraph (c)(5) is amended by removing the word ''Customs'' and adding, in its place, the term ''CBP'';

■ d. The introductory text to paragraph (d)(1) is revised; and

■ e. Paragraph (d)(1)(vii), the introductory text to paragraph (d)(2)(i), and paragraphs (d)(2)(i)(H) and (d)(2)(ii) are amended by removing the word ''Customs'' and adding, in its place, the term ''CBP''.

The revisions read as follows:

§ 24.3a CBP bills; interest assessment; delinquency; notice to principal and surety.

* * * * *

(c) * * *

(1) The percentage rate of interest to be charged on such bills will be based upon the quarterly rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the CBP bill and may be obtained from the IRS or the CBP Office of Finance, Indianapolis, Indiana. For the convenience of the importing public and CBP personnel, CBP publishes the current interest rate(s) in the *Customs Bulletin and Decisions* and **Federal Register** on a quarterly basis.

* * * * *

(d) *Notice*—(1) *Principal*. The principal will be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. Where the notification is returned to CBP due to an incorrect mailing address, the bill may be stopped. The following elements will normally appear on the bill:

* * * * *

§ 24.24 [Amended]

■ 24. In § 24.24:

■ a. Paragraph (e)(1)(ii) is amended by removing the words ''Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915'' and adding, in their place, the words ''CBP Form 349, to: U.S. Customs and Border Protection, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278'';

■ b. Paragraph (e)(2)(iii) is amended by removing the words ''Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915'' and adding, in their place, the words ''CBP Form 349, to: U.S. Customs and Border Protection, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278'';

■ c. Paragraph (e)(4)(i) is amended by removing the fourth sentence and adding, in its place, ''The address to mail supplemental payments of quarterly paid harbor maintenance fees is: U.S. Customs and Border Protection, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.'';

■ d. Paragraph (e)(4)(i) is further amended by removing the words ''U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN 46278'' in the last (fifth) sentence and adding, in their place, the words ''U.S. Customs and Border Protection, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.''

■ e. Paragraph (g) is amended by removing the words ''Director, Accounting Services—Accounts Receivable, P.O. Box 68903, Indianapolis, Indiana 46268'' in the third sentence and adding, in their place, the words ''Director, Revenue Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278''; and

■ f. Paragraph (g) is further amended by removing the words ''Director of Accounting Services, shall'' in the fourth sentence and adding, in their place, the words ''Director, Revenue Division, must''.

PART 101—GENERAL PROVISIONS

■ 25. The general authority citation for part 101, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

■ 26. In § 101.6:

■ a. The introductory text to the section is amended by removing the word ''Customs'' each place it appears and adding, in its place, the term ''CBP'';

■ b. The introductory text to paragraph (a) is amended by removing the word ''Customs'' and adding, in its place, the term ''CBP'';

■ c. Paragraph (a) is further amended by re-designating paragraphs (a)(2) through (a)(9) as paragraphs (a)(3) through (a)(10), respectively, and by adding a new paragraph (a)(2);

■ d. Paragraph (b) is amended by adding the words ''and Border Protection'' immediately following the words ''Commissioner of Customs'', and by removing the word ''Customs'' immediately before the word ''office'' and adding, in its place, the term ''CBP''; and

■ e. Paragraphs (c) through (g), including the headings to paragraphs (e) through (g), are amended by removing the word ''Customs'' each place it appears and adding, in its place, the term ''CBP''.

The addition reads as follows:

§ 101.6 Hours of business.

* * * * *

(a) * * *

(2) The third Monday of January.

* * * * *

PART 103—AVAILABILITY OF INFORMATION

■ 27. The general authority citation for part 103, CBP regulations, and the specific authority for § 103.31 continue to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701. (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 103.31 also issued under 19 U.S.C. 1431.

* * * * *

§ 103.31 [Amended]

■ 28. In § 103.31:

■ a. Paragraph (e) is amended by removing the words ''magnetic tapes'' in the paragraph heading and adding, in their place, the term ''CD–ROMS'', by removing the words ''magnetic tape'' in paragraphs (e)(1) and (e)(3) and adding, in their place, the term ''CD–ROM'', and by removing the word ''tapes'' each place it appears in paragraphs (e)(1) and (e)(2) and adding, in its place, the term ''CD–ROM'';

■ b. Paragraph (e)(2) is amended by removing the words ''U.S. Customs Service, Accounting Services—Accounts Receivable, P.O. Box 68907, Indianapolis, Indiana 46278'' in the first sentence and adding, in their place, the words ''U.S. Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, Indiana 46268, or 6026 Lakeside Blvd., Indianapolis, Indiana 46278'';

■ b. Paragraph (e)(2) is further amended by removing the words ''Accounting Services—Accounts Receivable at (317) 298–1330'' in the third sentence and

adding, in their place, the words ''Collections Section at (317) 614–4514'';

■ c. Paragraph (e)(2) is further amended by removing the words ''Customs Data Center'' in the fifth and eighth sentences and adding, in their place, the words ''CBP Data Center'';

■ d. Paragraph (e)(2) is further amended by removing the word ''Customs'' in the sixth and seventh sentences and adding, in its place, the term ''CBP''; and

■ e. Paragraph (e)(2) is further amended by removing the words ''U.S. Customs Data Center, on (703–644–5200)'' in the last sentence and adding, in their place, the words ''CBP Data Center, on (703–921–6000)''.

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

■ 29. The authority citation for part 115, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

§ 115.6 [Amended]

■ 30. In § 115.6, paragraph (c) is amended by removing the words ''One World Trade Center, Suite 2757, New York, New York 10048'' and adding, in their place, the words ''17 Battery Place, Suite 1232, New York, New York 10004–1110''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 31. The general authority for part 123, CBP regulations, continues to read, and the specific authority for § 123.2 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) (HTSUS), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.2 also issued under 19 U.S.C. 1459.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

■ 32. The authority citation for part 134, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.3 [Amended]

■ 33. In § 134.3:

■ a. Paragraph (a) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and by removing the word ''shall'' and adding, in its place, the word ''will''; and

■ b. The paragraph (b) introductory text is amended by removing the word ''Customs'' and adding, in its place, the term ''CBP'', by removing the lower case ''a'' at the beginning of the second sentence and adding, in its place, the upper case ''A'', and by removing the word ''shall'' in the second sentence and adding, in its place, the word ''will''.

PART 141—ENTRY OF MERCHANDISE

■ 34. The general authority citation for part 141, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

§ 141.102 [Amended]

■ 35. In § 141.102, paragraph (a) is amended by removing the reference to ''§ 11.2(a)'' and adding in its place ''§ 11.2a''.

PART 177—ADMINISTRATIVE RULINGS

■ 36. The authority citation for part 177, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

§ 177.21 [Amended]

■ 37. Section 177.21 is amended by removing the words ''Federal Procurement Regulations (41 CFR part 1–6)'' and adding, in their place, the words ''Federal Acquisition Regulations (48 CFR chapter 1)'', and by removing the parenthetical citation ''(32 CFR section VI)'' and adding, in its place, the parenthetical citation ''(48 CFR chapter 2)''.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 38. The general authority citation for part 181, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

* * * * *

■ 39. Section 181.93 is amended by revising the second and third sentences of paragraph (a) to read as follows:

§ 181.93 Submission of advance ruling requests.

(a) * * * For any subject matter specified in § 181.92(b)(6)(i), (v), (vi), (vii), (viii), or (ix) of this part, the request may be directed either to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229, or to the National Commodity Specialist Division, U.S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119. For any subject matter specified in § 181.92(b)(6)(ii), (iii), or (iv) of this part, the request must be directed to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

* * * * *

Dated: July 3, 2008.

Jayson P. Ahern,

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

[FR Doc. E8–15622 Filed 7–15–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9416]

RIN 1545–BH74

Determining the Amount of Taxes Paid for Purposes of Section 901

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 901 of the Internal Revenue Code providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit.

The regulations affect taxpayers that claim direct and indirect foreign tax credits. The text of these temporary regulations also serves as the text of the proposed regulations (REG–156779–06) published in the Proposed Rules section in this issue of the **Federal Register** .

DATES: *Effective Date:* These regulations are effective on July 16, 2008.

Applicability Dates: For dates of applicability, see § 1.901–1T(j) and § 1.901–2T(h)(2).

FOR FURTHER INFORMATION CONTACT: Michael Gilman, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2007, the **Federal Register** published proposed amendments (72 FR 15081) to the Income Tax Regulations (26 CFR part I) under section 901 of the Internal Revenue Code (Code) relating to the amount of taxes paid for purposes of the foreign tax credit (the ''2007 proposed regulations''). The 2007 proposed regulations would revise § 1.901–2(e)(5) in two ways. First, for purposes of § 1.901–2(e)(5), the 2007 proposed regulations would treat as a single taxpayer all foreign entities in which the same U.S. person has a direct or indirect interest of 80 percent or more (a ''U.S.-owned foreign group''). Second, the 2007 proposed regulations would treat amounts paid to a foreign taxing authority as noncompulsory payments if those amounts are attributable to certain structured passive investment arrangements. The 2007 proposed regulations provide that the regulations will be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the regulations are finalized.

The IRS and Treasury Department received written comments on the 2007 proposed regulations, which are discussed in this preamble. A public hearing was held on July 30, 2007. In response to written comments, the IRS and Treasury Department determined that the proposed change to § 1.901–2(e)(5) relating to U.S.-owned foreign groups may lead to inappropriate results in certain cases. Accordingly, on November 19, 2007, the IRS and Treasury Department issued Notice 2007–95, 2007–49 IRB 1 (see § 601.601(d)(2)(ii)(*b*)). Notice 2007–95 provided that the proposed rule for U.S.-owned foreign groups would be severed from the portion of the 2007 proposed regulations addressing the treatment of foreign payments attributable to certain structured passive investment arrangements. Notice 2007–95 further provided that the proposed rules for U.S.-owned groups would be effective for taxable years beginning after final regulations are published in the **Federal Register** .

In light of comments, the IRS and the Treasury Department believe that it is appropriate to issue new proposed and temporary regulations addressing the treatment of foreign payments attributable to structured passive investment arrangements. These new regulations make several changes to the 2007 proposed regulations to take into account comments received, while adopting without amendment substantial portions of the 2007 proposed regulations. The new temporary and proposed regulations will permit the IRS to enforce the rules relating to structured passive investment arrangements, while also allowing taxpayers a further opportunity for comment. The significant comments and revisions are described in this preamble.

Explanation of Provisions

The temporary regulations address the application of § 1.901–2(e)(5) in cases in which a person claiming foreign tax credits is a party to a structured passive investment arrangement. These complex arrangements are intentionally structured to create a foreign tax liability when, removed from the elaborately engineered structure, the basic underlying business transaction generally would result in significantly less, or even no, foreign taxes. The parties use these arrangements to exploit differences between U.S. and foreign law in order to permit a person to claim a foreign tax credit for the purported foreign tax payments while also allowing the foreign counterparty to claim a duplicative foreign tax benefit. The person claiming foreign tax credits and the foreign counterparty share the cost of the purported foreign tax payments through the pricing of the arrangement.

The temporary regulations treat foreign payments attributable to such arrangements as noncompulsory payments under § 1.901–2(e)(5) and, thus, disallow foreign tax credits for such amounts. For periods prior to the effective date of the temporary regulations, the IRS will continue to utilize all available tools under current law to challenge the U.S. tax results claimed in connection with these and other similar abusive arrangements, including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, other provisions of § 1.901–2, section 269, and the partnership anti-abuse rules of § 1.701–2.

The temporary regulations retain the general rule in the existing regulations that a taxpayer need not alter its form of doing business or the form of any transaction in order to reduce its foreign tax liability. However, § 1.901–2T(e)(5)(iv)(A) provides that, notwithstanding the general rule, an amount paid to a foreign country (a ''foreign payment'') is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to a structured passive investment arrangement. For this purpose, § 1.901–2T(e)(5)(iv)(B) defines a structured passive investment arrangement as an arrangement that satisfies six conditions. The six conditions consist of features that are common to arrangements that are intentionally structured to generate the foreign payment.

A. Section 1.901–2T(e)(5)(iv)(B)(1): Special Purpose Vehicle

The first condition provided in the 2007 proposed regulations is that the arrangement utilizes an entity that meets two requirements (an ''SPV''). The first requirement is that substantially all of the gross income (for United States tax purposes) of the entity, if any, is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. The second requirement is that there is a purported foreign tax payment attributable to income of the entity. The purported foreign tax may be paid by the entity itself, by the owner(s) of the entity (if the entity is treated as a pass-through entity under foreign law) or by a lower-tier entity (if the lower-tier entity is treated as a pass-through entity under U.S. law).

For purposes of the first requirement, § 1.901–2(e)(5)(iv)(C)(*4*) of the 2007 proposed regulations defines passive investment income as income described in section 954(c), with two modifications. The first modification excludes income of a holding company attributable to qualifying equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business (or that are themselves holding companies). The second modification is that passive investment income is determined by disregarding sections 954(c)(3) and 954(c)(6) and by treating income attributable to transactions with a counterparty as ineligible for the exclusions under sections 954(h) and 954(i).

One commentator recommended, in lieu of the holding company rules in the 2007 proposed regulations, applying look-through rules to income and assets of lower-tier entities similar to the rules of section 1297(c), under which a foreign corporation, if it owns at least 25 percent of the stock of another corporation, is treated as owning its proportionate share of the assets of the other corporation and receiving its proportionate share of the income of the other corporation. Alternatively, the commentator recommended that the holding company rules in the 2007 proposed regulations be modified to eliminate the requirement that

substantially all of the assets of the tested entity must consist of qualified equity interests; to permit income other than dividends (for example, interest and royalties) received from a lower-tier entity that is predominantly engaged in an active business to qualify as active income; and to treat a lower-tier entity as an operating company if more than 50 percent of either its assets or its income meet the active business test. In addition, commentators suggested eliminating the requirement that the U.S. party and the counterparty must share the opportunity of gain or loss with respect to the lower-tier entity, or replacing it with a rule disqualifying the equity interest if contractual restrictions limit the counterparty's recourse against the lower-tier entity's income or assets. Finally, commentators suggested that preferred stock should be treated as a qualifying equity interest.

These comments were not adopted. The holding company exception is intended only to clarify that a joint venture arrangement is not treated as a structured passive investment arrangement solely because it is conducted through a holding company structure, not to liberalize the definition of structured passive investment arrangements. The requirement that the parties share the opportunity for gain and risk of loss with respect to the holding company's assets is intended to ensure that the arrangement between the parties is a bona fide joint venture. In this regard, a commentator recommended that the regulations be clarified to provide that the holding company exception is not satisfied if either the U.S. party or the counterparty is solely a creditor with respect to the entity because it either owns a hybrid instrument that is debt for U.S. tax purposes or purchases stock subject to an obligation to sell the stock back. This modification is reflected in § 1.901–2T(e)(5)(iv)(C)(*5*)(*ii*) of the temporary regulations. In addition, *Example 2* of § 1.901–2T(e)(5)(iv)(D) is modified to clarify that the holding company exception is not met if the counterparty's interest is acquired in a sale-repurchase transaction.

The IRS and Treasury Department recognize that under the regulations an entity conducting business through an active foreign subsidiary may fail to meet the holding company exception, even though the entity would not be treated as an SPV under the ''substantially all'' test if it operated the subsidiary's business directly through a branch operation. The IRS and Treasury Department believe this result is appropriate because the segregation of active business income and assets in a lower-tier entity may facilitate the use of an upper-tier entity to conduct a structured passive investment arrangement.

The IRS and Treasury Department remain concerned that taxpayers may continue to enter into structured passive investment arrangements designed to generate foreign tax credits through entities that meet the technical requirements of the holding company exception. The IRS and Treasury Department intend to monitor the use of holding companies to facilitate abusive foreign tax credit arrangements, utilize all available tools under current law to challenge the U.S. tax results claimed in connection with such arrangements (including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, other provisions of § 1.901–2, section 269, and the partnership anti-abuse rules of § 1.701–2) in appropriate cases, and to issue additional regulations modifying or eliminating the holding company exception if necessary to prevent abuse.

The second modification in the 2007 proposed regulations is that passive investment income is determined by disregarding sections 954(c)(3) and 954(c)(6) and by treating income attributable to transactions with a counterparty as ineligible for the exclusions under sections 954(h) and 954(i). The IRS and Treasury Department received a number of comments suggesting that the definition of passive investment income should be narrowed by excluding income that would be treated as non-subpart F income under section 954(c)(3) or 954(c)(6), excluding income from unrelated persons other than the counterparty, or eliminating the requirement in section 954(h) that the tested entity's activity be conducted in the entity's ''home country.'' Other commentators suggested substituting other tests for the active financing exception in section 954(h), such as exempting financial services income as defined in section 904(d), with or without modification. For example, commentators suggested various modifications, such as excluding income derived from unrelated persons or from direct activities of employees of the tested entity; exempting any income derived from or related to transactions with customers; exempting income that would be considered attributable to an active foreign trade or business under the principles of section 864 and § 1.367(a)–2T(b); or exempting income other than income from ''tainted'' assets such as cash or cash equivalents, stock or notes of persons related to the U.S. party or counterparty, or assets giving rise to U.S. source income. One commentator suggested that payments described in section 954(c)(3) should not be treated as passive investment income to the extent the payment was deductible under foreign law and the corresponding income inclusion by the tested entity did not result in a net increase in foreign taxes paid. This commentator suggested that the result in the U.S. borrower transaction described in *Example 2* of the 2007 proposed regulations was inappropriate since the foreign tax paid by the SPV was offset by a reduction in tax paid by the CFC borrower.

The IRS and Treasury Department carefully considered these suggestions but ultimately determined that none of the suggested approaches has significant advantages over relying on section 954(h) to determine whether income from financing activities is sufficiently active that it should be excluded from passive investment income for purposes of these regulations. Section 954(h) includes detailed requirements that ensure that the entity is predominantly engaged in the active conduct of a banking, financing or similar business and conducts substantial activity with respect to such business. In addition, the IRS and Treasury Department continue to believe it is not appropriate to exclude income described in sections 954(c)(3) and 954(c)(6) from passive investment income, because financing arrangements between related parties that are engaged in the active conduct of a trade or business are commonly used in the structured transactions that are the target of these regulations. The IRS and Treasury Department also do not believe that U.S. borrower transactions should not be considered to result in a net increase in foreign tax, since in the absence of the structured passive investment arrangement the CFC borrower would still reduce its foreign tax by reason of the interest expense deduction but the U.S. party would not claim foreign tax credits for foreign payments attributable to income in the SPV that is in substance the foreign lender's interest income. Accordingly, § 1.901–2T(e)(5)(iv)(C)(*5*)(*i*) generally retains the definition of passive investment income in the 2007 proposed regulations.

However, the temporary regulations include two modifications in response to comments. First, the IRS and Treasury Department agree it is appropriate to require the entity's activities to be conducted directly by its own employees rather than by employees of affiliates, because the purpose of the SPV condition is to

distinguish between active entities and those with largely passive income, and it is reasonable to require an entity engaged in an active business to conduct that business through its own employees. Accordingly, § 1.901–2T(e)(5)(iv)(C)(*5*)(*i*) provides that section 954(h)(3)(E) shall not apply, and that the entity must conduct substantial activity through its own employees.

Second, the IRS and Treasury Department agree that the requirement that activities be conducted in the entity's ''home country'' reflects a subpart F policy that is more restrictive than necessary for purposes of these regulations. Accordingly, § 1.901–2T(e)(5)(iv)(C)(*5*)(*i*) provides that for purposes of these regulations the term *home country* means any foreign country.

Concerning the requirement in § 1.901–2(e)(5)(iv)(B)(*1*)(*i*) of the 2007 proposed regulations that substantially all of the gross income of the entity be passive investment income and substantially all of the entity's assets are assets held to produce such passive investment income, one commentator recommended that the regulations provide examples illustrating situations in which such requirement is met. The IRS and Treasury Department did not adopt this comment because the ''substantially all'' test requires evaluation of all the facts and circumstances and cannot be satisfied by reference to a specific percentage benchmark.

Several commentators requested that the regulations clarify the time at which the six conditions must be met to result in a structured passive investment arrangement. Section 1.901–2T(e)(5)(iv)(B)(*1*)(*ii*) of the temporary regulations is revised to clarify that the foreign payment must be made with respect to a U.S. tax year in which substantially all of the gross income (for U.S. tax purposes) of the entity, if any, is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. This clarification is intended to ensure that foreign tax credits are disallowed for foreign payments that relate primarily to passive investment income, but not for taxes that relate to active business income earned in an earlier or later year when the entity is not treated as an SPV. The regulations do not, however, require all six conditions to be met in the same tax year. For example, the regulations disallow credits for foreign payments with respect to income of an SPV even if the U.S. party acquires its interest, or a hybrid instrument is issued to the counterparty, after the foreign payments are made.

Other commentators recommended that the regulations eliminate the SPV condition and treat as noncompulsory payments only those foreign payments that directly relate to passive investment income, or with respect to which duplicative tax benefits are claimed. The IRS and Treasury Department did not adopt such an approach in the temporary regulations because of the administrative difficulty of tracing specific foreign payments to specific income or to the duplicative tax benefits. Accordingly, the temporary regulations retain the SPV condition and the approach of treating all foreign payments attributable to a structured passive investment arrangement as noncompulsory. However, the IRS and Treasury Department recognize that an element of the arrangements intended to be covered by the regulations is that they are designed to generate duplicative tax benefits, and that some connection between the counterparty's foreign tax benefit and the U.S. party's share of the foreign payments should be a pre-condition to the finding of a structured passive investment arrangement. Accordingly, as described in section D of this preamble, the foreign tax benefit condition is revised to provide that the counterparty's foreign tax benefit must correspond to 10 percent or more of the U.S. party's share of the foreign payments or the U.S. party's share (under U.S. tax principles) of the foreign tax base used to compute such payments.

B. Section 1.901–2T(e)(5)(iv)(B)(2): U.S. Party

Section 1.901–2T(e)(5)(iv)(B)(*2*) of the temporary regulations adopts without change the second overall condition of the 2007 proposed regulations that a person (a ''U.S. party'') would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment if such payment were an amount of tax paid.

One commentator requested that the regulations be amended to clarify that the ''U.S. party'' condition must be met at the same time as the other five conditions. The temporary regulations do not include this condition because the IRS and Treasury Department believe it is inappropriate to exempt arrangements that are structured so that the U.S. party claims a credit in a taxable year or period that is not the same taxable year or period in which the counterparty is entitled to a foreign tax benefit. In addition, the IRS and Treasury Department are concerned that this modification would allow a person to acquire an interest in an SPV and claim credits with respect to purported foreign taxes paid in an earlier period by the SPV in connection with an arrangement that met the other five conditions of the regulations.

C. Section 1.901–2T(e)(5)(iv)(B)(3): Direct Investment

The third overall condition provided in the 2007 proposed regulations is that the foreign payment or payments are (or are expected to be) substantially greater than the amount of credits, if any, that the U.S. party would reasonably expect to be eligible to claim under section 901(a) if such U.S. party directly owned its proportionate share of the assets owned by the SPV, other than through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would subject the income generated by its share of the assets to a net basis foreign tax. Commentators recommended several changes to the direct investment condition, several of which are adopted in the temporary regulations. First, in order to reach appropriate results in cases where more than one person owns an equity interest in the SPV for U.S. tax purposes, the temporary regulations amend the direct investment test to compare the U.S. party's proportionate share of the foreign payment made by the SPV to the amount of foreign tax the U.S. party would be eligible to credit if the U.S. party directly owned its proportionate share of the assets. Second, the temporary regulations clarify that a dual resident corporation that is an SPV meets the direct investment condition since its ownership of the passive assets is treated the same as ownership through a branch operation. Third, a commentator suggested that the direct investment test of the 2007 proposed regulations could be avoided by entering into a sale-repurchase transaction using an SPV that acquires passive assets subject to foreign withholding tax. This commentator recommended that the direct investment condition be revised to reduce the value of the U.S. party's interest by any amount advanced by the foreign counterparty that is treated as debt for U.S. tax purposes but as equity for foreign tax purposes. The IRS and Treasury Department agree that situations where the SPV's income is subject to gross basis foreign taxes raise the same foreign tax credit policy concerns as situations where the SPV's income is subject to net basis foreign taxes. The IRS and Treasury

Department, however, believe the commentator's recommended solution is incomplete, since the other conditions of the regulations can be met by structures employing techniques other than sale-repurchase agreements. Accordingly, the temporary regulations provide that the U.S. party's proportionate share of the SPV's assets does not include any assets that produce income subject to gross basis withholding tax.

Several commentators recommended that the regulations include an exception for certain transactions in which the amount of the foreign payments attributable to income of an SPV does not substantially exceed the amount of foreign taxes that would have been paid by a controlled foreign corporation that owns the SPV in the absence of the arrangement. The commentators suggested that such foreign payments should not be treated as noncompulsory payments because they effectively substitute for taxes that would have been imposed on the controlled foreign corporation in the absence of the arrangement.

These comments raise the fundamental question as to the appropriate baseline to which such transactions should be compared to determine if there has been a significant increase in the total amount of foreign taxes paid. Although the IRS and Treasury Department carefully considered an exception from the definition of structured passive investment arrangements for such transactions, the IRS and Treasury Department have been unable to develop an exception that can be administered by the IRS and that does not exclude abusive cases. Accordingly, the temporary regulations do not include this exception.

D. Section 1.901–2T(e)(5)(iv)(B)(4): Foreign Tax Benefit

The fourth condition provided in the 2007 proposed regulations is that the arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a similar tax benefit) for a counterparty or for a person that is related to the counterparty, but not related to the U.S. party. In response to comments, to relieve administrative burdens these regulations clarify that while the benefit must be reasonably expected, there is no requirement to show that the benefit be intended or actually realized. The temporary regulations also provide that the ability to surrender the use of a tax loss to another person is a foreign tax benefit because a foreign tax benefit need only be made available to a counterparty. See *Example 9* of § 1.901–2T(e)(5)(iv)(D).

Several commentators recommended that the regulations be revised to require a causal relationship between one or more of the six conditions. For example, one commentator recommended adding a requirement that the foreign tax benefit either relate to the foreign tax paid by the SPV or result from the counterparty being treated for foreign but not U.S. tax purposes as owning an equity interest in the SPV or a portion of the SPV's assets. Another commentator suggested requiring that the inconsistent aspect of the arrangement be created or used to achieve the foreign tax benefit. Another commentator recommended requiring that the foreign tax benefit would not have been allowed or allowable ''but for'' the existence of one or more of the other conditions.

In response to the comments, the temporary regulations revise the ''foreign tax benefit'' condition to provide that the credit, deduction, loss, exemption, exclusion or other tax benefit must correspond to 10 percent or more of the U.S. party's share (for U.S. tax purposes) of the foreign payment or 10 percent or more of the foreign tax base with respect to which the U.S. party's share of the foreign payment is imposed. The revisions are intended to clarify that a joint venture that does not involve any duplication of tax benefits is not covered by the temporary regulations. At the same time, the temporary regulations provide that the duplication need not be direct. For example, while the U.S. party generally seeks to claim foreign tax credits in the United States for foreign payments attributable to income of the SPV, the counterparty's foreign tax benefit may consist of tax-exempt income paid out of the SPV's income with respect to which foreign payments claimed as credits by the U.S. party were made and deductions or losses attributable to payments of corresponding amounts to the SPV or U.S. party. See *Example 3* of § 1.901–2T(e)(5)(iv)(D).

E. Section 1.901–2T(e)(5)(iv)(B)(5): Counterparty

The 2007 proposed regulations define a counterparty as a person (other than the SPV) that is unrelated to the U.S. party and that (i) directly or indirectly owns 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax or (ii) acquires 20 percent or more of the assets of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax.

Commentators proposed that the counterparty factor be amended to include certain related parties. Commentators noted that structured transactions engaged in by related persons under common foreign ownership present the same tax policy concerns as transactions between unrelated persons. However, these same commentators noted that structured transactions engaged in by related parties that are under common U.S. ownership do not pose the same tax policy concerns because the reduction in foreign tax liability obtained by the U.S.-controlled foreign counterparty will result in a corresponding increase in U.S. taxes when the foreign counterparty repatriates its earnings to the United States. The IRS and Treasury Department agree with these comments. Consequently, the temporary regulations amend the definition of a counterparty to include related persons, but excluding cases where the U.S. party is a U.S. corporation or individual that owns (directly or indirectly) at least 80 percent of the value of the potential counterparty and cases where at least 80 percent of the value of the U.S. party and the potential counterparty are owned (directly or indirectly) by the same U.S. corporation or individual.

Several commentators also suggested that the requirement that the counterparty own at least 10 percent (directly or indirectly) of the equity of the SPV or acquire at least 20 percent of the assets of the SPV should be revised. Some commentators proposed these thresholds be increased to 50 percent. Other commentators proposed that the ownership of all foreign parties deriving a foreign tax benefit should be aggregated to determine whether the thresholds are met. The IRS and Treasury Department agree that the regulatory conditions should be revised to better reflect that the counterparty is entitled to more than a nominal foreign tax benefit. Accordingly, the temporary regulations eliminate the percentage ownership thresholds from the counterparty definition, and modify the definition of a foreign tax benefit in § 1.901–2T(e)(5)(iv)(B)(*4*), as described in section D of this preamble.

F. Section 1.901–2T(e)(5)(iv)(B)(6): Inconsistent Treatment

The sixth condition in the 2007 proposed regulations is that the U.S. and an applicable foreign country treat

the arrangement differently under their respective tax systems. For this purpose, an applicable foreign country is any foreign country in which either the counterparty, a person related to the counterparty or the SPV is subject to net basis tax. To provide clarity and limit the scope of this factor, the 2007 proposed regulations provide that the arrangement must be subject to one of four specified types of inconsistent treatment. Specifically, the U.S. and the foreign country (or countries) must treat one or more of the following aspects of the arrangement differently, and the U.S. treatment of the inconsistent aspect must materially affect the amount of foreign tax credits claimed, or the amount of income recognized, by the U.S. party to the arrangement: (i) The classification of an entity as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes; (ii) the characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued in the transaction; (iii) the proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty; or (iv) the amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

Commentators recommended that this condition be clarified so that the U.S. treatment of the inconsistent aspect must materially increase the amount of the U.S. party's foreign tax credits or materially decrease the U.S. party's income for U.S. tax purposes. The temporary regulations reflect this clarification. In addition, commentators requested that this factor be limited to instances when the inconsistent treatment is reasonably expected to result in a permanent difference in the U.S. party's income or foreign tax credits. The IRS and Treasury Department believe that the revisions to the foreign tax benefit condition described in Section D of this preamble are sufficient to establish the appropriate linkage between the inconsistent U.S. and foreign law treatment and the duplicative tax benefits. Accordingly, the temporary regulations retain the inconsistent treatment factor without further changes.

One commentator also recommended that the inconsistent treatment condition be narrowed to instances where the inconsistent treatment under U.S. and foreign law related to definitions of ownership and the amount of the SPV's taxable income. The IRS and Treasury Department have not adopted this recommendation because it would cause certain types of abusive arrangements to fall outside the scope of the regulations and because differences in entity classification are features common to structured passive investment arrangements.

G. Other Comments

Commentators also made suggestions that did not relate to any single factor. For example, commentators also requested clarification that the foreign payments treated as noncompulsory amounts under the regulation may be deductible payments under sections 162 and 212 and reduce a foreign corporation's earnings and profits for purposes of subpart F. The IRS and Treasury Department believe that providing guidance regarding sections 162, 212, and 964 is beyond the scope of this regulation project. The usual rules for determining the deductibility of a payment and determining the earnings and profits of a foreign corporation for subpart F purposes apply.

In addition, commentators requested that foreign payments attributable to a structured passive investment arrangement be excluded from the scope of the regulations if the arrangement has a valid business purpose. Other commentators suggested that the regulations adopt a broad anti-abuse rule that would deny a foreign tax credit in any case where allowance of the credit would be inconsistent with the purpose of the foreign tax credit regime. The IRS and Treasury Department are concerned that these approaches would create uncertainty for both taxpayers and the IRS. The IRS and Treasury Department have concluded that, at this time, a targeted rule denying foreign tax credits in arrangements described in the temporary regulations is more appropriate.

H. Other Examples

In response to comments, the temporary regulations include more examples illustrating additional variations of the structured passive investment arrangements that are covered by the regulations. For example, new *Example 3* illustrates a U.S. borrower transaction in which a foreign lender acquires assets instead of an equity interest in the SPV and new *Example 10* illustrates a joint venture in which the counterparty's foreign tax benefits do not correspond to the U.S. party's share of the base with respect to which the foreign payment is imposed. Modifications to examples in the 2007 proposed regulations were also necessary to reflect comments received and other changes to the regulations.

I. Effective/Applicability Dates

The 2007 proposed regulations were proposed to be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the final regulations are published in the **Federal Register** . A commentator observed that the final regulations would potentially be retroactively effective because the regulations would apply, for example, to calendar year taxpayers as of January 1 of the year in which the final regulations are published in the **Federal Register** and to taxpayers that participated in structured passive investment arrangements involving entities with taxable years that differ from the U.S. taxpayers' taxable years. Commentators also requested clarification of whether the relevant taxable year for purposes of the effective date is the taxable year of the SPV in which it pays or accrues the purported foreign taxes, or the taxable year of the U.S. taxpayer in which it claims a credit. For example, commentators observed that if the taxable year of the U.S. taxpayer in which it claims a credit is the relevant taxable year, the final regulations would apply to U.S. shareholders of controlled foreign corporations where the shareholder claims a deemed paid credit under section 902 with respect to foreign taxes paid by the foreign corporation in years prior to the effective date of the regulations. These commentators recommended that the regulations provide that the relevant taxable year is the SPV's taxable year. Commentators also recommended that the final regulations apply only to foreign taxes paid or accrued in taxable years beginning after the date the final regulations are published, or only to foreign taxes paid or accrued with respect to income accrued after the date the final regulations are published.

The IRS and Treasury Department have not adopted the recommendation to delay the effective date of these regulations to apply only in tax years beginning after the regulations are published. The IRS and Treasury Department generally believe the regulations should apply to disallow credits for foreign payments that would otherwise be eligible to be claimed as credits in taxable years ending after the regulations are published. The IRS and Treasury Department agree, however, that the regulations should not apply to foreign taxes paid or accrued by a foreign corporation in a U.S. taxable

year of the foreign corporation ending prior to the effective date of the regulations, provided that such year ends prior to the first taxable year of the domestic corporate shareholder for which these regulations are first applicable.

Accordingly, the effective date for these regulations is July 16, 2008. The regulations generally apply to foreign payments that, if they were an amount of tax paid, would be considered paid or accrued by a U.S. or foreign entity in taxable years ending on or after July 16, 2008. In the case of foreign payments by a foreign corporation that has a domestic corporate shareholder, the regulations also apply to such payments that would be considered paid or accrued in the foreign corporation's U.S. taxable years ending with or within taxable years of its domestic corporate shareholder ending on or after July 16, 2008. Finally, in the case of foreign payments by a partnership, trust or estate for which any partner or beneficiary would otherwise be eligible to claim a foreign tax credit, the regulations also apply to payments that would be considered paid or accrued in taxable years ending with or within taxable years of such partners or beneficiaries ending on or after July 16, 2008.

No inference is intended regarding the U.S. tax consequences of structured passive investment arrangements prior to the effective date of the regulations.

For periods after the effective date of the temporary regulations, the IRS and Treasury Department will continue to scrutinize other arrangements that are not covered by the regulations but are inconsistent with the purpose of the foreign tax credit. Such arrangements may include arrangements that are similar to arrangements described in the temporary regulations, but that do not meet all of the conditions included in the temporary regulations. The IRS will continue to challenge the claimed U.S. tax results in appropriate cases. In addition, the IRS and Treasury Department may issue additional regulations in the future in order to address such other arrangements.

J. Miscellaneous Amendments

The temporary regulations also amend § 1.901–1(a) and (b) to reflect statutory changes made by the Foreign Investors Tax Act of 1966 (Pub. L. 89–809 (80 Stat. 1539), section 106(b)), the Tax Reform Act of 1976 (Pub. L. 94–455 (90 Stat. 1520), section 1901(a)(114)), and the American Jobs Creation Act of 2004 (Pub. L. 108–357 (118 Stat. 1418–20), section 405(b)).

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. For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Michael I. Gilman, Office of Associate Chief Counsel (International). 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.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.901–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.901–1 Allowance of credit for taxes.

(a) and (b). [Reserved]. For further guidance, see § 1.901–1T(a) and (b).

* * * * *

■ **Par. 3.** Section 1.901–1T is added to read as follows:

§ 1.901–1T Allowance of credit for taxes (temporary).

(a) *In general.* Citizens of the United States, domestic corporations, and certain aliens resident in the United States or Puerto Rico may choose to claim a credit, as provided in section 901, against the tax imposed by chapter 1 of the Code for taxes paid or accrued to foreign countries and possessions of the United States, subject to the conditions prescribed in paragraphs (a)(1) through (a)(3) and paragraph (b) of this section.

(1) *Citizen of the United States.* A citizen of the United States, whether resident or nonresident, may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(ii) His share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary.

(2) *Domestic corporation.* A domestic corporation may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States;

(ii) Its share of any such taxes of a partnership of which it is a member, or of an estate or trust of which it is a beneficiary; and

(iii) The taxes deemed to have been paid under section 902 or 960.

(3) *Alien resident of the United States or Puerto Rico.* Except as provided in a Presidential proclamation described in section 901(c), an alien resident of the United States, or an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(ii) His share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary.

(b) *Limitations.* Certain Code sections, including sections 814, 901(e) through (l), 906, 907, 908, 911, 999, and 6038, limit the credit against the tax imposed by chapter 1 of the Code for certain foreign taxes.

(c) through (i) [Reserved]. For further guidance, see § 1.901–1(c) through (i).

(j) *Effective/applicability date.* This section applies to taxable years beginning after July 16, 2008.

(k) *Expiration date.* The applicability of this section expires July 15, 2011.

■ **Par. 4.** Section 1.901–2 is amended by adding paragraphs (e)(5)(iii) and (e)(5)(iv) and revising paragraph (h) to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iii) and (iv) [Reserved]. For further guidance, see § 1.901–2T(e)(5)(iii) and (iv).

* * * * *

(h) *Effective/applicability date*—(1) *In general.* This section and §§ 1.901–2A

and 1.903–1 apply to taxable years beginning after November 14, 1983.

(2) [Reserved]. For further guidance, see § 1.901–2T(h)(2).

■ **Par. 5.** Section 1.901–2T is added to read as follows:

§ 1.901–2T Income, war profits, or excess profits tax paid or accrued (temporary).

(a) through (e)(5)(ii) [Reserved]. For further guidance, see § 1.901–2(a) through (e)(5)(ii).

(e)(5)(iii) [Reserved].

(iv) *Structured passive investment arrangements*—(A) *In general.* Notwithstanding § 1.901–2(e)(5)(i), an amount paid to a foreign country (a ''foreign payment'') is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable (within the meaning of paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section) to a structured passive investment arrangement (as described in paragraph (e)(5)(iv)(B) of this section).

(B) *Conditions.* An arrangement is a structured passive investment arrangement if all of the following conditions are satisfied:

(*1*) *Special purpose vehicle (SPV).* An entity that is part of the arrangement meets the following requirements:

(*i*) Substantially all of the gross income (for U.S. tax purposes) of the entity, if any, is passive investment income, and substantially all of the assets of the entity are assets held to produce such passive investment income. As provided in paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section, passive investment income generally does not include income of a holding company from qualified equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business. Thus, except as provided in paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section, qualified equity interests of a holding company in such lower-tier entities are not held to produce passive investment income and the ownership of such interests will not cause the holding company to meet the requirements of this paragraph (e)(5)(iv)(B)(*1*)(*i*).

(*ii*) There is a foreign payment attributable to income of the entity (as determined under the laws of the foreign country to which such foreign payment is made), including the entity's share of income of a lower-tier entity that is a branch or pass-through entity under the laws of such foreign country, that, if the foreign payment were an amount of tax paid, would be paid or accrued in a U.S. taxable year in which the entity meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. A foreign payment attributable to income of an entity includes a foreign payment attributable to income that is required to be taken into account by an owner of the entity, if the entity is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity also includes a foreign payment attributable to income of a lower-tier entity that is a branch or pass-through entity for U.S. tax purposes. A foreign payment attributable to income of the entity does not include a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a distribution or payment from the entity to a U.S. party.

(*2*) *U.S. party.* A person would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section if the foreign payment were an amount of tax paid.

(*3*) *Direct investment.* The U.S. party's proportionate share of the foreign payment or payments described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section is (or is expected to be) substantially greater than the amount of credits, if any, that the U.S. party reasonably would expect to be eligible to claim under section 901(a) for foreign taxes attributable to income generated by the U.S. party's proportionate share of the assets owned by the SPV if the U.S. party directly owned such assets. For this purpose, direct ownership shall not include ownership through a branch, a permanent establishment or any other arrangement (such as an agency arrangement or dual resident status) that would result in the income generated by the U.S. party's proportionate share of the assets being subject to tax on a net basis in the foreign country to which the payment is made. A U.S. party's proportionate share of the assets of the SPV shall be determined by reference to such U.S. party's proportionate share of the total value of all of the outstanding interests in the SPV that are held by its equity owners and creditors. A U.S. party's proportionate share of the assets of the SPV, however, shall not include any assets that produce income subject to gross basis withholding tax.

(*4*) *Foreign tax benefit.* The arrangement is reasonably expected to result in a credit, deduction, loss, exemption, exclusion or other tax benefit under the laws of a foreign country that is available to a counterparty or to a person that is related to the counterparty (determined under the principles of paragraph (e)(5)(iv)(C)(*7*) of this section by applying the tax laws of a foreign country in which the counterparty is subject to tax on a net basis). However, a foreign tax benefit is described in this paragraph (e)(5)(iv)(B)(*4*) only if any such credit corresponds to 10 percent or more of the U.S. party's share (for U.S. tax purposes) of the foreign payment referred to in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section or if any such deduction, loss, exemption, exclusion or other tax benefit corresponds to 10 percent or more of the foreign base with respect to which the U.S. party's share (for U.S. tax purposes) of the foreign payment is imposed.

(*5*) *Counterparty.* The arrangement involves a counterparty. A counterparty is a person that, under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax, directly or indirectly owns or acquires equity interests in, or assets of, the SPV. However, a counterparty does not include the SPV or a person with respect to which for U.S. tax purposes the same domestic corporation, U.S. citizen or resident alien individual directly or indirectly owns more than 80 percent of the total value of the stock (or equity interests) of each of the U.S. party and such person. In addition, a counterparty does not include a person with respect to which for U.S. tax purposes the U.S. party directly or indirectly owns more than 80 percent of the total value of the stock (or equity interests), but only if the U.S. party is a domestic corporation, a U.S. citizen or a resident alien individual.

(*6*) *Inconsistent treatment.* The United States and an applicable foreign country treat one or more of the following aspects of the arrangement differently under their respective tax systems, and for one or more tax years when the arrangement is in effect either the amount of income recognized by the SPV, the U.S. party, and persons related to the U.S. party for U.S. tax purposes is materially less than the amount of income that would be recognized if the foreign tax treatment controlled for U.S. tax purposes, or the amount of credits claimed by the U.S. party (if the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section were an amount of tax paid) is materially greater than it would be if the foreign tax treatment controlled for U.S. tax purposes:

(*i*) The classification of the SPV (or an entity that has a direct or indirect ownership interest in the SPV) as a corporation or other entity subject to an entity-level tax, a partnership or other

flow-through entity or an entity that is disregarded for tax purposes.

(*ii*) The characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued by the SPV (or an entity that has a direct or indirect ownership interest in the SPV) to the U.S. party, the counterparty or a person related to the U.S. party or the counterparty.

(*iii*) The proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty.

(*iv*) The amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

(C) *Definitions.* The following definitions apply for purposes of paragraph (e)(5)(iv) of this section.

(*1*) *Applicable foreign country.* An *applicable foreign country* means each foreign country to which a foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section is made or which confers a foreign tax benefit described in paragraph (e)(5)(iv)(B)(*4*) of this section.

(*2*) *Counterparty.* The term *counterparty* means a person described in paragraph (e)(5)(iv)(B)(*5*) of this section.

(*3*) *Entity.* The term *entity* includes a corporation, trust, partnership or disregarded entity described in § 301.7701–2(c)(2)(i) of this chapter.

(*4*) *Indirect ownership.* Indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), regardless of whether the interest is owned by a U.S. or foreign entity.

(*5*) *Passive investment income*—(*i*) *In general.* For purposes of paragraph (e)(5)(iv) of this section, the term *passive investment income* means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(*5*)(*i*) and paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section. In determining whether income is described in section 954(c), paragraphs (c)(3) and (c)(6) of that section shall be disregarded, and sections 954(h) and 954(i) shall be taken into account by applying those provisions at the entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). For purposes of the preceding sentence, any income of an entity attributable to transactions that, assuming the entity is an SPV, are with a person that is a counterparty, or with persons that are related to a counterparty within the meaning of paragraph (e)(5)(iv)(B)(*4*) of this section, shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and 954(i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or 954(i), but only if any such person (or a person that is related to such person within the meaning of paragraph (e)(5)(iv)(B)(*4*) of this section) is eligible for a foreign tax benefit described in paragraph (e)(5)(iv)(B)(*4*) of this section. In addition, in applying section 954(h) for purposes of this paragraph (e)(5)(iv)(C)(*5*)(*i*), section 954(h)(3)(E) shall not apply, section 954(h)(2)(A)(ii) shall be satisfied only if the entity conducts substantial activity with respect to its business through its own employees, and the term ''any foreign country'' shall be substituted for ''home country'' wherever it appears in section 954(h).

(*ii*) *Holding company exception.* Except as provided in this paragraph (e)(5)(iv)(C)(*5*)(*ii*), income of an entity that is attributable to an equity interest in a lower-tier entity is passive investment income. If the entity is a holding company and directly owns a qualified equity interest in another entity (a ''lower-tier entity'') that is engaged in the active conduct of a trade or business and that derives more than 50 percent of its gross income from such trade or business, then none of the entity's income attributable to such interest is passive investment income, provided that substantially all of the entity's opportunity for gain and risk of loss with respect to such interest in the lower-tier entity is shared by the U.S. party or parties (or persons that are related to a U.S. party) and, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty). For purposes of the preceding sentence, an entity is a holding company, and is considered to be engaged in the active conduct of a trade or business and to derive more than 50 percent of its gross income from such trade or business, if substantially all of its assets consist of qualified equity interests in one or more entities, each of which is engaged in the active conduct of a trade or business and derives more than 50 percent of its gross income from such trade or business and with respect to which substantially all of the entity's opportunity for gain and risk of loss with respect to each such interest in a lower-tier entity is shared (directly or indirectly) by the U.S. party or parties (or persons that are related to a U.S. party) and, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty). A person is not considered to share in the entity's opportunity for gain and risk of loss if its equity interest in the entity was acquired in a sale-repurchase transaction, if its interest is treated as debt for U.S. tax purposes, or if substantially all of the entity's opportunity for gain and risk of loss with respect to its interest in any lower-tier entity is borne (directly or indirectly) by the U.S. party or parties (or persons that are related to a U.S. party) or, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty), but not both parties. For purposes of this paragraph (e)(5)(iv)(C)(*5*)(*ii*), a lower-tier entity that is engaged in a banking, financing, or similar business shall not be considered to be engaged in the active conduct of a trade or business unless the income derived by such entity would be excluded from section 954(c)(1) under section 954(h) or 954(i), determined by applying those provisions at the lower-tier entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions that, assuming the entity is an SPV, are with a person that is a counterparty, or with other persons that are related to a counterparty within the meaning of paragraph (e)(5)(iv)(B)(*4*) of this section, shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and 954(i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or 954(i), but only if any such person (or a person that is related to such person within the meaning of paragraph (e)(5)(iv)(B)(*4*) of this section) is eligible for a foreign tax benefit described in paragraph (e)(5)(iv)(B)(*4*) of this section. In applying section 954(h) for purposes of this paragraph (e)(5)(iv)(C)(*5*)(*ii*), section 954(h)(3)(E) shall not apply, section 954(h)(2)(A)(ii) shall be satisfied only if the entity conducts substantial activity with respect to its business through its own employees, and the term ''any foreign country'' shall be substituted for ''home country'' wherever it appears in section 954(h).

(*6*) *Qualified equity interest.* With respect to an interest in a corporation, the term *qualified equity interest* means

stock representing 10 percent or more of the total combined voting power of all classes of stock entitled to vote and 10 percent or more of the total value of the stock of the corporation or disregarded entity, but does not include any preferred stock (as defined in section 351(g)(3)). Similar rules shall apply to determine whether an interest in an entity other than a corporation is a qualified equity interest.

(*7*) *Related person.* Two persons are related if—

(*i*) One person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of the other person; or

(*ii*) The same person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of both persons.

(*8*) *Special purpose vehicle (SPV).* The term *SPV* means the entity described in paragraph (e)(5)(iv)(B)(*1*) of this section.

(*9*) *U.S. party.* The term *U.S. party* means a person described in paragraph (e)(5)(iv)(B)(*2*) of this section.

(D) *Examples.* The following examples illustrate the rules of paragraph (e)(5)(iv) of this section. No inference is intended as to whether a taxpayer would be eligible to claim a credit under section 901(a) if a foreign payment were an amount of tax paid.

Example 1. U.S. borrower transaction. (i) *Facts.* A domestic corporation (USP) forms a country M corporation (Newco), contributing $1.5 billion in exchange for 100 percent of the stock of Newco. Newco, in turn, loans the $1.5 billion to a second country M corporation (FSub) wholly owned by USP. USP then sells its entire interest in Newco to a country M corporation (FP) for the original purchase price of $1.5 billion, subject to an obligation to repurchase the interest in five years for $1.5 billion. The sale has the effect of transferring ownership of the Newco stock to FP for country M tax purposes. The sale-repurchase transaction is structured in a way that qualifies as a collateralized loan for U.S. tax purposes. Therefore, USP remains the owner of the Newco stock for U.S. tax purposes. In year 1, FSub pays Newco $120 million of interest. Newco pays $36 million to country M with respect to such interest income and distributes the remaining $84 million to FP. Under country M law, the $84 million distribution is excluded from FP's income. None of FP's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Under an income tax treaty between country M and the United States, country M does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result.* The $36 million payment by Newco to country M is not a compulsory payment, and thus is not an amount of tax paid because the foreign payment is attributable to a structured passive investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section; Newco's only asset, a note, is held to produce such income; the payment to country M is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. Second, if the foreign payment were treated as an amount of tax paid, USP would be deemed to pay the foreign payment under section 902(a) and, therefore, would be eligible to claim a credit for such payment under section 901(a). Third, USP would not pay any country M tax if it directly owned Newco's loan receivable. Fourth, the distribution from Newco to FP is exempt from tax under country M law, and the exempt amount corresponds to more than 10 percent of the foreign base with respect to which USP's share (which is 100 percent under U.S. tax law) of the foreign payment was imposed. Fifth, FP is a counterparty because FP owns stock of Newco under country M law and none of FP's stock is owned by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, FP is the owner of 100 percent of Newco's stock for country M tax purposes, while USP is the owner of 100 percent of Newco's stock for U.S. tax purposes, and the amount of credits claimed by USP if the payment to country M were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, FP and not USP were treated as owning 100 percent of Newco's stock. Because the payment to country M is not an amount of tax paid, USP is not deemed to pay any country M tax under section 902(a). USP has dividend income of $84 million and also has interest expense of $84 million. FSub's post-1986 undistributed earnings are reduced by $120 million of interest expense.

Example 2. U.S. borrower transaction. (i) *Facts.* The facts are the same as in *Example 1*, except that FSub is a wholly-owned subsidiary of Newco. In addition, assume FSub is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its gross income from such business.

(ii) *Result.* The results are the same as in *Example 1.* Although Newco wholly owns FSub, which is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its income from such business, Newco's income that is attributable to Newco's equity interest in FSub is passive investment income because the sale-repurchase transaction limits FP's interest in Newco and its assets to that of a creditor, so that substantially all of Newco's opportunity for gain and risk of loss with respect to its stock in FSub is borne by USP. See paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section. Accordingly, Newco's stock in FSub is held to produce passive investment income. Thus, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section, Newco's assets are held to produce such income, the payment to country M is attributable to such income, and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section.

Example 3. U.S. borrower transaction. (i) *Facts.* (A) A domestic corporation (USP) loans $750 million to its wholly-owned domestic subsidiary (Sub). USP and Sub form a country M partnership (Partnership) to which each contributes $750 million. Partnership loans all of its $1.5 billion of capital to Issuer, a wholly-owned country M affiliate of USP, in exchange for a note and coupons providing for the payment of interest at a fixed rate over a five-year term. Partnership sells all of the coupons to Coupon Purchaser, a country N partnership owned by a country M corporation (Foreign Bank) and a wholly-owned country M subsidiary of Foreign Bank, for $300 million. At the time of the coupon sale, the fair market value of the coupons sold is $290 million and, pursuant to section 1286(b)(3), Partnership's basis allocated to the coupons sold is $290 million. Several months later and prior to any interest payments on the note, Foreign Bank and its subsidiary sell all of their interests in Coupon Purchaser to an unrelated country O corporation for $280 million. None of Foreign Bank's stock or its subsidiary's stock is owned, directly or indirectly, by USP or Sub or by any shareholders of USP or Sub that are domestic corporations, U.S. citizens, or resident alien individuals.

(B) Assume that both the United States and country M respect the sale of the coupons for tax law purposes. In the year of the coupon sale, for country M tax purposes USP's and Sub's shares of Partnership's profits total $300 million, a payment of $60 million to country M is made with respect to those profits, and Foreign Bank and its subsidiary, as partners of Coupon Purchaser, are entitled to deduct the $300 million purchase price of the coupons from their taxable income. For U.S. tax purposes, USP and Sub recognize their distributive shares of the $10 million premium income and claim a direct foreign tax credit for their distributive shares of the $60 million payment to country M. Country M imposes no additional tax when Foreign Bank and its subsidiary sell their interests in Coupon Purchaser. Country M also does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result.* The payment to country M is not a compulsory payment, and thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Partnership is an SPV because all of Partnership's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section; Partnership's only asset, Issuer's note, is held to produce such income; the payment to country M is attributable to such income; and if the payment were an amount of tax paid, it would be paid or accrued in a U.S. taxable year in which Partnership meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. Second, if the foreign payment were an amount of tax paid, USP and Sub would be eligible to claim a credit for such payment

under section 901(a). Third, USP and Sub would not pay any country M tax if they directly owned Issuer's note. Fourth, for country M tax purposes, Foreign Bank and its subsidiary deduct the $300 million purchase price of the coupons and are exempt from country M tax on the $280 million received upon the sale of Coupon Purchaser, and the deduction and exemption correspond to more than 10 percent of the $300 million base with respect to which USP's and Sub's 100% share of the foreign payments was imposed. Fifth, Foreign Bank and its subsidiary are counterparties because they indirectly acquired assets of Partnership, the interest coupons on Issuer's note, and are not directly or indirectly owned by USP or Sub or shareholders of USP or Sub that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the amount of taxable income of Partnership for one or more years is different for U.S. and country M tax purposes, and the amount of income recognized by USP and Sub for U.S. tax purposes is materially less than the amount of income they would recognize if the country M tax treatment of the coupon sale controlled for U.S. tax purposes. Because the payment to country M is not an amount of tax paid, USP and Sub are not considered to pay tax under section 901. USP and Sub have interest income of $10 million in the year of the coupon sale.

Example 4. Active business; no SPV. (i) *Facts.* A, a domestic corporation, wholly owns B, a country X corporation engaged in the manufacture and sale of widgets. On January 1, year 1, C, also a country X corporation, loans $400 million to B in exchange for an instrument that is debt for U.S. tax purposes and equity in B for country X tax purposes. As a result, C is considered to own stock of B for country X tax purposes. B loans $55 million to D, a country Y corporation wholly owned by A. In year 1, B has $166 million of net income attributable to its sales of widgets and $3.3 million of interest income attributable to the loan to D. Country Y does not impose tax on interest paid to nonresidents. B makes a payment of $50.8 million to country X with respect to B's net income. Country X does not impose tax on dividend payments between country X corporations. None of C's stock is owned, directly or indirectly, by A or by any shareholders of A that are domestic corporations, U.S. citizens, or resident alien individuals.

(ii) *Result.* B is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this section because the amount of interest income received from D does not constitute substantially all of B's income and the $55 million note from D does not constitute substantially all of B's assets. Accordingly, the $50.8 million payment to country X is not attributable to a structured passive investment arrangement.

Example 5. U.S. lender transaction. (i) *Facts.* (A) A country X corporation (Foreign Bank) contributes $2 billion to a newly-formed country X company (Newco) in exchange for 100 percent of Newco's common stock. A domestic corporation (USP) contributes $1 billion to Newco in exchange for securities that are treated as stock of Newco for U.S. tax purposes and debt of Newco for country X tax purposes. Newco loans the $3 billion to a wholly-owned, country X subsidiary of Foreign Bank (FSub) in return for a $1 billion note paying fixed, non-contingent interest and a $2 billion contingent interest zero coupon note, each note having a term of seven years. FSub is required to pay non-contingent interest to Newco annually on the $1 billion note, but the contingent interest is only payable at maturity of the $2 billion note (December 31 of year 7). The contingency is effective to prevent the current accrual of the contingent interest for U.S. tax purposes. At the end of year 5, pursuant to a prearranged plan, Foreign Bank acquires USP's stock of Newco for $1 billion. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. Under an income tax treaty between country X and the United States, country X does not impose country X tax on interest received by U.S. residents from sources in country X. None of Foreign Bank's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals.

(B) In each of years 1 through 7, FSub pays Newco $40 million of non-contingent interest. Even though none of the contingent interest is currently payable by FSub, for country X tax purposes Newco accrues an additional $84 million of interest income attributable to the contingent note in each year. Newco distributes $4 million to USP in each of years 1 through 5 and pays country X $36 million with respect to $120 million of taxable income from the two notes in each year. For U.S. tax purposes, only the $40 million of non-contingent interest is included in computing Newco's post-1986 undistributed earnings.

(ii) *Result.* The $36 million payment to country X is not a compulsory payment, and thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section; Newco's only assets, two notes of FSub, are held to produce such income; the payment to country X is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. Second, if the foreign payment were an amount of tax paid, USP would be deemed to pay all, or $36 million, of the foreign payment under section 902(a) in each of years 1 through 5 and, therefore, would be eligible to claim a credit under section 901(a). Third, USP would not pay any country X tax if it directly owned its proportionate share of Newco's assets, the notes of FSub. Fourth, for country X tax purposes, Foreign Bank is eligible to receive a tax-free distribution of the $84 million of contingent interest attributable to each of years 1 through 5, and that amount corresponds to more than 10 percent of the $120 million foreign base with respect to which USP's share of the foreign payment was imposed. The result would be the same whether or not the contingency occurs and whether or not FSub pays the contingent interest to Newco, because Foreign Bank would be entitled to receive the amount of the contingent interest from either FSub or Newco without including it in income for country X tax purposes. Fifth, Foreign Bank is a counterparty because it owns stock of Newco and none of Foreign Bank's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat various aspects of the arrangement differently, including whether USP's interest is debt or equity and the timing and amount of interest accruals on the contingent interest note. The amount of credits claimed by USP if the payment to country X were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, the securities held by USP were treated as debt, and the amount of income recognized by Newco for U.S. tax purposes is materially less than the amount of income recognized for country X tax purposes. Because the payment to country X is not an amount of tax paid, USP is not deemed to pay any country X tax under section 902(a). USP has dividend income of $4 million in each of years 1 through 5.

Example 6. Holding company; no SPV. (i) *Facts.* A, a country X corporation, and B, a domestic corporation, each contribute $1 billion to a newly-formed country X entity (C) in exchange for stock of C. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. C contributes $1.95 billion to a newly-formed country X corporation (D) in exchange for 100 percent of D's stock. C loans its remaining $50 million to D. Accordingly, C's sole assets are stock and debt of D. D uses the entire $2 billion to engage in the business of manufacturing and selling widgets. In year 1, D derives $300 million of income from its widget business and derives $2 million of interest income. Also in year 1, C has dividend income of $200 million and interest income of $3.2 million with respect to its investment in D. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result.* C's dividend income is not passive investment income, and C's stock in D is not held to produce such income, because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section. As a result, less than substantially all of C's income is passive investment income and less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this section, and the $960,000 payment to country X is not attributable to a structured passive investment arrangement.

Example 7. Holding company; no SPV. (i) *Facts.* The facts are the same as in *Example*

6, except that instead of loaning $50 million to D, C contributes the $50 million to E in exchange for 10 percent of the stock of E. E is a country Y corporation that is not engaged in the active conduct of a trade or business. Also in year 1, D pays no dividends to C, E pays $3.2 million in dividends to C, and C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result.* C's dividend income attributable to its stock in E is passive investment income, and C's stock in E is held to produce such income. C's stock in D is not held to produce passive investment income because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section. As a result, less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV because it does not meet the requirements of paragraph (e)(5)(iv)(B)(*1*) of this section, and the $960,000 payment to country X is not attributable to a structured passive investment arrangement.

Example 8. Asset holding transaction. (i) *Facts.* (A) A domestic corporation (USP) contributes $6 billion of country Z debt obligations to a country Z entity (DE) in exchange for all of the class A and class B stock of DE. A corporation unrelated to USP and organized in country Z (FC) contributes $1.5 billion to DE in exchange for all of the class C stock of DE. DE uses the $1.5 billion contributed by FC to redeem USP's class B stock. The class C stock is entitled to ''all'' income from DE. However, FC is obligated immediately to contribute back to DE all distributions on the class C stock. USP and FC enter into—

(*1*) A contract under which USP agrees to buy after five years the class C stock for $1.5 billion; and

(*2*) An agreement under which USP agrees to pay FC periodic payments on $1.5 billion.

(B) For U.S. tax purposes, these steps create a loan of $1.5 billion from FC to USP, and USP is the owner of the class C stock and the class A stock. DE is a disregarded entity for U.S. tax purposes and a corporation for country Z tax purposes. In year 1, DE earns $400 million of interest income on the country Z debt obligations. DE makes a payment to country Z of $100 million with respect to such income and distributes the remaining $300 million to FC. FC contributes the $300 million back to DE. None of FC's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Country Z does not impose tax on interest income derived by U.S. residents.

(C) Country Z treats FC as the owner of the class C stock. Pursuant to country Z tax law, FC is required to report the $400 million of income with respect to the $300 million distribution from DE, but is allowed to claim credits for DE's $100 million payment to country Z. For country Z tax purposes, FC is entitled to current deductions equal to the $300 million contributed back to DE.

(ii) *Result.* The payment to country Z is not a compulsory payment, and thus is not an amount of tax paid because the payment is attributable to a structured passive investment arrangement. First, DE is an SPV because all of DE's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section; all of DE's assets are held to produce such income; the payment to country Z is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which DE meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. Second, if the payment were an amount of tax paid, USP would be eligible to claim a credit for such amount under section 901(a). Third, USP would not pay any country Z tax if it directly owned DE's assets. Fourth, FC is entitled to claim a credit under country Z tax law for the payment and recognizes a deduction for the $300 million contributed to DE under country Z law. The credit claimed by FC corresponds to more than 10 percent of USP's share (for U.S. tax purposes) of the foreign payment and the deductions claimed by FC correspond to more than 10 percent of the base with respect to which USP's share of the foreign payment was imposed. Fifth, FC is a counterparty because FC is considered to own equity of DE under country Z law and none of FC's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat certain aspects of the transaction differently and the amount of credits claimed by USP if the country Z payment were an amount of tax paid is materially greater than it would be if FC, rather than USP, owned the class C stock for U.S. tax purposes. Because the payment to country Z is not an amount of tax paid, USP is not considered to pay tax under section 901. USP has $400 million of interest income.

Example 9. Loss surrender. (i) *Facts.* The facts are the same as in *Example 8*, except that the deductions attributable to the arrangement contribute to a loss recognized by FC for country Z tax purposes, and pursuant to a group relief regime in country Z FC elects to surrender the loss to its country Z subsidiary.

(ii) *Result.* The results are the same as in *Example 8*. The surrender of the loss to a related party is a foreign tax benefit that corresponds to the base with respect to which USP's share of the foreign payment was imposed.

Example 10. Joint venture; no foreign tax benefit. (i) *Facts.* FC, a country X corporation, and USC, a domestic corporation, each contribute $1 billion to a newly-formed country X entity (C) in exchange for stock of C. FC and USC are entitled to equal 50% shares of C's income, gain, expense and loss. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. In year 1, C earns $200 million of passive investment income, makes a payment to country X of $60 million with respect to that income, and distributes $70 million to each of FC and USC. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation.

(ii) *Result.* FC's tax-exempt receipt of $70 million, or its 50% share of C's profits, is not a foreign tax benefit within the meaning of paragraph (e)(5)(iv)(B)(*4*) of this section, because it does not correspond to any part of the foreign base with respect to which USC's share of the foreign payment was imposed. Accordingly, the $60 million payment to country X is not attributable to a structured passive investment arrangement.

(f) through (h)(1) [Reserved]. For further guidance, see § 1.901–2(f) through (h)(1).

(h)(2) This section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901–2(f) by a U.S. or foreign person in taxable years ending on or after July 16, 2008. In the case of foreign payments by a foreign corporation that has a domestic corporate shareholder, this section also applies to such payments that, if such payments were an amount of tax paid, would be considered paid or accrued in the foreign corporation's U.S. taxable years ending with or within taxable years of its domestic corporate shareholder ending on or after July 16, 2008. In the case of foreign payments by a partnership, trust or estate with respect to which any person would be eligible to claim a credit under section 901(b) if the payment were an amount of tax paid, this section also applies to such payments that would be considered paid or accrued in U.S. taxable years of the partnership, trust or estate ending with or within taxable years of such eligible persons ending on or after July 16, 2008.

(3) *Expiration date.* The applicability of this section expires on July 15, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–16329 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9409]

RIN 1545–BI01

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9409) that was published in the **Federal Register** on Wednesday, July 2, 2008 (73 FR 37804) providing rules relating to the disclosure and use of tax return information by tax return preparers. These regulations provide updated guidance regarding the disclosure of a taxpayer's social security number to a tax return preparer located outside of the United States.

DATES: *Effective Date:* July 16, 2008.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Mack, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subjects of this document are under section 7216 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9409) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.7216–3T(d) is amended by revising the second sentence to read as follows:

§ 301.7216–3T Disclosure or use permitted only with the taxpayer's consent (temporary).

* * * * *

(d) * * * The applicability of this section expires on July 1, 2011.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–16288 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9410]

RIN 1545–BF54

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to final regulations (TD 9410) that were published in the **Federal Register** on Tuesday, July 8, 2008 (73 FR 38915) relating to the discharge of liens under section 7425 and return of wrongfully levied upon property under section 6343 of the Internal Revenue Code of 1986. These regulations revise regulations currently published under sections 7425 and 6343. These regulations clarify that such notices and claims should be sent to the IRS official and office specified in the relevant IRS publications. The regulations will affect parties seeking to provide the IRS with notice of a nonjudicial foreclosure sale and parties making administrative requests for return of wrongfully levied property.

DATES: This correction is effective July 16, 2008, and is applicable on July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subjects of this document are under sections 6343 and 7425 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9410) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9410), which were the subject of FR Doc. E8–15460, is corrected as follows:

■ On page 38916, column 1, in the preamble, under the caption **DATES**:, lines 3 thru 4, the language ''*Applicability Date:* See §§ 301.6343–2 and 301.6343–3.'' is corrected to read ''*Applicability Date:* See §§ 301.6343–2 and 301.7425–3.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–16289 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Cape Fear River, Corpus Christi, North Carolina, and Port Arthur.

SUMMARY: This Notice informs owners and operators of facilities located within Captain of the Port Zones Cape Fear River, Corpus Christi, North Carolina, and Port Arthur that they must implement access control procedures utilizing TWIC no later than November 28, 2008.

DATES: This Notice is effective July 16, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Notice, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC, must implement those procedures, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as laid out in 33 CFR 105.115(e).

The Coast Guard will continue to announce rolling compliance dates, as laid out in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Cape Fear River, Corpus Christi, North Carolina, and Port Arthur

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Cape Fear River, Corpus Christi, North Carolina, and Port Arthur that the deadline for their compliance with Coast Guard and TSA TWIC requirements is November 28, 2008.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/*.

You may also visit our Web site at *homeport.uscg.mil/twic* for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: July 7, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.

[FR Doc. E8–16169 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0630]

RIN 1625–AA00

Safety Zone; Mackinac Bridge Birthday Fireworks, Lake Huron, St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Huron, St. Ignace, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the Mackinac Bridge Birthday Fireworks, July 26, 2008 fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. to 11:59 p.m. on July 26, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0630 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783; 906–635–3220. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish a NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on

accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Sault Ste. Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Mackinac Bridge Birthday Fireworks display. The fireworks display will occur between 9 p.m. and 11:59 p.m. on July 26, 2008.

The safety zone for the fireworks will encompass all waters of Lake Huron within a 500-foot radius from the fireworks launch site in East Moran Bay, with its center in position: 45°52.25′ N, 084°43.20′ W [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Ste. Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Huron off St. Ignace, Michigan between 9 p.m. and 11:59 p.m. on July 26, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for fewer than three hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Ste. Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, based on the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–0630 is added as follows:

§ 165.T09–0630 Safety Zone; Mackinac Bridge Birthday Fireworks, Lake Huron, St. Ignace, MI.

(a) *Location*. The following area is a temporary safety zone: all waters of Lake Huron within a 500-foot radius from the fireworks launch site with its center in position: 45°52.25′ N, 084°43.20′ W [DATUM: NAD 83].

(b) *Effective period*. This regulation is effective from 9 p.m. to 11:59 p.m. on July 26, 2008.

(c) *Regulations*. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sault Ste. Marie, or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sault Ste. Marie or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sault Ste. Marie or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sault Ste. Marie or his on-scene representative.

Dated: July 2, 2008.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.

[FR Doc. E8–16168 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0631]

RIN 1625–AA00

Safety Zone; 100th Anniversary Chicago to Mackinac Race Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Huron, Mackinac Island, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the 100th Anniversary Chicago to Mackinac Race Fireworks, July 22, 2008 fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. to 11:59 p.m. on July 22, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0631 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783; 906–635–3220. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish a NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Sault Ste. Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the 100th Anniversary Chicago to Mackinac Race fireworks display. The fireworks display will occur between 9 p.m. and 11:59 p.m. on July 22, 2008.

The safety zone for the fireworks will encompass all waters of Lake Huron within a 600-foot radius from the fireworks launch site off of Bindle Point, with its center in position 45°50.57′ N, 084°37.54′ W [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Ste. Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Huron off Mackinac Island, Michigan between 9 p.m. and 11:59 p.m. on July 22, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for fewer than three hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Ste. Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, based on the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore paragraph (34)(g) of the Instruction applies.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–0631 is added as follows:

§ 165.T09–0631 Safety Zone; 100th Anniversary Chicago to Mackinac Race Fireworks, Lake Huron, Mackinac Island, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Huron within a 600-foot radius from the fireworks launch site with its center in position 45°50.57′ N, 084°37.54′ W [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. to 11:59 p.m. on July 22, 2008.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sault Ste. Marie, or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sault Ste. Marie or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sault Ste. Marie or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sault Ste. Marie or his on-scene representative.

Dated: July 2, 2008.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.

[FR Doc. E8–16170 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AM49

Supplemental Statement of the Case

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to adjust the time period for filing a response to a Supplemental Statement of the Case in appeals to the Board of Veterans' Appeals (Board) from 60 days to 30 days. The purpose of this adjustment is to improve efficiency in the appeals process and reduce the time that it takes to resolve appeals while still providing appellants with a reasonable period to respond to a Supplemental Statement of the Case.

DATES: *Effective Date:* This rule is effective July 16, 2008.

Applicability Date: VA will apply this rule to appeals pending before VA after a period of 90 days from the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Board is an administrative body within VA that decides appeals from denials by Agencies of Original Jurisdiction (AOJ) of claims for veterans' benefits, as well as a limited class of cases of original jurisdiction. The Board is under the administrative control and supervision of a Chairman who is directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101(a).

On March 26, 2007, VA published in the **Federal Register** (72 FR 14056) a Notice of Proposed Rulemaking (NPRM) that proposed to reduce the time limit for filing a response to a Supplemental Statement of the Case from 60 days to 30 days. Interested persons were invited to submit written comments on or before May 25, 2007.

Eight comments were received, all of which disagreed with the proposed rule for reasons summarized below. At least three commenters argued that 30 days was simply not enough time to respond to a Supplemental Statement of the Case. Those commenters also questioned the purpose of the time reduction, arguing that this action would not serve the stated purpose of expediting appeals adjudication. One commenter indicated that the proposed rule would add further confusion regarding the various time periods within which claimants must respond to VA documents. Another commenter expressed concern that the proposed rule did not consider individuals who have appeals pending and yet reside outside of the United States. Two commenters expressed concern over the process of requesting an extension for filing a response to a Supplemental Statement of the Case. Finally, several commenters provided general suggestions for improving the VA adjudication system.

A recurring theme among the comments received was that 30 days was simply not enough time to prepare a response to a Supplemental Statement of the Case. One commenter noted that many veterans are represented by veterans service organizations that are overworked and understaffed, which results in veterans having to wait 3 to 4 weeks just to get an appointment with their representative. Thus, the commenter concluded, 30 days would be an insufficient amount of time in which to prepare a response. The commenter also suggested that VA was implementing this time reduction in hopes of receiving fewer responses to Supplemental Statements of the Case. A second commenter noted that if additional medical evidence, such as a rebuttal medical opinion, was required to respond to evidence outlined in the Supplemental Statement of the Case, a 30-day response period leaves little time to obtain such evidence. Yet another commenter remarked that Supplemental Statements of the Case often contain only a brief description of the evidence added to the record, thus, requiring claimants to request complete copies of such evidence from the AOJ in order to prepare a response. The commenter argued that this process alone can take more than 30 days.

Although VA recognizes and appreciates the concerns expressed by these commenters, we believe that the 30-day response time offered under the proposed rule does in fact afford appellants a reasonable opportunity to meaningfully respond to a Supplemental Statement of the Case, and we decline to make any changes to the response time outlined in the proposed rule based on these comments. As explained in the NPRM, Supplemental Statements of the Case are issued at a late stage in the appellate process, often the last formal step prior to certification of an appeal to the Board. By that stage in the appeal period, appellants have already had extensive opportunity to gather evidence, including supportive medical opinions, for submission to the AOJ. Unlike a Statement of the Case, which must contain specific information about the evidence and issues in the case, the applicable laws and regulations, and the reasons for each determination, a Supplemental Statement of the Case is not required to contain the same degree of detail. As its name implies, a Supplemental Statement of the Case is a *supplement* to the Statement of the Case. The purpose of this document is to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. 38 CFR 19.31(a). In *no case* will a Supplemental Statement of the Case be used to announce AOJ decisions on issues that were not previously addressed in a Statement of the Case. 38 CFR 19.31(a). Therefore, due to the limited purpose of a Supplemental Statement of the Case, less time should be needed to respond to a Supplemental Statement of the Case as compared to the Statement of the Case. Significantly, a response to a Supplemental Statement of the Case is *optional* and generally is not required to perfect an appeal. 38 CFR 20.302(c).

To the extent that certain cases involve a degree of medical or legal complexity so as to require additional time to craft an appropriate response to a Supplemental Statement of the Case, appellants can easily request an extension of the 30-day period for responding to a Supplemental Statement of the Case under the provisions of 38 CFR 20.303. Section 20.303 provides that an extension of the period for filing a response to a Supplemental Statement of the Case may be granted for good cause. Although good cause is not specifically defined by that regulation, it seems logical that a request for an extension on the basis that additional medical evidence was being sought would indeed be good cause for such an extension. Moreover, in response to one commenter's concern that the extension request may not be granted, the rule provides that a denial of a request for extension is appealable to the Board. 38 CFR 20.303.

We will, however, make one minor revision to the extension provisions of 38 CFR 20.303 to ensure that they have

broad applicability. Currently, § 20.303 allows for an extension of the period to respond to a Supplemental Statement of the Case based on good cause only when a response to the Supplemental Statement of the Case ''is required.'' As noted above, however, in the vast majority of cases, a response to a Supplemental Statement of the Case is merely optional and is not mandatory to perfect an appeal. 38 CFR 20.302(c). A response to a Supplemental Statement of the Case is only ''required'' when a Substantive Appeal has not been submitted and the statutory period to file the same has not expired. *Id.* Because Supplemental Statements of the Case are typically issued after a Substantive Appeal has been filed, a response is rarely needed to perfect the appeal. Thus, as currently written, the extension request provisions of § 20.303 have narrow applicability in that they only apply in the rare case where a Substantive Appeal has not been filed and a response to a Supplemental Statement of the Case is required to perfect an appeal.

To ensure that all appellants are able to request an extension of the period to respond to a Supplemental Statement of the Case based on good cause, regardless of whether such response is required to perfect the appeal, we will delete the phrase ''when such a response is required'' from the first sentence of 38 CFR 20.303. This minor revision will ensure that all appellants will have a mechanism to request an extension, regardless of the procedural posture of their cases.

Even in the absence of an approved extension request, the appellant still has an additional opportunity to submit evidence and argument in his or her appeal. As noted in the NRPM, in addition to the 30-day period to respond to the Supplemental Statement of the Case, once an appeal has been certified and transferred to the Board, the appellant typically still has 90 days to submit further evidence. 38 CFR 20.1304(a). Although 38 CFR 20.1304(a) states that the appellant has 90 days or until the Board promulgates a decision to submit evidence, as a practical matter, with the exception of a limited class of cases, such as cases advanced on the Board's docket pursuant to 38 U.S.C. 7107(a)(2), the Board generally does not decide cases until after the 90-day period has passed. This effectively provides the vast majority of appellants with the full 90 days to submit additional evidence. Moreover, under 38 CFR 20.1304(b), even after the 90-day period expires an appellant may still move to submit additional evidence if he or she can demonstrate good cause for the delayed submission.

One commenter expressed concern that the aforementioned extension procedure imposes an ''additional burden'' upon appellants to request an extension of time and show good cause, which ''suggests hostility toward their claims and is inconsistent with the notion of a veteran-friendly VA system.'' VA respectfully disagrees with this comment for several reasons. First, the commenter is presupposing that this rulemaking will have adverse effects for veterans and other claimants seeking veterans' benefits. On the contrary, we believe that this rulemaking will add efficiency to the appeals process and lessen the time needed at the AOJ level to resolve appeals. Currently, due in part to the fact that a response to a Supplemental Statement of the Case is usually optional, many appellants choose not to file a response. However, VA must wait until the current 60-day time period expires before taking any further action in the appeal. Although a waiver form is sometimes used to ask appellants if they wish to waive this 60-day period, responses are not always received to that request. Therefore, the result is cases that sit without any action, simply waiting for a regulatory time period to expire. By shortening the turn-around time provided for a response to a Supplemental Statement of the Case, appeals can be certified and transferred to the Board sooner, thereby allowing that tribunal to adjudicate the claim sooner than if the claims file was allowed to linger at the AOJ for an additional 30 days.

VA emphasizes that the purpose of this rulemaking is not to saddle appellants with an additional obligation to make extension requests, but rather to streamline the appeals process for the vast majority of appellants who either need little time to formulate a response to a Supplemental Statement of the Case or who wish to submit no response at all.

In response to the criticism that this reduced time period will not serve the stated purpose of expediting appeals or that VA is taking this action in the hopes that few responses will be received, that is simply not true. The VA claims and adjudication process has grown tremendously over the years both regarding the volume of claims and appeals, and the legal and medical complexity of the cases. Along with this high volume has come an increased appeals resolution time. VA is closely examining its systems to determine where time can be reduced. Although this 30-day reduction may be small in the scheme of the average appeal, it is an initial step in the right direction. Reducing unnecessary wait times encourages efficiency and promotes case movement. There is no adverse effect on the appellant, as a process exists for requesting an extension, if one is desired. That extension request is itself an appealable issue, thus ensuring legal protection of the appellant's right to respond to a Supplemental Statement of the Case.

While an extension request may be needed in more complex cases or where extenuating circumstances are present, such cases constitute a relatively small percentage of the overall number of appeals in the VA system. We do not believe that requiring appellants to request an extension in these cases represents an overly burdensome task. The extension procedure is already an integral part of 38 CFR 20.303. This rulemaking merely reduces to 30 days, as opposed to 60, the period during which the extension request must be made. It also liberalizes the extension request procedure by allowing all appellants to make an extension request, regardless of whether a response to the Supplemental Statement of the Case is required to perfect the appeal. As outlined above, at the Supplemental Statement of the Case stage, the appellant has already been afforded ample opportunity to submit evidence and argument in support of his or her claim. In the relatively small number of cases where a 30-day response period may be inadequate to respond to the Supplemental Statement of the Case, an extension request provides an uncomplicated means to allow for the submission of additional evidence and argument. Again, should the AOJ deny such request, that denial is itself appealable to the Board. Moreover, as noted above, there is still generally a minimum period of 90 days for evidence submission after the appeal is certified and transferred to the Board. We therefore make no changes based on these comments.

Another commenter also expressed concern that a 30-day response time was inadequate for those individuals who have appeals pending but reside outside the United States. The commenter argued that a Supplemental Statement of the Case mailed to an address overseas presumably takes longer to be delivered than mail being delivered to an address close to the AOJ. While VA acknowledges that mail delivered to destinations at a distance from the AOJ may take longer to reach the intended recipient, we do not believe that such consideration warrants any change to the proposed rule. In fact, no other VA regulations pertaining to claims

adjudication allow different time periods for overseas mailings. We do note, however, that while mailing to a distant destination may delay the appellant's actual receipt of the Supplemental Statement of the Case, it will not affect the timeliness of the response. The regulations currently provide that a response postmarked prior to the expiration of an applicable time limit will be accepted as having been timely filed. 38 CFR 20.305. In the event that the postmark is not of record, the postmark date will be presumed to be 5 days prior to the date of the receipt of the document by VA. *Id.* Thus, if a claimant's response to a Supplemental Statement of the Case is postmarked prior to the expiration of the 30-day period, it will be considered timely, even if the response is not received by VA within the 30-day period (including due to mailing delays). Accordingly, VA makes no change based on this comment.

As outlined above, Supplemental Statements of the Case are limited in scope and are issued for the sole purpose of informing the appellant of material changes in or additions to information found in the Statement of the Case or a prior Supplemental Statement of the Case. We again note that Supplemental Statements of the Case are issued well into the appeals process and after claimants have had adequate opportunity to submit or identify favorable evidence. Due to the limited purpose of a Supplemental Statement of the Case and its occurrence late in the appeals process, little time should be required to respond in most cases. Thus, most appellants should be able to timely respond even in situations where the Supplemental Statement of the Case is not immediately received by a claimant due to mailing delays. As with other cases, should 30 days prove insufficient, an extension may be granted where good cause is shown. In certain circumstances, good cause may include those situations where an appellant's response time is truncated due to mail delays.

Another commenter expressed concern that the change to a 30-day response period would ''add further confusion regarding the time periods with which claimants must respond to VA documents.'' We respectfully disagree. The revised period is not misleading or difficult to calculate. The 30-day response period established in this rulemaking is not inherently more confusing than the current 60-day period. Nor do we find confusing a 30-day period among other periods for responding to other documents. Response periods and filing deadlines are a necessary part of any regulatory system, including that governing the response to Supplemental Statements of the Case. While claimants and their representatives will need to adjust to a shortened time frame to craft a response to a Supplemental Statement of the Case, we believe that this change is quite straightforward in application. Therefore, we make no change based on this comment.

Finally, we acknowledge the comments containing general suggestions for improving the VA claims adjudication system. While VA welcomes any input regarding improvements in the system, these particular comments do not directly concern the subject of this rulemaking, and therefore, this document is not an appropriate venue to address such comments. Thus, VA makes no changes to the NPRM based on those comments.

Based on the rationale stated above, as well as the rationale outlined in the NPRM, the proposed rule is adopted with the minor change to 38 CFR 20.303 outlined above.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. By reducing the period allowed for submitting an optional response to a Supplemental Statement of the Case to 30 days, this final rule will affect claimants for VA benefits who appeal to the Board. It may also affect a few small organizations appealing to the Board, including attorneys appealing the cancellation of their accreditation by the VA General Counsel and accredited attorneys appealing decisions affecting payment of their fees out of past-due benefits awarded to VA claimants. This final rule may also affect a few small governmental jurisdictions appealing to the Board, such as state agencies appealing VA decisions on per diem payments for services provided to veterans in state homes.

However, reducing the period permitted for submitting an optional response to a Supplemental Statement of the Case would not have a significant economic impact on a substantial number of these small entities. Rather, it will expedite the processing of their appeals to the Board. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of 5 U.S.C. 603 and 604.

Executive Order 12866

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 Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any 1 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101,

Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans' Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: April 25, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 19 and 20 are amended as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.38 [Amended]

■ 2. Section 19.38 is amended by removing ''60-day'' and adding, in its place, ''30-day''.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart D—Filing

§ 20.302 [Amended]

■ 4. Section 20.302(c) is amended by removing ''60'' and adding, in its place, ''30''.

§ 20.303 [Amended]

■ 5. Section 20.303 is amended by removing the phrase ''or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required'' and adding, in its place, ''or the 30-day period for responding to a Supplemental Statement of the Case''.

[FR Doc. E8–16238 Filed 7–15–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0003; FRL–8578–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Illinois Ozone State Implementation Plan (SIP). On August 17, 2005, Illinois requested that five compounds be added to its list of compounds that are exempt from being considered as volatile organic compounds (VOCs). EPA no longer considers four of the compounds to be VOCs for control and recordkeeping/reporting purposes because the compounds were shown to be negligibly photochemically reactive, and do not lead to ozone formation. EPA, however, determined that tertiary-butyl acetate (t-butyl acetate) has negligible contribution to ozone formation, and, therefore, is not considered a VOC for emission limits and VOC control requirements, it should, noneless, continue to be covered by recordkeeping, emission reporting, and inventory requirements. Illinois provided a supplementary submission on January 29, 2008, correcting the August 17, 2007, submittal by clarifying the restrictions pertaining to the compound t-butyl acetate.

DATES: This final rule is effective on August 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0003. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Revisions Did the State Request?
II. What Is EPA's Analysis of the Revisions?
III. What Are the Environmental Effects of This Action?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Revisions Did the State Request?

Illinois requested revisions to its ozone SIP which would add five compounds to the list of compounds exempt from VOC requirements because they are negligibly photochemicially reactive. Illinois uses the term ''volatile organic matter'' or ''VOM'' in place of VOC. The State requested the compounds 1,1,1,2,2,3,3-Heptafluoro-3-methoxypropane (''n-$C_3F_7OCH_3$''), 3-Ethoxy 1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (''HFE-7500''), 1,1,1,2,3,3,3-Heptafluoropropane (''HFC-227ea''), Methyl formate, and tertiary-Butyl acetate (''t-butyl acetate'') be added to Title 35 of the Illinois Administrative Code (IAC) Section 211.7150(a), its list

of compounds exempt from VOC requirements. Illinois also requested the addition of t-butyl acetate to the 35 IAC 211.7150(a) exemption list, with a separate provision that special requirements, 35 IAC 211.7150(e), apply to t-butyl acetate. T-butyl acetate is to be considered a VOC for recordkeeping, emissions reporting, modeling, and inventory requirements, but is not to be considered VOC for emission limits or content requirements.

II. What Is EPA's Analysis of the Revisions?

On November 29, 2004, EPA added four compounds, n-$C_3F_7OCH_3$, HFE-7500, HFC-227ea, and methyl formate, to its list of compounds exempt from VOC requirements, (69 FR 69290). On the same day, EPA also exempted t-butyl acetate from emission limitations and VOC content requirements, but continued in effect for that compound recordkeeping, emissions reporting, and inventory requirements, (69 FR 69298).

In its August 17, 2005, submission, Illinois requested that n-$C_3F_7OCH_3$, HFE-7500, HFC-227ea, methyl formate, and t-butyl acetate be listed as compounds that are exempt from VOC requirements. The State's addition of the first four of these compounds to its list of exempt compounds can be approved, as EPA added them to its list of compounds exempt from VOC regulation on November 29, 2004. As to the fifth compound, t-butyl acetate, Illinois has limited the extent of its exemption from regulation (consistent with EPA's November 29, 2004 action), in its supplementary submission of January 29, 2008. In 35 IAC 211.7150(a), Illinois adds t-butyl acetate to the list of compounds exempt from VOC regulation. However, Illinois also specifically provides that t-butyl acetate will continue to be governed by recordkeeping, emissions reporting, and inventory requirements. Consequently, Illinois's rule revisions provide adequate notice to t-butyl acetate users that, while the compound is exempt from emission limitations and content requirements, it continues to be regulated by recordkeeping, emissions reporting and inventory requirements.

III. What Are the Environmental Effects of This Action?

Volatile organic compounds are precursors to ozone formation. Complex photochemical reactions involving VOCs form tropospheric ozone.

Ozone decreases lung function, causing chest pain and coughing. It can aggravate asthma, reduce lung capacity, and increase risk of respiratory diseases like pneumonia and bronchitis. Children playing outside and healthy adults who work or exercise outside may also be harmed by elevated ozone levels. Ozone also reduces vegetation growth in economically important agricultural crops and wild plants.

EPA has determined that the five compounds make a negligible contribution to ozone formation. Thus, the compounds are no longer considered to be VOCs for emission control purposes, and the exemptions will not harm air quality.[1] In fact, if sources switch from the use of a VOC compound to one of the compounds that are no longer considered VOCs, ozone formation may be reduced.

IV. What Action Is EPA Taking Today?

EPA is approving VOC revisions to the Illinois SIP. Specifically, EPA is approving revisions to 35 IAC 211.7150(a) and (e). Illinois has added language to section 211.7150(a) that states that some compounds listed in that section must also follow the restrictions in section 211.7150(e). All five compounds are listed in section 211.7150(a), but the notation makes it clear that t-butyl acetate users must follow the special recordkeeping, emissions reporting, modeling, and inventory requirement restrictions from section 211.7150(e).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

[1] Recordkeeping and reporting requirements for t-butyl acetate and other future exempt compounds are retained because even ''negligibly reactive'' compounds may contribute significantly to ozone formation if present in sufficient quantities. Also, accurate emission figures are needed for modeling analyses. The recordkeeping and reporting for t-butyl acetate are further justified when considering its reactivity is on the borderline of what has been considered negligibly reactive.

this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 27, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(181) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(181) On August 17, 2005 and January 29, 2008, Illinois submitted revised regulations that are consistent with 40 CFR 51.100(s)(1), as amended by 69 FR 69298. The compounds 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-$C_3F_7OCH_3$), 3-ethoxy 1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (HFE-7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea), and methyl formate were added to the list of negligibly reactive compounds excluded from the definition of VOM in 35 IAC 211.7150(a). Tertiary-butyl acetate is also listed in 35 IAC 211.7150(a) with a notation that it must also meet the requirements of 35 IAC 211.7150(e), which state that tertiary-butyl acetate is considered a VOC for recordkeeping, emissions reporting, modeling, and inventory requirements, but is not considered a VOC for emission limits or content requirements.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code Title 35: Environmental Protection, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.7150: Volatile Organic Matter (VOM) or Volatile Organic Compound (VOC), Subsections 211.7150(a) and 211.7150(e). Effective January 16, 2008.

[FR Doc. E8–15815 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0645; FRL–8692–1]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Wyoming on December 13, 2006. The proposed revisions modify the State's Prevention of Significant Deterioration (PSD) regulations to address changes to the federal NSR regulations promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003. The State of Wyoming has a federally-approved PSD program for new and modified sources impacting attainment areas in the State. Wyoming does not have a Nonattainment New Source Review (NNSR) program. This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date*: This final rule is effective August 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–0645. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov*, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–A, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6416, *mastrangelo.domenico@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Wyoming* mean the State of Wyoming unless the context indicates otherwise.

Table of Contents

I. What Action Is EPA Taking?
II. Background
III. Final Action
IV. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is taking final action to approve revisions to the State of Wyoming SIP regarding the Wyoming PSD program. On April 1, 2008 (73 FR 17289), EPA published an action of proposed rulemaking to approve Wyoming's revisions to their Prevention of Significant Deterioration regulations, Chapter 6, Section 4 of the Wyoming Air Quality Standards and Regulations (WAQS&R). The formal SIP revision was submitted to EPA by the State of Wyoming on December 13, 2006. EPA's proposed rule action published April 1, 2008 (73 FR 17289) provides more detailed information about the Wyoming SIP revisions being approved today. The public comment period for the proposed action ended on May 1, 2008. No comments, adverse or otherwise, were received on EPA's proposed action.

II. Background

On December 31, 2002, EPA published revisions to the Federal PSD

and non-attainment NSR regulations in 40 Code of Federal Regulations (CFR) Parts 51 and 52 (67 FR 80186). This action was reconsidered with minor changes on November 7, 2003 (68 FR 63021). Collectively, these two final actions are referred to as the ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory revisions included provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), Clean Units, and Pollution Control Projects (PCPs). As stated in the December 31, 2002 rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements (67 FR 80240). With the December 13, 2006 submittal, Wyoming requested approval of program revisions into the State SIP that satisfy this requirement.

In the November 7, 2003 reconsideration noted earlier, EPA clarified two provisions in the regulations by including a definition of ''replacement unit'' and by clarifying that the PALs baseline calculation procedures for newly constructed units do not apply to modified units (68 FR 63021).

On October 27, 2003 EPA published a rulemaking action related to, but not part of, the 2002 NSR Reform. EPA published the Routine Equipment Replacement Provision (ERP) amendments (68 FR 61248) which specified at 40 CFR 51.166(b)(2)(iii)(a) the criteria for the routine replacement of equipment.

On December 24, 2003, the United States Court of Appeals for the District of Columbia Circuit, on challenges to the October 27, 2003 EPA rulemaking, stayed EPA's final Routine Equipment Replacement Provision, *State of New York* v. *EPA,* No. 03–1380. On March 17, 2006, the same Court vacated these provisions. On June 24, 2005, the same Appeals Court issued a ruling on challenges to the December 2002 NSR Reform revisions, State of New York *et al.* v. EPA, 413 F.3d 3 (D.C. Cir. 2005). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit (CU) and the PCP provisions and remanded back to EPA the recordkeeping provisions at 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a ''reasonable possibility'' that the project could result in a significant emissions increase.

EPA brought its NSR Reform regulations in conformity with the Court's June 24, 2005 ruling in final rulemakings published on June 13 and December 21, 2007 (72 FR 32526, 72 FR 32526). In these actions, EPA removed from the Code of Federal Regulations (CFR) the PCP and CU provisions contained in sections 40 CFR 51.165, 51.166, and 52.21(72 FR 32526), and identified the criteria triggering the ''reasonable possibility'' recordkeeping and reporting standard (72 FR 72607).

The revised Chapter 6, Section 4 of the WAQS&R submitted to EPA on December 13, 2006, consistent with the Court rulings noted above, does not include the vacated Clean Unit, PCP, and ERP provisions. As for the ''reasonable possibility'' phrase, the Wyoming revised PSD provisions included recordkeeping requirements omitting the ''reasonable possibility'' language objected to by the Court. This omission makes the Wyoming recordkeeping requirements, set at Chapter 6, Section 4(b)(i)(H)(I), more stringent than the equivalent EPA provisions in the 2002 NSR Reform rules, and therefore approvable. To make the State NSR SIP provisions we are approving consistent with the EPA December 21, 2007 rulemaking on the ''reasonable possibility'' recordkeeping and reporting standard (72 FR 72607), the State of Wyoming needs to submit a notice to EPA within 3 years to acknowledge that their regulations fulfill these requirements.

The Wyoming PSD revisions do not address the definition of ''replacement unit'' approved by EPA in the November 7, 2003 reconsideration of the 2002 NSR Reform. This omission was based on the State's understanding that the NSR Reform Rules contained ''replacement unit'' references only within the PCPs and CU provisions that Wyoming, as noted above, has not adopted. As the State realized that both its revised and its EPA-approved NSR SIPs include a reference to ''replacement unit'' in their definition of ''Net emission increase'' at Chapter 6, Section 4(a)(viii), the State addressed this issue to the satisfaction of EPA. In an exchange of e-mails with EPA on August 13 and September 5, 2007 (included as part of the docket for this action), the State of Wyoming indicated its agreement with EPA's interpretation of the definition of ''replacement unit'' detailed in the EPA ''Technical Support Document (TSD) for the Prevention of Significant Deterioration (PSD) and Nonattainment Area New Source Review (NSR): Reconsideration.'' As a result, EPA concluded that the omission of this definition from Chapter 6, Section 4 of Wyoming regulations is approvable, but also recommends that the State of Wyoming make these provisions formally consistent with the Federal language by adopting the definition of ''replacement unit'' in a future rulemaking.

III. Final Action

EPA is taking final action to approve Wyoming's revisions to their Wyoming Air Quality Standards and Regulations, Chapter 6, Section 4, Prevention of Significant Deterioration, submitted to EPA by the State of Wyoming on December 13, 2006. These revisions to Chapter 6, Section 4 were adopted by the Wyoming Environmental Quality Council (EQC) on July 27, 2006, effective October 6, 2006, and supersede and replace the EPA-approved Chapter 6, Section 4 of the WAQS&R rules.

IV. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register** . A major rule cannot take effect until 60 days after it is published in the **Federal Register** . This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *September 15, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 30, 2008.

Judith Wong,

Acting Deputy Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (c)(1) is amended under Chapter 6 by revising the entry for Section 4 to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/Subject	State adopted and effective date	EPA approval date and citation [1]	Explanations
* * *	*	*	*	*
Chapter 6				
* * *	*	*	*	*
Section 4	Prevention of significant deterioration.	7/27/06, 10/6/06	7/16/08. [insert FR page number where document begins].	
* * *	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

[FR Doc. E8–16126 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2008–0004; FRL–8576–6]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing approval of a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. The SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from stationary internal combustion engines operated by the Trigen-Trenton Energy Co., L.P. This action approves the source-specific RACT determination that was made by New Jersey in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this action is to approve source-specific emission limitations required by the Clean Air Act.

DATES: *Effective Date:* This rule will become effective on *August 15, 2008.*

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2008–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New

York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Gavin Lau, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3708, e-mail: *Lau.Gavin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is approving a revision to the New Jersey Department of Environmental Protection's (New Jersey's) ozone State Implementation Plan (SIP) submitted on August 7, 2007. This SIP revision relates to New Jersey's NO_X RACT determination for the Trigen-Trenton Energy Co. L.P. (Trigen) facility located in Trenton, Mercer County. The facility contains two stationary reciprocating internal combustion engines vented through a common stack. The reader is referred to the proposed rulemaking on this action (March 6, 2008, 73 FR 12041) for additional details.

II. What Comments Were Received and What Is EPA's Response?

No comments were received.

III. Conclusion

EPA has determined that New Jersey's SIP revision for New Jersey's NO_X RACT determination for Trigen's internal combustion engines is consistent with New Jersey's RACT regulation and EPA's guidance. EPA has determined that the NO_X emission limits identified in New Jersey's Conditions of Approval document represent RACT for Trigen's internal combustion engines. More specifically, EPA approves New Jersey's Conditions of Approval document which includes an alternative emissions limit for Trigen's engines while operating on dual fuel and low sulfur distillate oil. While burning dual fuel, Trigen's engines will comply with the NO_X RACT limit of 2.3 g/bhp-hr. Under conditions specified for burning low sulfur distillate oil, emissions of NO_X from the engines shall not exceed 12 g/bhp-hr. The use of low sulfur distillate oil is limited to 200 hours per year per engine during startup, shutdown, injector cleanout, major component break-in and during emergencies. Trigen is also limited to using low sulfur distillate oil for only one engine at any time, excluding times of natural gas curtailment or emergency. As a point of clarification, EPA's approval of the alternative emission limit applies only to Trigen's internal combustion engines and does not include boilers as stated in the proposed rule.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 28, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Section 52.1570 is amended by adding new paragraph (c)(85) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(85) Revisions to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of nitrogen oxides from Trigen-Trenton Energy Co., L.P., dated August 7, 2007 submitted by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) a letter from Lisa P. Jackson, Commissioner, New Jersey Department of Environmental Protection, addressed to Alan J. Steinberg, USEPA, dated August 7, 2007, and Attachment 1 to the letter, titled ''Conditions of Approval, Alternative Maximum Emission Rate for NO_X for Two (2) Cooper Bessemer Distillate Oil or Dual Fuel Fired 4-Stroke Diesel Internal Combustion Engines,'' Trigen-Trenton Energy Company L.P., Trenton, NJ. APC Plant ID No. 61015, approved January 11, 2007.

* * * * *

[FR Doc. E8–16122 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1105; FRL–8580–3]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from wood products and marine coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 15, 2008 without further notice, unless EPA receives adverse comments by August 15, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1105, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MDAQMD	1106	Marine Coating Operations	10/23/06	05/08/07
VCAPCD	74.30	Wood Products Coatings	06/27/06	10/05/06

On July 23, 2007, the submittal of MDAQMD Rule 1106 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On October 24, 2006, the submittal of VCAPCD Rule 74.30 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of Rule 1106 in the MDAQMD SIP, although the MDAQMD adopted an earlier version of this rule on August 28, 2006, and CARB submitted it to us on May 8, 2007. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals. A version of SCAQMD Rule 1106 adopted on November 4, 1988 and amended on August 2, 1991, was approved into the SIP on July 14, 1995 (60 FR 36227) and

is federally enforceable for portions of the area now regulated by MDAQMD.

A version of VCAPCD Rule 74.30 was approved into the SIP on October 25, 2005 (70 FR 61561).

C. What is the purpose of the submitted rule revision?

Section 110(a) of the CAA requires States to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

MDAQMD Rule 1106 reduces VOC emissions from marine coatings operations. The provisions of this rule apply to all marine coating operations of both commercial boats and ships, pleasure craft and their appurtenances, and to coating of buoy and oil drilling rigs, or their parts and components intended for the marine environment.

VCAPCD Rule 74.30 revisions involve a reduction in reactive organic compound (ROC) content for surface preparation and cleanup material. Currently, the effective date of the revisions are 90 days from the date of adoption. The revisions are required because, under the provisions of Health and Safety Code Section 40914(b)(2), staff is required to demonstrate that the District's plan to attain the California ambient ozone standard provides for expeditious implementation of 'every feasible measure' to reduce ozone precursor emission (including ROC). In addition, revisions include the removal of obsolete language and the rewording of certain subsections for clarity. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD and VCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so MDAQMD Rule 1106 and VCAPCD Rule 74.30 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities, EPA Region 9, April 1994 (EPA 453/R–94–932).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 15, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 15, 2008. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 3, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(347)(i)(D) and (c)(350)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(347) * * *

(i) * * *

(D) Ventura County Air Pollution Control District.

(*1*) Rule 74.30, Wood Products Coatings, adopted May 17, 1994 and revised on June 27, 2006.

* * * * *

(350) * * *

(i) * * *

(B) * * *

(*2*) Rule 1106, Marine Coating Operations, adopted on August 28, 2006 and amended on October 23, 2006.

* * * * *

[FR Doc. E8–16020 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2007–0346; FRL–8369–3]

Bacillus thuringiensis Cry 1A.105 protein; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry 1A.105 protein in or on corn when used as a plant–incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting to amend the existing temporary tolerance in 40 CFR 174.502 for the *Bacillus thuringiensis* Cry 1A.105 protein to establish a permanent exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry 1A.105 protein in or on all food commodities when used as a plant-incorporated protectant in all food commodities. This regulation eliminates the need to establish a maximum permissible level for residues of the *Bacillus thuringiensis* Cry 1A.105 insecticidal protein in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

DATES: This regulation is effective July 16, 2008. Objections and requests for hearings must be received on or before September 15, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0346. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0346 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 15, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0346, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 1, 2007 (72 FR 42075) (FRL–8129–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7142) by Monsanto Company, 800 North Lindbergh Blvd. St. Louis, MO 63167. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry 1A.105 protein in or on all food commodities when used as plant–incorporated protectant in all food commodities. This notice included a summary of the petition prepared by the petitioner Monsanto Company. One commenter objected to the petition, expressing concerns about Monsanto obtaining an exemption from tolerance and potential harmful effects. The Agency understands the commenter's concerns about potential effects of this particular plant-incorporated protectant to humans and the environment. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive assessment of Cry 1A.105 protein, including a review of acute oral toxicity data on Cry 1A.105 protein, amino acid sequence comparisons to known toxins and allergens, as well as data demonstrating that Cry 1A.105 protein is rapidly degraded by gastric fluid *in vitro*, is not glycosylated, and is present at low levels in the tissues expressing the plant-incorporated protectant. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to residues of Cry1A.105 protein in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant. Thus, under the standard in FFDCA section 408(b)(2), a tolerance exemption is appropriate. In taking this action, EPA, pursuant to its authority under section 408(d)(4)(A)(i) of the FFDCA, is issuing a final regulation that varies from the regulation sought by Monsanto in its petition. Specifically, instead of issuing a tolerance exemption that covers residues of the subject plant-incorporated protectant in all food commodities, EPA is issuing a tolerance exemption that covers residues of the subject plant-incorporated protectant in those commodities in which it will be used as a plant-incorporated protectant— in this case, the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. In this way, the tolerance exemption is coextensive with the registered uses for this particular plant-incorporated protectant.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other

relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mammalian Toxicity and Allergenicity Assessment. Monsanto has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry1A.105 protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in corn using submitted Cry1A.105 expression values. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.2130). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies such as the mouse oral toxicity study, to verify the observed adverse effects and clarify the source of these effects (Tiers II & III).

An acute oral toxicity study in mice (MRID 46694603) indicated that Cry1A.105 is non-toxic to humans. The oral LD_{50} for mice was greater than 2,072 milligrams/kiligrams (mg/kg) bodyweight. This dose level is above 2,000 mg/kg, which is above the limit dose (i.e., the highest dose used in acute toxicity testing).

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Therefore, since no acute effects were shown to be caused by Cry1A.105, even at relatively high dose levels, the Cry1A.105 protein is not considered toxic. Further, amino acid sequence comparisons between the Cry1A.105 and known toxic proteins in protein databases showed no similarities that would raise a safety concern. In addition, the Cry1A.105 protein was shown to be substantially degraded by heat when examined by immunoassay. This instability to heat would also lessen the potential dietary exposure to intact Cry1A.105 protein in cooked or processed foods. These biochemical features along with the lack of adverse results in the acute oral toxicity test support the conclusion that there is a reasonable certainty no harm from toxicity will result from dietary exposure to residues of Cry1A.105 in or on the identified corn commodities.

Since Cry1A.105 is a protein, allergenic potential was also considered. Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of- evidence approach where the following factors are considered: source of the trait; amino acid sequence comparison with known allergens; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation. This approach is consistent with the approach outlined in the Annex to the Codex Alimentarius ''Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.'' The allergenicity assessment for Cry1A.105 follows:

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of Cry1A.105 with known allergens showed no overall sequence similarity (35% identity over 80 amino acids) or identity at the level of eight contiguous amino acid residues, indicating a lack of potential linear epitopes found in known food allergens.

3. *Digestibility.* The Cry1A.105 protein was digested within 30 seconds in simulated gastric fluid containing pepsin. The rapid degradation of Cry1A.105 in the gastric environment suggests little possible exposure to intact protein in the intestinal lumen where sensitization to food allergens occurs.

4. *Glycosylation.* Cry1A.105 expressed in corn was shown not to be glycosylated.

5. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for Cry1A.105 to be a food allergen is minimal.

The information on the safety of pure Cry1A.105 protein provides adequate justification to address possible exposures in all corn crops.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses.)

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectants chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant- incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for Cry1A.105 to be an allergen is low, as discussed in unit III. Although the allergenicity assessment focuses on potential to be a food allergen, the data (comparing amino acid sequence similarity to allergens, including aeroallergens) also indicate a low potential for Cry1A.105 to be an inhalation allergen. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the Cry1A.105 protein are agricultural. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, theoretically, drinking water. However oral toxicity testing showed no adverse effects.

Food. The data submitted and cited regarding potential health effects for the Cry1A.105 protein includes the characterization of the expressed Cry1A.105 protein in corn, as well as the acute oral toxicity study, amino acid sequence comparisons to known allergens and toxins, and in vitro digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

Adequate information was submitted to show that the Cry1A.105 test material derived from microbial culture was biochemically and functionally equivalent to the protein produced by the plant-incorporated protectant ingredient in the plant. Microbially produced protein was used in the studies so that sufficient material for testing was available.

The acute oral toxicity data submitted support the prediction that the Cry1A.105 protein would be non-toxic

to humans. As mentioned in this unit, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Since no treatment-related adverse effects were shown to be caused by the Cry1A.105 protein, even at relatively high dose levels (e.g., 2072 mg/kg body weight), the Cry1A.105 protein is not considered toxic. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing or residue data is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered when significant adverse effects are seen in studies such as the acute oral toxicity study. Further studies verify the observed adverse effects and clarify the source of these effects (Tiers II and III).

Residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant because of the lack of mammalian toxicity. Nonetheless, data submitted demonstrated low levels of the Cry1A.105 protein in corn tissues (5-7 ppm in grain, 20-570 ppm in forage or leaf tissue), indicating a low potential for dietary exposure.

Since Cry1A.105 is a protein, potential allergenicity is also considered as part of the toxicity assessment. Considering all of the available information:

1. Cry1A.105 originates from a non-allergenic source;
2. Cry1A.105 has no sequence similarities with known allergens;
3. Cry1A.105 is not glycosylated; and
4. Cry1A.105 is rapidly digested in simulated gastric fluid; EPA has concluded that the potential for Cry1A.105 to be a food allergen is minimal.

The genetic material necessary for the production of the plant-incorporated protectant active ingredient include the nucleic acids (DNA, RNA) that encode these proteins and regulatory regions. The genetic material (DNA, RNA) necessary for the production of the Cry1A.105 protein has been exempted from the requirement of a tolerance under 40 CFR 174.507 (Nucleic acids that are part of a plant-incorporated protectant; exemption from the requirement of a tolerance).

B. Other Non-Occupational Exposure

Dermal and Inhalation exposure. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for Cry1A.105 to be an allergen is minimal, as discussed in this unit. Although the allergenicity assessment focuses on potential to be a food allergen, the data also indicate a low potential for Cry1A.105 to be an inhalation allergen.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity from the plant-incorporated protectant, we conclude that there are no cumulative effects for the Cry1A.105 protein.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry1A.105 protein. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional tenfold margin of safety does not apply. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry1A.105 protein, as well as the minimal potential to be a food allergen, demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from a source that is not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectant at this time.

B. Analytical Method

A standard operating procedure for an enzyme-linked immunosorbent assay for the detection and quantification of Cry1A.105 in corn tissue has been submitted.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the plant-incorporated protectant *Bacillus thuringiensis* Cry1A.105 protein.

VIII. Conclusions

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the Cry1A.105 protein in or on all food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed in this unit, no toxicity to mammals has been observed, nor is there any indication of allergenicity potential for the plant-incorporated protectant.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211,

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.502 to subpart D is revised to read as follows:

§ 174.502 Bacillus thuringiensis Cry 1A.105 protein in corn; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry 1A.105 protein in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, are exempt from the requirement of a tolerance when the *Bacillus thuringiensis Cry* 1A.105 protein is used as a plant–incorporated protectant in those food and feed corn commodities.

[FR Doc. E8–15836 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2007–1204; FRL–8371–6]

Bacillus thuringiensis Modified Cry1Ab Protein; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* modified Cry1Ab protein as identified under OECD Unique Identifier SYN–IR67B–1 when used as a plant-incorporated protectant in the food and feed commodities of cotton; cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* modified Cry1Ab protein as identified under OECD Unique Identifier SYN–IR67B–1 when used as a plant-incorporated protectant in cotton.

DATES: This regulation is effective July 16, 2008. Objections and requests for hearings must be received on or before September 15, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1204. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and

Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 15, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–1204, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 30, 2008 (73 FR 5563) (FRL–8348–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7290) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 E. Cornwallis Road, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* modified Cry1Ab protein containing an additional 26 amino acid sequence (''Geiser Motif'') in all crops and agricultural commodities. A summary of the petition prepared by the petitioner, Syngenta Seeds, Inc., was posted on *www.regulations.gov* in the docket for this action (EPA–HQ–OPP–2007–1204). After review, the Agency determined that the appropriate designation for the protein is *Bacillus thuringiensis* modified Cry1Ab protein as identified under OECD Unique Identifier SYN–IR67B–1 (hereafter referred to as modified Cry1Ab). There was one comment received in response to the notice of filing. The commenter objected to the petition, pesticide residues on food crops, and the widespread use of *Bacillus thuringiensis* (Bt). The Agency understands the commenter's concerns regarding tolerances of pesticide residues on food. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive assessment of modified Cry1Ab protein, including a review of acute oral toxicity data on modified Cry1Ab protein, amino acid sequence comparisons to known toxins and allergens, as well as data demonstrating that modified Cry1Ab protein is rapidly degraded by gastric fluid *in vitro*, is not glycosylated, and is present in low levels in plant tissues. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this protein as expressed in plant-incorporated protectants. Thus, under the standard in FFDCA section 408(b)(2), a tolerance exemption is appropriate.

In taking this action, EPA, pursuant to its authority under section 408(d)(4)(A)(i) of the FFDCA, is issuing a final regulation that varies from the regulation sought by petitioner Syngenta Seeds, Inc. Specifically, instead of issuing a tolerance exemption that covers residues of the subject plant-incorporated protectant in all food commodities, EPA is issuing a tolerance exemption that covers such residues in those commodities in which it will be used as a plant-incorporated protectant – in this case, the food and feed commodities of cotton; cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts. In this way, the tolerance exemption is coextensive with the registered uses for this particular plant-incorporated protectant.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mammalian Toxicity and Allergenicity Assessment

Syngenta Seeds, Inc. has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure modified Cry1Ab protein as identified under the Organisation for Economic Co-operation and Development (OECD) Unique Identifier SYN–IR67B–1 (hereafter referred to as modified Cry1Ab). The modified Cry1Ab protein contains a 26 amino acid sequence that is found at the C-terminus of the pro-toxin portion of the modified Cry1Ab protein. This sequence naturally occurs in Cry1Ab protein expressed in microbial *Bacillus thuringiensis* (Bt). The pro-toxin containing the additional 26 amino acid sequence is enzymatically cleaved in the insect gut to produce active Cry1Ab. These toxicity data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.2140). For microbial products, further toxicity testing (Tiers II and III) and residue data are triggered by significant adverse acute effects in studies such as the acute oral toxicity study, to verify the observed adverse effects and clarify the source of these effects.

An acute oral toxicity study in mice indicated that modified Cry1Ab is non-toxic to humans. Groups of five male and five female mice were given 0 or 1,830 mg/kg bodyweight microbially-produced modified Cry1Ab by oral gavage as a single dose. There were no effects on clinical condition, body weight, food consumption, clinical pathology, organ weight, or macroscopic or microscopic pathology that were attributed to the test substance.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Therefore, since no acute effects were shown to be caused by modified Cry1Ab, even at relatively high dose levels, the modified Cry1Ab protein is not considered toxic.

Since modified Cry1Ab is a protein, allergenic potential was also considered. Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of- evidence approach where the following factors are considered: source of the trait; amino acid sequence comparison with known allergens; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation. This approach is consistent with the approach outlined in the Annex to the Codex Alimentarius ''Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.'' The allergenicity assessment for modified Cry1Ab follows:

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of modified Cry1Ab with known allergens showed no significant sequence identity over 80 amino acids or identity at the level of 8 contiguous amino acid residues.

3. *Digestibility.* Modified Cry1Ab was rapidly digested in simulated gastric fluid containing pepsin.

4. *Glycosylation.* Modified Cry1Ab expressed in cotton was shown not to be glycosylated.

5. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for modified Cry1Ab to be a food allergen is minimal.

Although modified Cry1Ab was only shown not to be glycosylated in cotton, it is unlikely to be glycosylated in any other crops because in order for a protein to be glycoslyated, it needs to contain specific recognition sites for the enzymes involved in glycosylation, and the mechanisms of protein glycosylation are similar in different plants (Ref. 2).

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue (i.e., the modified Cry1Ab protein) and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other exposures from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for modified Cry1Ab to be an allergen is low, as discussed above. Although the allergenicity assessment focuses on potential to be a food allergen, the data also indicate a low potential for modified Cry1Ab to be an inhalation allergen. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the modified Cry1Ab protein is agricultural. Dietary exposure may occur from ingestion of processed cotton products but is expected to be very low because the already low expression levels in the seed would be reduced further by the heat and pressure used for processing. Also, dietary exposure may theoretically occur

through exposure in drinking water because plant stubble may release modified Cry1Ab protein into ground water upon decay. This protein would not be expected to survive in the soil due to microbial degradation, adherence to soil components and removal upon exposure to drinking water treatment procedures. In addition, oral toxicity testing showed no adverse effects.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity from the plant-incorporated protectant, there is no common mechanism of toxicity for this protein; therefore, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the modified Cry1Ab protein includes the characterization of the expressed modified Cry1Ab protein in cotton, as well as the acute oral toxicity study, amino acid sequence comparisons to known allergens, and *in vitro* digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

Adequate information was submitted to show that the modified Cry1Ab test material derived from microbial culture was biochemically and functionally equivalent to the protein in the plant. Microbially produced protein was used in the safety studies so that sufficient material for testing was available.

The acute oral toxicity data submitted support the prediction that the modified Cry1Ab protein is non-toxic to humans. As mentioned above, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Since no treatment-related adverse effects were shown to be caused by the Cry1Ab protein, even at relatively high dose levels, the modified Cry1Ab protein is not considered toxic. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.2140). For microbial products, further toxicity testing and residue data are triggered when significant adverse effects are seen in studies such as the acute oral toxicity study. Further studies verify the observed adverse effects and clarify the source of these effects.

Residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. However, data submitted demonstrated low levels of the modified Cry1Ab protein in cotton tissues.

Since Cry1Ab is a protein, potential allergenicity is also considered as part of the toxicity assessment. Considering all of the available information (1) modified Cry1Ab originates from a non-allergenic source; (2) modified Cry1Ab has no sequence similarities with known allergens; (3) modified Cry1Ab is not glycosylated; and (4) modified Cry1Ab is rapidly digested in simulated gastric fluid; EPA has concluded that the potential for modified Cry1Ab to be an allergen is minimal.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the modified Cry1Ab protein, as well as the minimal potential to be an allergen, demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated.

The genetic material necessary for the production of the plant-incorporated protectant active ingredient include the nucleic acids (DNA, RNA) that encode these proteins and regulatory regions. The genetic material (DNA, RNA) necessary for the production of the modified Cry1Ab protein has been exempted from the requirement of a tolerance under 40 CFR 174.507—nucleic acids that are part of a plant-incorporated protectant.

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the modified Cry1Ab protein. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the modified Cry1Ab protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectant.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from a source that is not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of this plant-incorporated protectant at this time.

B. Analytical Method(s)

A lateral flow enzyme-linked immunosorbent assay (ELISA) protocol has been provided to the Agency for detecting modified Cry1Ab in cotton.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the plant-incorporated protectant *Bacillus thuringiensis* modified Cry1Ab protein.

VIII. References

1. Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for

Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992).

2. Lerouge, P., Cabanes-Macheteau, M., Rayon, C., Fichette-Lainè, A-C., Gomord, V., and Faye, L., ''N-Glycoprotein biosynthesis in plants: recent developments and future trends,'' *Plant Molecular Biology* 38: 31–48 (1998).

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.529 is added to subpart W to read as follows:

§ 174.529 Bacillus thuringiensis modified Cry1Ab protein as identified under OECD Unique Identifier SYN–IR67B–1 in cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* modified Cry1Ab protein as identified under OECD Unique Identifier SYN–IR67B–1 are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in cotton; cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts.

[FR Doc. E8–16277 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ09

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the limited access or opt-out fisheries that are subject to sideboard limits established under the Central GOA Rockfish Program in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 sideboard limits of Pacific ocean perch established for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2008, through 1200 hrs, A.l.t., July 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 Pacific ocean perch sideboard limit established for catcher

processors participating in the limited access or opt-out fisheries that are subject to sideboard limits in the Central GOA Rockfish Program in the Western Regulatory Area is 864 mt. The sideboard limit is established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008) and as posted as the 2008 Rockfish Program Catcher Processor Sideboards at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.82(d)(7)(i)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Pacific ocean perch sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 614 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.82(d)(7)(ii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the Pacific ocean perch sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch sideboard limit for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 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 § 679.82 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1435 Filed 7–11–08; 1:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ10

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use 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 14, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., July 28, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XJ10,'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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.

NMFS closed the directed fishery for northern rockfish in the Western Regulatory Area of the GOA on July 7, 2008 (73 FR 39626, July 10, 2008).

NMFS has determined that approximately 1,560 mt of the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for northern rockfish in the Western Regulatory Area of the GOA. The opening is effective 1200 hrs, A.l.t., July 14, 2008, through 2400 hrs, A.l.t., December 31, 2008.

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 a 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 opening of the northern rockfish fishery in the Western Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 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.

Without this inseason adjustment, NMFS could not allow the northern rockfish fishery in the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until July 28, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1436 Filed 7–11–08; 1:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ07

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2008 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., July 28, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XJ07,'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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.

NMFS closed the directed fishery for Pacific ocean perch in the Western Regulatory Area of the GOA on July 4, 2008 (73 FR 38931, July 8, 2008).

NMFS has determined that approximately 1,100 mt of the 2008 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA. The opening is effective 1200 hrs, A.l.t., July 14, 2008, through 2400 hrs, A.l.t., December 31, 2008.

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 a 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 opening of the Pacific ocean perch fishery in the Western Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 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.

Without this inseason adjustment, NMFS could not allow the Pacific ocean perch fishery in the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until July 28, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1437 Filed 7–11–08; 1:51 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 137
Wednesday, July 16, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM–71–13; NRC–2007–0022]

Christine O. Gregoire, Governor of the State of Washington; Consideration of Petition in Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Resolution and closure of petition docket.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider the issues raised in a petition for rulemaking submitted by Christine O. Gregoire, Governor of the State of Washington, in the NRC's rulemaking process. Further information on this rulemaking may be tracked through *http://www.regulations.gov* under Docket ID NRC–2008–0120. The petition was docketed by the NRC on March 15, 2007, and was assigned Docket No. PRM–71–13 [NRC–2007–0022]. The petitioner requested that the NRC amend its regulations to require the use of global positioning satellite (GPS) for tracking vehicles transporting highly radioactive mobile or portable radioactive devices. The petitioner also stated that another alternative was for the Commission to grant states the flexibility to impose more stringent requirements than those required under NRC's current increased controls. The NRC has determined that this petition will be considered through NRC's rulemaking process.

DATES: The docket for the petition for rulemaking, PRM–71–13 [NRC–2007–0022], is closed on July 16, 2008.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: NRC–2008–0120. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).'' The Regulatory Agenda is a semiannual compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve.

You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov*, and search for documents filed under Docket ID [NRC–2008–0120].

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agency-Wide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Federal and State Materials and Environmental Management Programs, Division of Intergovernmental Liaison and Rulemaking, Rulemaking Branch A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–5795, e-mail *thomas.young@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On April 27, 2007 (72 FR 20963), the NRC published a notice of receipt requesting comment on a petition for rulemaking filed by Christine O. Gregoire, Governor of the State of Washington. The public comment period closed on July 11, 2007. The petitioner requests that the NRC adopt the use of GPS tracking as a national requirement for vehicles transporting highly radioactive mobile or portable radioactive devices. The petitioner states that an alternative is for the Commission to grant states the flexibility to impose more stringent requirements than those required under current NRC's increased controls. The petitioner believes that GPS technology is an effective and relatively inexpensive tool that will help when a vehicle with radioactive material is missing. The petitioner acknowledges that requiring a GPS on these vehicles does not ensure that the radiological source will be found. However, the petitioner believes that these suggestions would give law enforcement a significant advantage.

Public Comments on the Petition

NRC staff received 15 comment letters on the petition. Comments were received from licensees, radiography source and device manufacturers, industry involved with radiography, a GPS manufacturer, a professional organization, a State agency, and a Federal agency. One comment letter did not have a comment included. The State of Washington submitted two additional comments to clarify that the intent of its petition was to track vehicles, not the device or source. In summary, seven commenters opposed the petition and five commenters supported it.

Commenters who opposed the petition submitted similar comments stating that GPS units would not prevent theft of the devices, would provide little, if any, deterrence to thieves or terrorists, and would provide little, if any, enhancement of authorities' ability to recover a stolen radiography camera. Some commenters stated that the requirement to add GPS units to cameras will be a matter of public record, so anyone serious about illegally obtaining a camera would take measures in advance to defeat them from acting as tracking mechanisms. These commenters also stated that the multiple increased controls security measures that currently apply to industrial radiography sources are appropriate and adequately provide reasonable assurances to deter theft. Because the licensees recognize the threat posed by high activity radiation sources, there has been little opposition from the industry regarding these measures, despite the time and monetary investments that these measures require.

In addition, some commenters stated that GPS units are a good example that additional security requirements provide a poor return on the investment because the costs to licensees and equipment manufacturers could be substantial. These commenters also stated that they are opposed to the petitioner's alternative to grant states the flexibility to impose more stringent requirements than those required under current NRC regulations, because it will not allow for a uniform set of regulations that apply to industrial radiographic operations in all jurisdictions.

These commenters further stated that the lack of uniform regulations imposes a severe burden on the industry, which increases the complexity of regulatory requirements, and imposes additional burdens that increase costs and make compliance more difficult. The commenters suggested that state and Federal regulators enforce the existing regulations, instead of requiring GPS units on (or in) radiography cameras, or any other modifications to equipment, or additional equipment, or any other enhancements to equipment or procedures.

One commenter stated that GPS units would not prevent theft of the devices and would provide little, if any, deterrence to thieves or terrorists, and stated that if someone has the wherewithal to steal a camera, they will likely have the ability to defeat its GPS unit. In addition, the commenter stated that the increased controls that currently apply to industrial radiography sources are sufficient and appropriate requirements that provide reasonable assurances to deter theft. The commenter also stated that GPS unit costs to licensees, especially to small companies, could be substantial, and that modifications to radiography cameras needed to incorporate GPS units would impose costs on equipment manufacturers due to research and development, and the regulatory approval and altered production processes. These costs would be passed on to the manufacturers' clients—the licensees, who already face skyrocketing insurance costs due to the increased threat associated with possession and use of high activity sources. Another commenter stated that the replacement of, or alteration to, existing equipment would be costly for users and create work time schedule and shipping burdens, especially for small companies. The commenter also stated that because industrial radiography is a cross jurisdictional service industry, the current regulations attempt to provide a uniform set of regulations that apply to industrial radiographic operations in all jurisdictions.

Another commenter expressed opposition to the petition. The commenter, a manufacturer and distributor of industrial radiography equipment and oil well logging sources, commented that the petition represented a potential negative impact to the industry and noted that the petition is unclear if it is the vehicle or the device which will be equipped with GPS technology. The commenter also stated that the definition of ''highly radioactive source'' was not clear, and asked if it was intended to cover NRC Category 1 and 2 sources only, or if it also includes Category 3 sources. The commenter stated that any further serious review of this petition for rulemaking cannot accurately be made until these points were clarified. In addition, the commenter noted that there is no current technology that can successfully track a source or device reliably, and that this equipment is subject to harsh environments and usage, and any additional external feature would not hold up to being thrown around in a truck and/or jobsite. Therefore, any additional feature put on a device would require research and development, design, testing and licensing to assure the device continues to meet American National Standards Institute, International Organization for Standardization, NRC and Department of Transportation (DOT) requirements for devices and transport packages. The commenter also stated that this is an expensive and time consuming process and would significantly add to the cost of the equipment, that end users would be unwilling to pay for this and a cost benefit analysis would need to be performed to determine if it is worth pursuing. This commenter also stated that there are already numerous other effective controls in place for device security and tracking, such as the increased controls, and NRC's national source tracking database, which would provide information if a source is not received at its destination when expected. The commenter stated its opposition to allowing individual states to impose more stringent requirements than the NRC because the industrial radiography and oil well logging industry are both very mobile and need to provide their services all across the United States. The commenter further stated that without a set of uniform standards the requirements could be quite different in each state and would significantly restrict interstate commerce.

Another commenter, a manufacturer of industrial radiography devices and radioactive sources, expressed opposition to the petition and provided several reasons. Among them, the commenter noted the recently adopted increased controls for mobile devices in vehicles and stated that the imposition of a GPS system would represent an unjustified additional significant financial burden to the radiography industry. The commenter also stated that there is a significant lack of formal study to identify the effectiveness of GPS systems when used with vehicles, the costs, and the effectiveness and practicality of GPS systems when used in or on portable devices. In addition, the commenter expressed satisfaction with the effectiveness of the current controls because the petitioner stated that the radioactive source was quickly recovered during the event that triggered the petition. The commenter also stated that any proposal to increase the security of radioactive materials should be considered from the criminal activity versus terrorist activity perspectives, and stated that if a GPS system is required by rulemaking, it will be known to the public. The commenter stated that it is highly unlikely that a GPS system could be protected from being destroyed, removed or disabled by a sophisticated terrorist. Finally, the commenter expressed opposition to the proposal for the Commission to grant states the flexibility to impose more stringent requirements than those required under current NRC regulations because most radiography licensees work in several states and such a proposal would be counterproductive and unnecessarily financially burdensome for licensees to be subjected to different regulations from state to state.

Another commenter stated that the burdensome administrative requirements of the current regulations and increased controls imposed on radiography licensees focuses only on prevention of the theft of these sources, and would greatly increase each licensee's liability in the event of a theft (even if a theft occurs beyond the control of a licensee, such as during shipment via a common carrier or a ''carjacking''). The commenter stated that regulations and increased controls do not address recovery of a source following a theft. The commenter stated that while there appears to be no limit to the additional liabilities and responsibilities placed upon individual radiographic testing licensees, there are some functions that can be more effectively addressed by other means (in lieu of merely issuing citations and monetary fines to licensees). The

commenter stated that there are multiple regulatory requirements regarding a licensee's responsibilities to prevent the theft of radiographic sources, so more of the same only provides an opportunity for regulatory agencies to cite multiple violations with little or no improvement on public health and safety. The commenter also stated that the regulations and increased control requirements, with which the licensee has complied, are useless in cases such as in the event that the licensee's transport vehicle (with a source on board) is carjacked, and that the priority then needs to be the immediate recovery of the stolen device/source and apprehension of the thieves. If an electronic tracking system could be ''activated'' immediately, a local law enforcement agency (LLEA) could recover the device/source, apprehend the perpetrators, and recover the licensee's stolen property (vehicle, equipment, etc.). The commenter also stated that if an effective electronic tracking system (*e.g.*, GPS) can be affixed/installed to radioactive material devices/sources of concern such that the location of the device can be determined by LLEA in order for them to respond, then the device manufacturers should be expected to install this type of technology, preferably integrated into the device design in lieu of an ''add-on'' which could be removed. The commenter also stated that additional costs would clearly be offset by the greater effectiveness of LLEA to recover a stolen device/source, and supported the concept of electronic tracking of sources in quantities of concern, including radiographic exposure devices, only under a number of specific conditions. The commenter expressed opposition to the issuance of any additional rules or regulations that are not consistently administered to all licensees across all regulatory jurisdictions, or that places the onus of interpretation, implementation and maintenance back on individual licensees.

Among the commenters in favor of the petition, a GPS manufacturer submitted two comment letters. The first letter presented the commenter's views on the petition. The second letter presented the commenter's customers' views. In general, the commenter noted the benefits and practicability of GPS tracking units currently available and how they can benefit the industry. The commenter stated that GPS tracking devices are not over the counter devices with a magnet, at least not the appropriate devices for this application, and stated that the ideal solution is a device which is extremely small with little marking so the device identity is limited to most of the public. The commenter stated that GPS devices transmit their location when summoned and/or periodically, can be fitted with a siren that can be activated remotely to provide a more precise location when the device has been tracked to a home, storage facility, etc., and that this technology allows the owner/victim the ability to do the legwork before law enforcement arrives and, thus, saving valuable time in the recovery process. The commenter also stated that these devices, if installed on a vehicle, would not only provide the tracking, if stolen, but when accompanied by a simple sticker, work as a deterrent, and that the public notice of these systems being required would also act as a deterrent. However, the commenter stated that the willingness of a criminal to commit a crime does make the system worthless as others have stated, but the ability to make security measures redundant and exceptional would help in the recovery of the equipment and the apprehension of the thieves. The commenter also offered a description of costs for using this technology and stated that the availability and affordability of this technology is extremely feasible. Because industry has the most to gain from it, the security of the devices, equipment, vehicles, companies and public is too valuable to overlook.

In the second letter, the commenter stated that if GPS is required for vehicles it would be inexpensive for the end users and would provide additional benefits. However, if it's required on devices and other equipment, the cost could be high to outfit these devices with little or no real benefit other than loss recovery. The commenter supported having the tracking devices in vehicles because of the additional benefit in recovery of lost material it represents.

Another commenter, a licensee who is currently using a GPS for their shipments, questioned whether or not the licensees would have to incur the additional expense of tracking the device as well as the vehicle. Additionally, the commenter believed that GPS tracking by alternate means such as on the vehicle rather than the device should be allowed.

The Illinois Emergency Management Agency (IEMA), Division of Nuclear Safety, submitted a comment letter in favor of the petition. IEMA stated that GPS systems are very reliable and that this technology is currently used by some of their distributors. IEMA also stated that these systems are very invaluable for locating shipments and that they would add further credibility to the increased control measures. In addition, IEMA suggested that packages containing highly radioactive sources (*e.g.*, Category 1) be tagged for GPS tracking.

A comment submitted by the Nuclear Energy Institute (NEI) stated that adding a GPS unit would not work for the majority of sources and that the additional costs for a GPS unit do not offset the benefit for the few mobile devices which are lost each year. NEI stated that the petition had potential for a few highly radioactive sources in mobile devices, but it would not work for the majority of sources. NEI also stated that, to send a signal, GPS tracking devices require power supplies, as well as a means of monitoring the power supplies. NEI also stated that a large number of mobile radioactive devices containing highly radioactive sources are manually operated with no internal or external power supply. NEI believes this process would make it necessary for a manual unit to require a power supply in addition to the GPS unit, to require maintenance and recharging of the power unit to keep it available, and to require a network to pick up the signal. NEI also stated that this would result in additional weight and bulkiness to the unit, and would increase the capital cost, as well as the additional operation and maintenance expense. In addition, NEI stated that because the devices are designed to be low maintenance, light weight, and simple to operate, the addition of the GPS unit would detract from all three of its principal features. Therefore, this could result in a greater risk to worker safety in the handling and operation of the units.

DOT submitted a comment letter stating that a risk-informed evaluation is necessary to ensure an appropriate decision on this petition is achieved. DOT stated that although it is generally agreed that GPS technology is effective, relatively inexpensive and may assist law enforcement in locating missing devices containing radioactive material and the associated transport vehicle, there were many factors to consider before requiring the use of these instruments. Among those, DOT stated that specific elements of concern should include a clarification of the definition of ''mobile or portable uses of highly radioactive sources,'' as well as an evaluation of the current security requirements and risk of diversion of carrier mode (*i.e.*, rail, air, vessel, and road). In addition, DOT stated that in evaluating the proposal, it must be recognized that many existing devices containing radioactive material devices

are too small to accommodate a GPS device, that not all losses are transport-related, and that any installed GPS device could likely be removed or disabled.

DOT also stated that, although the U.S. has the right to enact unique security provisions, the impact on international transport must be considered, and the requirements for importers and exporters of radioactive material devices and the consequences for overseas buyers and suppliers of these devices must be analyzed. DOT stated that any actions undertaken by the NRC must consider security related measures being implemented or under evaluation for implementation by Federal agencies, including DOT and the U.S. Department of Homeland Security. DOT also commented that the proposal's ability to reduce both the probability of theft/diversion and the associated impacts of theft/diversion, as well as the advantages and disadvantages of state-specific regulations, in addition to national regulations, need to be evaluated. Specifically, DOT stated that requirements that vary widely from state to state could have significant impacts on interstate commerce.

In addition, DOT stated that, although the petitioner cited that significant law enforcement efforts were undertaken to recover past devices, there is no quantified data provided for these efforts, nor quantification of potential benefits of the proposal, nor quantification of the impacts for a national or state GPS requirement, and stated that a requirement for a specific technology to be implemented, rather than a performance based measure that achieves the same objective, may have adverse impacts. DOT further stated that a risk-informed evaluation should be implemented taking these factors into account to ensure a measured and appropriate final decision on this petition is achieved.

Reasons for Closure of the Petition

The NRC concluded that the underlying issue of tracking shipments of highly radioactive sources is an important one and merits further consideration, and therefore, will be included into NRC's ongoing rulemaking efforts on the security requirements for the transportation of Radioactive Material in Quantities of Concern. This rulemaking will consider various tracking technologies including, but not limited to, GPS technology. Further information on this rulemaking may be tracked through *http://www.regulations.gov* under Docket ID NRC–2008–0120.

While the NRC will consider the issues raised by the petition in the rulemaking process, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before finalizing the rule.

Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected.

For the reasons cited in this document, the NRC closes this petition.

Dated at Rockville, Maryland, this 1st day of July, 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–16235 Filed 7–15–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0013]

RIN 1904–AB83

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability and request for public comment.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, directs the U.S. Department of Energy (DOE) to establish energy conservation standards for certain commercial and industrial equipment, including commercial heating, air-conditioning, and water-heating products. Of particular relevance here, the statute also requires that each time the corresponding consensus standard—the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/ Illuminating Engineering Society of North America (IESNA) Standard 90.1—is amended, DOE must assess whether there is a need to update the uniform national energy conservation standards for the same equipment covered under EPCA. ASHRAE officially released an amended version of this industry standard (ASHRAE Standard 90.1–2007) on January 10, 2008, thereby triggering DOE's related obligations under EPCA. As a first step in meeting these statutory requirements, today's notice of data availability (NODA) discusses the results of DOE's analysis of the energy savings potential of amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1. Potential energy savings are based upon either the efficiency levels specified in the amended industry standard (*i.e.*, ASHRAE Standard 90.1–2007) or more stringent levels that would result in significant additional conservation of energy and are technologically feasible and economically justified. DOE is publishing this NODA to: (1) Announce the results and preliminary conclusions of DOE's analysis of potential energy savings associated with amended standards for this equipment, and (2) request public comment on this analysis, as well as the submission of data and other relevant information.

DATES: DOE will accept comments, data, and information regarding this NODA submitted no later than August 15, 2008. See Section IV, ''Public Participation,'' of this notice for details.

ADDRESSES: Any comments submitted must identify the NODA for ASHRAE Products and provide the docket number EERE–2008–BT–STD–0013 and/or Regulatory Information Number (RIN) 1904–AB83. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ASHRAE_90.1_rulemaking@ee.doe.gov.* Include the docket number EERE–2008–BT–STD–0013 and/or RIN number 1904–AB83 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on this document, see section IV (Public Participation).

Docket: For access to background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies

Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

For information on how to submit public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Authority
B. Purpose of the Notice of Data Availability
C. Background
D. Summary of DOE's Preliminary Assessment of Equipment for Energy-Savings Analysis
II. Discussion of Equipment for Further Consideration
A. Commercial Warm-Air Furnaces
1. Gas-Fired Commercial Warm-Air Furnaces
2. Oil-Fired Commercial Warm-Air Furnaces
B. Commercial Package Air-Conditioning and Heating Equipment
1. Three-Phase, Through-the-Wall Air-Cooled Air Conditioners and Heat Pumps
2. Three-Phase, Small-Duct, High-Velocity Air-Cooled Air Conditioners and Heat Pumps
3. Commercial Package Air-Cooled Air Conditioners with a Cooling Capacity at or Above 760,000 Btu per Hour
4. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 135,000 Btu per Hour and Less Than 240,000 Btu per Hour
5. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or above 240,000 Btu per Hour
C. Packaged Terminal Air Conditioners and Heat Pumps
D. Commercial Water Heaters
1. Oil-Fired Instantaneous Water Heaters
2. Electric Storage Water Heaters
E. Commercial Packaged Boilers
1. Small, Gas-Fired Hot Water Commercial Packaged Boilers
2. Small, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers
3. Small, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers
4. Small, Oil-Fired, Hot Water Commercial Packaged Boilers
5. Small, Oil-Fired, Steam, Commercial Packaged Boilers
6. Large, Gas-Fired, Hot Water Commercial Packaged Boilers
7. Large, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers
8. Large, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers
9. Large, Oil-Fired, Hot Water Commercial Packaged Boilers
10. Large, Oil-Fired, Steam Commercial Package Boilers
III. Analysis of Potential Energy Savings
A. Annual Energy Use
B. Shipments
C. Other Analytical Inputs
1. Site-to-Source Conversion
2. Effective Date
3. Analysis Period and Lifetime
D. Estimates of Potential Energy Savings
IV. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment

I. Introduction

A. Authority

Title III of EPCA, Pub. L. 94–163, as amended, sets forth a variety of provisions concerning energy efficiency. Part A–1 [1] of Title III created the energy conservation program for ''Certain Industrial Equipment.'' (42 U.S.C. 6311–6317) In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

In relevant part here, EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy efficiency standard for each type of equipment listed, each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended,[2] DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the minimum efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more stringent standard is justified under 42 U.S.C. 6313(a)(6)(A)(ii)(II), then DOE must establish such more stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

[1] This part was originally titled Part C; however, it was redesignated Part A–1 after Part C of Title III of EPCA was repealed by Public Law 109–58.

[2] Although EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007 (hereafter referred to as the March 2007 final rule). 72 FR 10038. In that rule, DOE stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. Id. 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A).

As a preliminary step in this process, EPCA directs DOE to publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards, within 180 days after ASHRAE Standard 90.1 is amended with respect to any of the covered products specified under 42 U.S.C. 6313(a).[3] (42 U.S.C. 6313(a)(6)(A))

On January 9, 2008, ASHRAE's Board of Directors gave final approval to ASHRAE Standard 90.1–2007[4] for distribution, which ASHRAE officially released and made public on January 10, 2008. This action by ASHRAE triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined above. This NODA embodies the analysis of the energy savings potential of amended energy efficiency standards, as required under 42 U.S.C. 6313(a)(6)(A)(i).

B. Purpose of the Notice of Data Availability

As explained above, DOE is publishing today's NODA as a preliminary step pursuant to EPCA's requirements for DOE to consider amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1, whenever ASHRAE amends its standard to increase the energy efficiency level for that equipment type. Specifically, this NODA presents for public comment DOE's analysis of the potential energy savings estimates for amended national energy conservation standards for these types of commercial equipment based on: (1) The modified efficiency levels contained within ASHRAE Standard 90.1–2007, and (2) more stringent efficiency levels. DOE describes these analyses and preliminary conclusions and seeks input from interested parties, including the submission of data and other relevant information.

DOE is not required by EPCA to review additional changes in ASHRAE Standard 90.1–2007 for those equipment types where ASHRAE did not increase the efficiency level. For those types of equipment for which efficiency levels clearly did not change, DOE has conducted no further analysis. However, for other ASHRAE products, DOE found that while ASHRAE had made changes in ASHRAE Standard 90.1–2007, it was not immediately apparent whether such revisions to the Standard 90.1 level would make the equipment more or less efficient, as compared to the existing Federal energy conservation standards. For example, when setting a standard using a different efficiency metric (as is the case for several types of commercial packaged boiler equipment), ASHRAE Standard 90.1–2007 changes the standard level from that specified in EPCA, but it is not immediately clear whether a standard level will make equipment more or less efficient. Therefore, DOE is undertaking this additional threshold analysis in order to thoroughly evaluate the amendments in ASHRAE Standard 90.1–2007 in a manner consistent with its statutory mandate.

Using this approach, DOE has undertaken a comprehensive analysis of the products covered under both EPCA and ASHRAE Standard 90.1–2007 to determine which products types require further analysis. Section II, *Discussion of Equipment for Further Consideration,* contains a description of DOE's evaluation of each ASHRAE equipment type for which energy conservation standards have been set pursuant to EPCA, in order for DOE to determine whether the amendments in Standard 90.1–2007 have resulted in increased efficiency levels. For those types of equipment in ASHRAE Standard 90.1, which have been determined to increase the efficiency levels, DOE subjected that equipment to further analysis under Section III, *Analysis of Potential Energy Savings.*

In summary, the energy savings analysis presented in this NODA is a preliminary step required under 42 U.S.C. 6313(a)(6)(A)(i). After review of the public comments on this NODA, if DOE decides that the amended efficiency levels in ASHRAE Standard 90.1–2007 have the potential for additional energy savings for types of equipment currently covered by uniform national standards, DOE will commence rulemaking to consider amended standards, based upon either the efficiency levels in ASHRAE Standard 90.1–2007 or more stringent efficiency levels which would be expected to result in significant additional conservation of energy and are technologically feasible and economically justified. In conducting such rulemaking, DOE will address the general rulemaking requirements for all energy conservation standards, such as the anti-backsliding provision[5] (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)), the criteria for making a determination that a standard is economically justified[6] (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii)), and the prohibition on making unavailable existing products with performance characteristics generally available in the U.S.[7] (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(4)).

C. Background

ASHRAE Standard 90.1–2007

As noted above, on January 9, 2008, ASHRAE's Board of Directors gave final approval to ASHRAE Standard 90.1–2007, which ASHRAE released on January 10, 2008. The ASHRAE standard addresses efficiency levels for many types of commercial heating,

[3] This statutory provision was added by section 305 of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, which applies to all of the products for which there are currently Federal energy conservation standards that are also covered by ASHRAE Standard 90.1. In addition, this document is also required under the Consent Decree (filed Nov. 6, 2006) in *New York* v. *Bodman,* No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council* v. *Bodman,* No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005), which requires an initial DOE action to be taken on any ASHRAE amendments related to products in the Consent Decree (*i.e.,* packaged terminal air conditioners and packaged terminal heat pumps, packaged boilers, and instantaneous water heaters) no later than six months after adoption of the amendment by ASHRAE. (Consent Decree section III, paragraph 4)

[4] This industry standard is developed with input from a number of organizations—most prominently, ASHRAE, the American National Standards Institute (ANSI), and the Illuminating Engineering Society of North America (IESNA). Therefore, this document may sometimes be referred to more formally as ANSI/ASHRAE/IESNA Standard 90.1–2007. *See http://www.ashrae.org* for more information.

[5] EPCA contains what is commonly known as an ''anti-backsliding'' provision (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)). This provision mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. *Natural Resources Defence Council* v. *Abraham,* 355 F. 3d 179 (2d Cir. 2004).

[6] In deciding whether a more stringent standard is economically justified, DOE must review comments on the proposed standard, and then determine whether the benefits of the standard exceed its burdens by considering the following seven factors to the greatest extent practicable:

(1) The economic impact on manufacturers and consumers subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class), compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of product utility or performance likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii))

[7] The Secretary may not prescribe an amended standard if interested persons have established by a preponderance of evidence that the amended standard is ''likely to result in the unavailability in the United States of any product type (or class)'' with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(4))

ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA. ASHRAE Standard 90.1–2007 revised the efficiency levels for certain commercial equipment, but for the remaining equipment, ASHRAE left in place the preexisting levels (*i.e.*, the efficiency levels specified in EPCA or the efficiency levels in ASHRAE Standard 90.1–1999).

Table I.1 below sets forth the existing Federal energy conservation standards and the efficiency levels specified in ASHRAE Standard 90.1–2007 for equipment where ASHRAE modified its requirements. The balance of this section of the document will assess these equipment types to determine whether the amendments in ASHRAE Standard 90.1–2007 constitute increased energy efficiency levels, as would necessitate further analysis of the potential energy savings from amended Federal energy conservation standards under Section III.

TABLE I.1.—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT*

ASHRAE equipment class	Federal energy conservation standards	Energy efficiency levels in ASHRAE Standard 90.1–2007	ASHRAE Standard 90.1–2007 effective date	Energy-savings potential analysis required
Commercial Warm-Air Furnaces				
Gas-Fired Commercial Warm-Air furnace	E_t = 80%	E_c = 80% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**.	1/10/2008	No (See Section II.A.1.).
Oil-Fired Commercial Warm-Air furnace	E_t = 81%	E_t = 81% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**.	1/10/2008	No (See Section II.A.2.).
Commercial Package Air-Conditioning and Heating Equipment				
Through-the-Wall Air Conditioners	13.0 SEER*** (Effective as of 06/19/08)	12.0 SEER (As of 01/23/10)	1/23/2010	No (See Section II.B.1.).
Through-the-Wall Air-Cooled Heat Pumps	13.0 SEER (Effective as of 06/19/08)	12.0 SEER 7.4 HSPF † (As of 01/23/10)	1/23/2010	No (See Section II.B.1.).
Small Duct, High Velocity, Air-Cooled Air Conditioners.	13.0 SEER (Effective as of 06/19/08)	10.0 SEER	1/10/2008	No (See Section II.B.2.).
Small Duct, High Velocity, Air-Cooled Heat Pumps.	13.0 SEER (Effective as of 06/19/08)	10.0 SEER 6.8 HSPF	1/10/2008	No (See Section II.B.2.).
Packaged Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h †† and with No Heating or with Electric Resistance Heating.	None	9.7 EER ††† (As of 01/01/10)	1/1/2010	No (See Section II.B.3.).
Packaged Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h and with Heating That is Other Than Electric Resistance Heating.	None	9.5 EER (As of 01/01/10)	1/1/2010	No (See Section II.B.3.).
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with No Heating or with Electric Resistance Heating.	11.0 EER	11.0 EER	‡1/10/2008	No (See Section II.B.4.).
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with Heating That is Other Than Electric Resistance Heating.	11.0 EER	10.8 EER	‡1/10/2008	No (See Section II.B.4.).
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with No Heating or with Electric Resistance Heating.	None	11.0 EER	1/10/2008	No (See Section II.B.5.).
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with Heating That is Other Than Electric Resistance Heating.	None	10.8 EER	1/10/2008	No (See Section II.B.5.)

TABLE I.1.—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT*—Continued

ASHRAE equipment class	Federal energy conservation standards	Energy efficiency levels in ASHRAE Standard 90.1–2007	ASHRAE Standard 90.1–2007 effective date	Energy-savings potential analysis required
Packaged Terminal Air Conditioners (PTACs) and Heat Pumps (PTHPs) ‡‡				
Packaged Terminal Air Conditioners with Cooling Capacity <7,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 8.88	EER = 11.0	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Air Conditioners with Cooling Capacity <7,000 Btu/h, and Non-Standard Size ◊ (Replacement).	EER = 8.88	EER = 9.4	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Air Conditioners with Cooling Capacity ≥7,000 and <15,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 10.0 − (0.16 × Cap ◊◊).	EER = 12.5 − (0.213 × Cap ◊◊).	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Air Conditioners with Cooling Capacity ≥7,000 and <15,000 Btu/h, and Non-Standard Size◊ (Replacement).	EER = 10.0 − (0.16 × Cap ◊◊).	EER = 10.9 − (0.213 × Cap ◊◊).	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Air Conditioners with Cooling Capacity >15,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 7.6	EER = 9.3	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Air Conditioners with Cooling Capacity >15,000 Btu/h, and Non-Standard Size ◊ (Replacement).	EER = 7.6	EER = 7.7	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Heat Pumps with Cooling Capacity <7,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 8.88 COP◊◊◊ = 2.7	EER = 10.8 COP = 3.0	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Heat Pumps with Cooling Capacity <7,000 Btu/h, and Non-Standard Size◊ (Replacement).	EER = 8.88 COP = 2.7	EER = 9.3 COP = 2.7	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Heat Pumps with Cooling Capacity ≥7,000 and <15,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 10.0 − (0.16 × Cap ◊◊). COP = 1.3 + (0.16 × EER)	EER = 12.3 − (0.213 × Cap ◊◊). COP = 3.2 − (0.026 × Cap ◊◊).	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Heat Pumps with Cooling Capacity ≥7,000 and <15,000 Btu/h, and Non-Standard Size ◊ (Replacement).	EER = 10.0 − (0.16 × Cap ◊◊). COP = 1.3 + (0.16 × EER)	EER = 10.8 − (0.213 × Cap ◊◊). COP = 2.9 − (0.026 × Cap ◊◊).	‡1/10/2008	No (See Section II.C.).
Packaged Terminal Heat Pumps with Cooling Capacity >15,000 Btu/h, and Standard Size ‡‡‡ (New Construction).	EER = 7.6 COP = 2.5	EER = 9.1 COP = 2.8	‡1/10/2008	No (See Section II.C.)
Packaged Terminal Heat Pumps with Cooling Capacity >15,000 Btu/h, and Non-Standard Size ◊ (Replacement).	EER = 7.6 COP = 2.5	EER = 7.6 COP = 2.5	‡1/10/2008	No (See Section II.C.).
Commercial Water Heaters				
Oil-Fired Instantaneous Water Heaters ≥4,000 Btu/h/gal and ≥10 gal.	E_T = 78% SL = Q/800 + 110$(V_r)^{1/2}$, Btu/h.	E_T = 78% SL = Q/800 + 110$(V)^{1/2}$, Btu/h.	‡1/10/2008	No (See Section II.D.1.).
Electric Storage Water Heaters	SL = 0.3 + 27/V_m (%/h)	SL = 20 + 35$(V)^{1/2}$, Btu/h	‡1/10/2008	No (See Section II.D.2.).
Commercial Packaged Boilers				
Small Gas-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 80%	E_T = 80%	3/2/2010	Yes (See Section II.E.1, Section III, and Table III.4.).
Small Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers.	E_C = 80%	E_T = 79%	3/2/2010	Yes (See Section II.E.2, Section III, and Table III.5.).
Small Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers.	E_C = 80%	E_T = 77% (Effective 03/2/2010). E_T = 79% (Effective 03/2/2020).	3/2/2010 3/2/2020	Yes (See Section II.E.3, Section III, and Table III.6.).

TABLE I.1.—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT*—Continued

ASHRAE equipment class	Federal energy conservation standards	Energy efficiency levels in ASHRAE Standard 90.1–2007	ASHRAE Standard 90.1–2007 effective date	Energy-savings potential analysis required
Small Oil-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 83%	E_T = 82%	3/2/2010	Yes (See Section II.E.4, Section III, and Table III.7.).
Small Oil-Fired, Steam, Commercial Packaged Boilers.	E_C = 83%	E_T = 81%	3/2/2010	Yes (See Section II.E.5, Section III, and Table III.8.).
Large Gas-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 80%	E_C = 82%	3/2/2010	Yes (See Section II.E.6, Section III, and Table III.9.).
Large Gas-Fired, Steam, All except Natural Draft, Boilers.	E_C = 80%	E_T = 79%	3/2/2010	Yes (See Section II.E.7, Section III, and Table III.10.).
Large Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers.	E_C = 80%	E_T = 77% (Effective 3/2/2010). E_T = 79% (Effective 3/2/2020).	3/2/2010 3/2/2020	Yes (See Section II.E.8, Section III, and Table III.11.).
Large Oil-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 83%	E_C = 84%	3/2/2010	Yes (See Section II.E.9, Section III, and Table III.12.).
Large Oil-Fired, Steam, Commercial Packaged Boilers.	E_C = 83%	E_T = 81%	3/2/2010	No (See Section II.E.10.).

* All equipment classes included in this table are equipment where there is a perceived difference between the current Federal standard levels and the efficiency levels specified by ASHRAE Standard 90.1–2007. Although, in some cases, the efficiency levels in this table may appear to be equal or lower than the Federal energy conservation standards, DOE further reviewed the efficiency levels in ASHRAE Standard 90.1–2007 and presented its findings in section II, *Discussion of Equipment for Further Consideration.*

** A vent damper is an acceptable alternative to a flue damper for those furnaces that draw combustion air from conditioned space.

*** Seasonal Energy Efficiency Ratio.

† Heating Seasonal Performance Factor.

†† British thermal units per hour (Btu/h).

††† Energy Efficiency Ratio.

‡ For the purposes of this NODA, the date shown in this column is the date of publication of ASHRAE Standard 90.1–2007 (Jan. 10, 2008) for equipment where the ASHRAE Standard 90.1–2007 initially appears to be different from the Federal energy conservation standards and where no effective date was specified by ASHRAE Standard 90.1–2007.

‡‡ For equipment rated according to the DOE test procedure, all EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products, and at 85°F entering water temperature for water-cooled products. All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products, and at 70°F entering water temperature for water-source heat pumps.

‡‡‡ Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions ≥16 inches high, or ≥42 inches wide.

◊ Non-standard size refers to PTAC or PTHP aequipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide. ASHRAE/IESNA Standard 90.1–1999 also includes a factory labeling requirement for non-standard size PTAC and PTHP equipment as follows: "MANUFACTURED FOR REPLACEMENT APPLICATIONS ONLY; NOT TO BE INSTALLED IN NEW CONSTRUCTION PROJECTS."

◊◊ Cap means cooling capacity in kBtu/h at 95°F outdoor dry-bulb temperature.

◊◊◊ Coefficient of Performance.

D. Summary of DOE's Preliminary Assessment of Equipment for Energy-Savings Analysis

DOE has reached a preliminary conclusion for each of the classes of commercial equipment for which ASHRAE Standard 90.1–2007 modified the pre-existing minimum efficiency standard. For each class of commercial equipment for which ASHRAE modified the pre-existing standard, DOE assessed whether the change made would increase energy efficiency and, therefore, require an energy-savings potential analysis. This assessment is summarized in Section II of this NODA. Table I.1 indicates whether DOE concluded, based on this assessment, that an energy-savings potential analysis is required. For those products for which such an analysis is required, DOE has indicated the results of its preliminary analysis in section III.

Based upon DOE's analysis in section II, DOE has determined that ASHRAE increased the efficiency level for the following equipment classes. Accordingly, DOE performed an energy-savings analysis for these equipment types, the results of which are presented in section III. These equipment classes include:

- Small, Gas-Fired Hot Water Commercial Packaged Boilers;
- Small, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers;
- Small, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers;
- Small, Oil-Fired, Hot Water Commercial Packaged Boilers;
- Small, Oil-Fired, Steam, Commercial Packaged Boilers;
- Large, Gas-Fired, Hot Water Commercial Packaged Boilers;
- Large, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers;
- Large, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers;
- Large, Oil-Fired, Hot Water Commercial Packaged Boilers.

II. Discussion of Equipment for Further Consideration

As discussed above, before beginning an analysis of the potential energy savings that would result from adopting the efficiency levels specified by ASHRAE Standard 90.1–2007 or more stringent efficiency levels, DOE first determined whether or not the ASHRAE Standard 90.1–2007 efficiency levels actually represented an increase in efficiency above the current Federal standard levels. This section contains a discussion of each equipment class where the ASHRAE Standard 90.1–2007 efficiency level differs from the current Federal standard level, along with a preliminary conclusion as to the action DOE would take with respect to that equipment.

A. Commercial Warm-Air Furnaces

Under EPCA, a ''warm air furnace'' is defined as ''a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air-conditioning units but does not include unit heaters and duct furnaces.'' (42 U.S.C. 6311(11)(A)) In its regulations, DOE defines a ''commercial warm air furnace'' as a ''warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu per hour or more.'' 10 CFR 431.72. The amendments in ASHRAE Standard 90.1–2007 trigger DOE to evaluate two types of furnaces: (1) Gas-fired commercial warm air furnaces, and (2) oil-fired commercial warm air furnaces.

1. Gas-Fired Commercial Warm-Air Furnaces

Gas-fired commercial warm-air furnaces are fueled by either natural gas or propane. The Federal minimum energy conservation standard for commercial gas-fired warm-air furnaces corresponds to the efficiency level in ASHRAE Standard 90.1–1999, which specifies for equipment with a capacity of 225,000 Btu/h or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be no less than 80 percent. 10 CFR Part 431.77(a). The Federal minimum energy conservation standard for gas-fired commercial warm-air furnaces applies to equipment manufactured on or after January 1, 1994. 10 CFR 431.77.

ASHRAE changed the efficiency levels for gas-fired commercial warm-air furnaces by changing the metric from a thermal efficiency descriptor to a combustion efficiency descriptor and adding three design requirements. Specifically, the efficiency levels in ASHRAE Standard 90.1–2007 specify a minimum combustion efficiency of 80 percent. ASHRAE Standard 90.1–2007 also specifies the following design requirements for commercial gas-fired warm-air furnaces: The gas-fired commercial warm-air furnace must use an interrupted or intermittent ignition device, have jacket losses no greater than 0.75 percent of the input rating, and use a power vent or flue damper.

In order to evaluate the change in efficiency level (if any) effectuated by the amended ASHRAE standard, DOE reviewed the change of metric for gas-fired commercial warm-air furnaces. In general, the energy efficiency of a product is a function of the relationship between the product's output of services and its energy input. A furnace's output is largely the energy content of its output (*i.e.,* warm air delivered to the building). A furnace's energy losses consist of energy that escapes through its flue (commonly referred to as ''flue losses''), and of energy that escapes into the area surrounding the furnace (commonly referred to as ''jacket losses'').

In a final rule published in the **Federal Register** on October 21, 2004 (the October 2004 final rule), DOE incorporated definitions for commercial warm-air furnaces and its efficiency descriptor, energy efficiency test procedures, and energy conservation standards. 69 FR 61916. In the October 2004 final rule, DOE pointed out that EPCA specifies the energy conservation standard levels for commercial warm-air furnaces in terms of thermal efficiency (42 U.S.C. 6313(a)(4)(A)–(B); 10 CFR 431.77), but provides no definition for this term. DOE proposed to interpret this term in the context of commercial warm-air furnaces to mean combustion efficiency (*i.e.,* 100 percent minus percent flue loss). *Id.* at 61919. Given use of the thermal efficiency term in EPCA and its continued use as the efficiency descriptor for furnaces in ANSI Standard Z21.47, *Gas-Fired Central Furnaces* (DOE's test procedure for this equipment), DOE stated that it would be confusing to use the term ''combustion efficiency'' in the final rule. Accordingly, DOE defined the term ''thermal efficiency'' to mean 100 percent minus the percent flue loss in the October 2004 final rule for gas-fired commercial warm-air furnaces. *Id.*

Upon reviewing the efficiency levels and methodology specified in ASHRAE Standard 90.1–2007, DOE believes that despite changing the name of the energy efficiency descriptor from ''thermal efficiency'' to ''combustion efficiency,'' ASHRAE did not intend to change the efficiency metric for gas-fired commercial warm air furnaces. When ASHRAE specified a newer version of the test procedure manufacturers use for gas-fired commercial air furnaces (*i.e.*, ANSI Standard Z21.47–2001), the calculation of thermal efficiency did not change from the previous version. So despite that change in the name of the energy efficiency descriptor, DOE believes that in the present context, the terms are synonymous, because the calculation of that value has not changed (*i.e.* , 100 percent minus the percent flue loss). DOE sees no plausible reason why ASHRAE would have chosen to incorporate a different metric than that used in the ANSI Standard Z21.47–2001 test procedure. Consequently, because the amendments for this type of product set out in ASHRAE Standard 90.1–2007 do not appear to have changed the efficiency level, DOE tentatively plans to leave the existing Federal energy conservation standards in place for gas-fired commercial warm air furnaces, which specify a thermal efficiency of 80 percent using the definition of ''thermal efficiency'' established by DOE in the October 2004 final rule and presented in subpart D to 10 CFR part 431.

2. Oil-Fired Commercial Warm-Air Furnaces

The Federal minimum energy conservation standard for commercial oil-fired warm-air furnaces corresponds to the efficiency level in ASHRAE Standard 90.1–1999, which specifies that for equipment with a capacity of 225,000 Btu/h or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be no less than 81 percent. 10 CFR 431.77(b). The Federal minimum energy conservation standard for oil-fired commercial warm-air furnaces applies to equipment manufactured on or after January 1, 1994. 10 CFR 431.77.

The efficiency level in ASHRAE Standard 90.1–2007 specifies a minimum thermal efficiency of 81 percent. ASHRAE did not change the efficiency levels for oil-fired commercial warm-air furnaces, but ASHRAE added three design requirements. ASHRAE Standard 90.1–2007 now specifies that commercial, oil-fired, warm-air furnaces must use an interrupted or intermittent ignition device, have jacket losses no greater than 0.75 percent of the input rating, and use a power vent or flue damper.

DOE published a final rule in the **Federal Register** on March 7, 2007, which states that the statutory trigger that requires DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a

standard by increasing the energy efficiency of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313 (a)(6)(A)(i)). 72 FR 10038, 10042. If ASHRAE merely considers raising the standards for any of the equipment listed in this section but ultimately decides to leave the standard levels unchanged or lowers the standard, DOE does not have the authority to conduct a rulemaking for higher standards. *Id.* If ASHRAE imposes more stringent standards for a specific subset of the listed equipment, DOE only has the authority to adopt the ASHRAE levels for that subset of equipment and its effective dates specified in the new ASHRAE standard. *Id.*

In practice, 42 U.S.C. 6313 generally allows ASHRAE Standard 90.1 to set minimum energy efficiency levels for equipment as a model building code and directs DOE to use these efficiency levels as the basis for maintaining consistent, uniform national energy conservation standards for the same equipment, provided all other applicable statutory requirements are met. If ASHRAE has not changed an efficiency level for a class of equipment subject to 42 U.S.C. 6313, DOE does not have authority to consider amending the uniform national standard at the time of publication of the amended ASHRAE Standard 90.1. Therefore, although ASHRAE added design requirements in ASHRAE Standard 90.1–2007, it did not change the efficiency levels for oil-fired commercial warm-air furnaces. Therefore, DOE does not have authority to amend the uniform national standard for this equipment. As stated in the March 2007 final rule, DOE believes that the statutory language specifically links ASHRAE's action in changing standards for specific equipment as a prerequisite to DOE's action for that same equipment. 72 FR 10038, 10042 (March 7, 2007).

B. Commercial Package Air-Conditioning and Heating Equipment

EPCA, as amended, includes the following definition of ''commercial package air-conditioning and heating equipment'': ''air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.'' (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA also defines ''small,'' ''large,'' and ''very large commercial package air-conditioning and heating equipment'' based on the equipment's rated cooling capacity. (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) ''Small commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).'' (42 U.S.C. 6311(8)(B); 10 CFR 431.92) ''Large commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated: (i) at or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) ''Very large commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated: (i) at or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

1. Three-Phase, Through-the-Wall Air-Cooled Air Conditioners and Heat Pumps

ASHRAE Standard 90.1–2007 identifies efficiency levels for three-phase through-the-wall air-cooled air conditioners and heat pumps, single package and split systems, with a cooling capacity of no greater than 30,000 Btu/h. The efficiency levels specified by ASHRAE Standard 90.1–2007 include a seasonal energy efficiency ratio of 12.0 for cooling mode and a heating seasonal performance factor of 7.4 for equipment manufactured on or after January 23, 2010.[8] ASHRAE aligned these efficiency levels and its corresponding effective dates with the efficiency levels established in EPCA for single-phase residential versions of the same products.

Neither EPCA nor DOE has established a specific definition for commercial ''through-the-wall air-cooled air conditioners and heat pumps.'' The residential through-the-wall air-cooled air conditioners and heat pumps covered under EPCA, as amended by the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100–12) and defined in 10 CFR 430.2, are by definition single-phase products, whereas the commercial through-the-wall air-cooled air conditioners and heat pumps mentioned in ASHRAE Standard 90.1–2007 are three-phase products. In its regulations, DOE defines a residential ''through-the-wall air conditioner and heat pump'' as ''a central air conditioner or heat pump that is designed to be installed totally or partially within a fixed-size opening in an exterior wall. * * *'' 10 CFR 430.2. Furthermore, this equipment: (1) Must be manufactured before January 23, 2010; (2) must not be weatherized; (3) must be clearly and permanently marked for installation only through an exterior wall; (4) have a rated cooling capacity no greater than 30,000 Btu/h; (5) exchange all of its outdoor air across a single surface of the equipment cabinet; and (6) have a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface described in paragraph (5) of this definition. *Id.*

In terms of equipment construction, commercial and residential through-the-wall air-cooled air conditioners and heat pumps are believed to utilize the same components in the same configurations to provide space cooling and heating. DOE believes commercial versions of through-the-wall air-cooled air conditioners and heat pumps are essentially the same as residential versions, except that they are powered using three-phase electric power.

EPCA does not separate three-phase, through-the-wall air-cooled air conditioners and heat pumps from other types of small commercial package air-conditioning and heating equipment in its definitions. Therefore, EPCA's definition of ''small commercial package air-conditioning and heating equipment'' would include three-phase through-the-wall air-cooled air conditioners and heat pumps. Although EPCA does not use the term ''three-phase through-the-wall air-cooled air conditioners and heat pumps,'' the three-phase versions of this equipment, regardless of cooling capacity, fall within the definition of ''small commercial package air-conditioning and heating equipment.'' (42 U.S.C. 6311(8)(A)-(B)) There is no language in EPCA to indicate that three-phase through-the-wall air-cooled air conditioners and heat pumps are a separate type of covered equipment.

The Federal energy conservation standards for three-phase, commercial package air conditioners and heat pumps less than 65,000 Btu/h were established by EISA 2007 for such products manufactured on or after June 19, 2008. Specifically, section 314(b)(4)(C) of EISA 2007 amended section 342(a) of EPCA (42 U.S.C. 6313(a)) by adding new provisions for three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C.

[8] ASHRAE provides the same requirement for single-phase and three-phase through-the-wall air-cooled air conditioners and heat pumps used in covered commercial buildings, but points out that single-phase products are regulated as residential products under 10 CFR 430.32(c)(2).

6313(a)(7)(D)) The provision in EISA 2007 mandates minimum seasonal energy efficiency ratios for cooling mode and minimum heating seasonal performance factors for heating mode of air-cooled, three-phase electric central air conditioners and central air-conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h.[9] Three-phase, through-the-wall, air-cooled air conditioners and heat pumps are a smaller subset of three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h and were not explicitly excluded from the standards in section 314(b)(4)(C) of EISA 2007. Because EISA 2007 set such standards, DOE must follow them, and they are more stringent than the levels contained in ASHRAE Standard 90.1–2007 for those products. Accordingly, DOE affirms that the EISA 2007 efficiency levels for small commercial package air-conditioning and heating equipment less than 65,000 Btu/h apply to three-phase through-the-wall air-cooled air conditioners and heat pumps with a cooling capacity no greater than 30,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) Therefore, no further analysis is required for three-phase, through-the-wall, air-cooled air conditioners and heat pumps.

2. Three-Phase, Small-Duct, High-Velocity Air-Cooled Air Conditioners and Heat Pumps

ASHRAE Standard 90.1–2007 identifies efficiency levels for three-phase small-duct, high-velocity (SDHV) air-cooled air conditioners and heat pumps, both single-package and split systems, with a cooling capacity less than 65,000 Btu/h.[10] The efficiency levels specified by ASHRAE Standard 90.1–2007 include a seasonal energy efficiency ratio of 10.0 for cooling mode and a heating seasonal performance factor of 6.8 for equipment. ASHRAE aligned these efficiency levels and the corresponding effective dates with the efficiency levels established in EPCA for single-phase residential versions of the same products.

Just as with three-phase, through-the-wall air-cooled air conditioners and heat pumps, neither EPCA nor DOE has established a specific definition for commercial ''three-phase SDHV air conditioners and heat pumps.'' In its regulations, DOE defines a residential small-duct, high-velocity (SDHV) air-cooled air conditioner or heat pump as ''a heating and cooling product that contains a blower and indoor coil combination that: (1) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM [cubic feet per minute] per rated ton of cooling; and (2) When applied in the field, uses high velocity room outlets generally greater than 1,000 fpm [feet per minute] which have less than 6.0 square inches of free area.'' 10 CFR 430.2.

In terms of equipment construction, commercial and residential SDHV air conditioners and heat pumps are believed to utilize the same components in the same configurations to provide space cooling and heating. DOE believes commercial versions of SDHV systems are essentially the same as residential versions, except that they are powered using three-phase electric power.

EPCA does not separate three-phase, SDHV air conditioners and heat pumps from other types of small commercial package air-conditioning and heating equipment in its definitions. Therefore, EPCA's definition of ''small commercial package air-conditioning and heating equipment'' would include three-phase SDHV air conditioners and heat pumps. Although EPCA does not use the term ''three-phase SDHV air conditioners and heat pumps,'' the three-phase versions of this equipment, regardless of cooling capacity, fall within the definition of ''small commercial package air-conditioning and heating equipment.'' (42 U.S.C. 6311(8)(A)–(B)) There is no language in EPCA to indicate that three-phase SDHV air conditioners and heat pumps are a separate type of covered equipment.

The Federal energy conservation standards for three-phase, commercial package air conditioners and heat pumps less than 65,000 Btu/h were established by EISA 2007 for products manufactured on or after June 19, 2008. Specifically, section 314(b)(4)(C) of EISA 2007 amended section 342(a) of EPCA (42 U.S.C. 6313(a)) by adding new provisions for three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) As mentioned previously, the provision in EISA 2007 mandates minimum seasonal energy efficiency ratios for cooling mode and minimum heating seasonal performance factors for heating mode of air-cooled, three-phase electric central air conditioners and central air-conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) Three-phase, SDHV air conditioners and heat pumps are a smaller subset of three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h and were not explicitly excluded from the standards in section 314(b)(4)(C) of EISA 2007. Because EISA 2007 set such standards, DOE must follow them, and they are more stringent than the levels contained in ASHRAE Standard 90.1–2007 for those products.

Additionally, the residential versions of SDHV are subject to an exception issued by the Office of Heating and Appeals (OHA). On October 14, 2004, OHA granted an exception to SpacePak and Unico, Inc., authorizing them to manufacture SDHV systems (as defined in 10 CFR 430.2) with a SEER of no less than 11.0 and an HSPF of 6.8. The exception relief will remain in effect until the agency modifies the general energy efficiency standard for central air conditioners and establishes a different standard for SDHV systems that complies with EPCA.[11] However, this exception only applies to the residential, single-phase SDHV systems and would, therefore, exclude three-phase SDHV equipment.

Thus, manufacturers of three-phase SDHV equipment must follow the energy conservation standards in EISA 2007. Accordingly, DOE affirms that the EISA 2007 efficiency levels for three-phase small commercial package air-conditioning and heating equipment less than 65,000 Btu/h apply to three-phase SDHV air-cooled air conditioners and heat pumps with a cooling capacity

[9] Section 314(b)(4)(C) of EISA specifies for ''equipment manufactured on or after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007—

(i) The minimum seasonal energy efficiency ratio of air-cooled 3-phase electric central air conditioners and central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 13.0;

(ii) the minimum seasonal energy efficiency ratio of air-cooled 3-phase electric central air conditioners and central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 13.0;

(iii) the minimum heating seasonal performance factor of air-cooled 3-phase electric central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 7.7; and

(iv) the minimum heating seasonal performance factor of air-cooled 3-phase electric central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 7.7.'' (42 U.S.C. 6313(a)(7)(D))

[10] ASHRAE Standard 90.1–2007 includes efficiency levels for three-phase and single-phase SDHV air-cooled air conditioners and heat pumps used in commercial buildings. ASHRAE Standard 90.1–2007 also includes a footnote to these provisions, which indicates that the single-phase versions of this equipment are regulated as residential products under 10 CFR 430.32(c)(2).

[11] DOE's Office of Hearing and Appeals. *Decision and Order: Applications for Exception.* October 14, 2004. *http://www.oha.doe.gov/cases/ee/tee0010.pdf.*

less than 65,000 Btu/h. Therefore, no further analysis is required for the three-phase SDHV air-cooled air conditioners and heat pumps.

3. Commercial Package Air-Cooled Air Conditioners With a Cooling Capacity at or Above 760,000 Btu per Hour

EPCA specifies energy conservation standards for small (cooling capacities at or above 65,000 and less than 135,000 Btu/h), large (cooling capacities at or above 135,000 and less than 240,000 Btu/h), and very large (cooling capacities at or above 240,000 and less than 760,000 Btu/h) commercial package air-cooled air conditioners. (42 U.S.C. 6313(a)(1)–(2), (7)–(9); 10 CFR Part 431.97) However, there are no Federal energy conservation standards for commercial package air-cooled air conditioners with a cooling capacity at or above 760,000 Btu/h. In contrast, ASHRAE Standard 90.1–2007 sets the minimum energy efficiency levels for this equipment at 9.7 EER for equipment with electric resistance heating, and 9.5 EER for equipment with any other type of heating or without heating. The efficiency level in ASHRAE Standard 90.1–2007 applies to equipment manufactured on or after January 1, 2010.

Thus, units with capacities at or above 760,000 Btu/h fall outside the definitions of the small, large, and very large commercial package air-cooled air conditioner equipment classes established in EPCA. (42 U.S.C. 6311(8)(A)–(D); 10 CFR Part 431.92) Therefore, DOE has tentatively concluded that it does not have the authority to review the efficiency level for that equipment.

4. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 135,000 Btu per Hour and Less Than 240,000 Btu per Hour

The current Federal energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h requires an EER no less than 11.0 for equipment manufactured on or after October 29, 2004. 10 CFR 431.97, Table 1.

ASHRAE Standard 90.1–2007 includes the same efficiency level for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that use electric resistance heating (*i.e.*, an EER no less than 11.0). However, ASHRAE Standard 90.1–2007 specifies a different efficiency level for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that use any type of heating other than electric resistance (*i.e.*, an EER no less than 10.8).

DOE reviewed the January 2001 final rule and ASHRAE Standard 90.1–1999 to determine the efficiency levels applicable to water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h. The January 2001 final rule did not establish different efficiency levels for different types of supplemental heating systems associated with this equipment. All large water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps were subject to the same minimum efficiency level of 11.0 EER regardless of heating type. ASHRAE Standard 90.l–1999 did establish different efficiency levels applicable to water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h for different types of supplemental heating systems.

DOE has tentatively concluded that the ASHRAE Standard 90.1–2007 efficiency levels for water-cooled and evaporatively cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that utilize any type of heating other than electric resistance would have the effect of lowering the minimum efficiency levels (*i.e.*, EER) required by EPCA and allow increased energy consumption. Because of backsliding concerns, DOE has tentatively decided not to adopt the ASHRAE Standard 90.1–2007 efficiency levels for water-cooled and evaporatively cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that utilize any type of heating other than electric resistance. Therefore, further analysis is not required.

5. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 240,000 Btu per Hour

EPCA defines ''commercial package air-conditioning and heating equipment'' as ''air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.'' (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA goes on to define ''very large commercial package air-conditioning and heating equipment'' as commercial package air-conditioning and heating equipment that is rated at or above 240,000 Btu per hour and below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92) Although water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h fall within the definition of very large commercial package air-conditioning and heating equipment, EPCA does not specify Federal energy conservation standards for this equipment class. (EPCA set standards for air-cooled systems only, under 42 U.S.C. 6313(a)(7)–(9).) ASHRAE added this new equipment class to ASHRAE Standard 90.1–2007, setting minimum efficiency levels at 11.0 EER for equipment with electric resistance heating, and at 10.8 EER for equipment with all other types of heating or without heating. Under EPCA, DOE must either adopt the efficiency level specified in ASHRAE Standard 90.1–2007 for this new class of equipment, or consider a more stringent level that would result in significant additional energy savings and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6))

DOE reviewed the market for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps and found that manufacturers offer few models. Furthermore, DOE surveyed the Air-conditioning, Heating, and Refrigerating Institute (AHRI) Directory of Certified Product Performance and did not identify any equipment on the market with a cooling capacity at or above 240,000 Btu/h. Because there is currently no equipment in this class being manufactured, there are no energy savings associated with this class at this time; therefore, it is not possible to assess the potential for *additional* energy savings beyond the levels

anticipated in ASHRAE Standard 90.1–2007. Thus, DOE did not perform a potential energy-savings analysis on this equipment type. DOE seeks comments from interested parties on the market and energy savings potential for this equipment type. This is Issue 1 under ''Issues on Which DOE Seeks Comment'' in section IV.B of this NODA.

C. Packaged Terminal Air Conditioners and Heat Pumps

EPCA defines a ''packaged terminal air conditioner'' as ''a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.'' (42 U.S.C. 6311(10)(A)) EPCA defines a ''packaged terminal heat pump'' as ''a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.'' (42 U.S.C. 6311(10)(B)) DOE codified these definitions in 10 CFR 431.92 in a final rule published in the **Federal Register** on October 21, 2004. 69 FR 61962, 61970.

The current energy conservation standards in EPCA for PTACs and PTHPs apply to all equipment manufactured on or after January 1, 1994 (42 U.S.C. 6313(a)(3)), and correspond to the minimum efficiency levels in ASHRAE/IESNA Standard 90.1–1989. ASHRAE specified more stringent efficiency levels for PTACs and PTHPs in ASHRAE Standard 90.1–2007, corresponding to the efficiency levels in ASHRAE Standard 90.1–1999. The efficiency levels vary by equipment type (*i.e.*, air conditioner or heat pump), wall sleeve dimensions (*i.e.*, new construction and replacement), and cooling capacity.

In response to the efficiency levels in ASHRAE Standard 90.1–1999, the March 2007 final rule states that DOE has decided to explore more stringent efficiency levels than in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs through a separate rulemaking. 72 FR 10038, 10045 (March 7, 2007). Recently, DOE published a notice of proposed rulemaking (NOPR) proposing more stringent standards than the efficiency levels in ASHRAE Standard 90.1–2007 for all types of PTACs and PTHPs. 73 FR 18858 (April 7, 2008). Since DOE is evaluating standard levels for packaged terminal air conditioners and heat pumps in a separate rulemaking,[12] DOE is excluding PTACs and PTHPs from further consideration, and interested parties can review the energy savings potential of more stringent efficiency levels in the April 2008 NOPR.

D. Commercial Water Heaters

1. Oil-Fired Instantaneous Water Heaters

EPCA defines an ''instantaneous water heater'' as ''a water heater that has an input rating of at least 4,000 Btu per hour per gallon of stored water.'' (42 U.S.C. 6311(12)(B)) DOE incorporated a more specific definition of instantaneous water heater into 10 CFR 431.105, which specifies that an oil-fired instantaneous water heater has an input rating no less than 4,000 Btu/h per gallon of stored water, and that it is industrial equipment (including equipment that heats water to 180 °F or higher).

The Federal energy conservation standard for oil-fired instantaneous water heaters is a minimum thermal efficiency of 78 percent and a maximum standby loss of $Q/800 + 110(V_r)^{1/2}$, where Q is the nameplate input rating in Btu/h and V_r is the rated volume in gallons. 10 CFR 431.110. ASHRAE Standard 90.1–2007 did not change this minimum thermal efficiency requirement. ASHRAE Standard 90.1–2007 contains an efficiency-level specification for the maximum standby loss, which is $Q/800 + 110(V)^{1/2}$, where Q is the nameplate input rating in Btu/h and V is the rated volume in gallons. Since V_r and V are both defined as rated volume in gallons, DOE has determined there is no difference between the standby provisions for the Federal energy conservation standard and the requirements specified by ASHRAE Standard 90.1–2007. Therefore, further analysis is not required.

2. Electric Storage Water Heaters

EPCA defines a ''storage water heater'' as equipment that ''heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. Such term does not include units with an input rating of 4,000 Btu/hr or more per gallon of stored water.'' (42 U.S.C. 6311(12)(A); 10 CFR 431.102) Electric storage water heaters are storage water heaters that heat water using electric resistance heating elements.

The Federal energy conservation standard for electric storage water heaters is set under EPCA as ''the maximum standby loss, in percent per hour, of electric storage water heaters shall be 0.30 + (27/Measured Storage Volume [in gallons]).'' (42 U.S.C. 6313(a)(5)(A); 10 CFR 431.110) ASHRAE Standard 90.1–2007 (which remains unchanged from Standard 90.1–1999) specifies a maximum standby loss in Btu per hour, of $20 + (35\sqrt{V})$, where V is the rated volume of the tank in gallons.

As discussed in the January 2001 final rule, DOE determined that the efficiency level in ASHRAE Standard 90.1–1999 (which is the same as the efficiency level specified by ASHRAE Standard 90.1–2007) would increase energy consumption relative to the standard in EPCA. 66 FR 3336, 3350 (Jan. 12, 2001). DOE further stated that under these circumstances, DOE cannot adopt the new efficiency level, because EPCA stipulates that its standards cannot be relaxed. *Id.* Therefore, DOE did not adopt the requirement specified by ASHRAE Standard 90.1–1999 for electric storage water heaters, thereby leaving the existing EPCA standards in place.

Since ASHRAE incorporated exactly the same efficiency levels in ASHRAE Standard 90.1–2007 as it did in ASHRAE Standard 90.1–1999, DOE does not see why its conclusion would differ from the one it presented in the January 2001 final rule. Under these circumstances, DOE has tentatively concluded that it cannot adopt the amended efficiency level for electric storage water heaters. Therefore, no further analysis is necessary.

E. Commercial Packaged Boilers

EPCA defines a ''packaged boiler'' as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' (42 U.S.C. 6311(11)(B)). In its regulations at 10 CFR 431.102, DOE further refined the ''packaged boiler'' definition to not include a boiler that is custom designed and field constructed; additionally, if the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location. There are various different types of commercial packaged boilers, which can be distinguished based on the input capacity size (*i.e.*, small or large), fuel type (*i.e.*, oil or gas), output (*i.e.*, hot water or steam), and draft type (*i.e.*, natural draft or other).

[12] For more information about the Packaged Terminal Air Conditioners and Heat Pumps rulemaking, visit the DOE Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/packaged_ac_hp.html.*

The Federal energy conservation standards separate commercial packaged boilers only by the type of fuel used by the boiler, creating two equipment classes: (1) gas-fired, and (2) oil-fired. (42 U.S.C. 6313(a)(4)(C)–(D); 10 CFR 431.87). ASHRAE Standard 90.1–2007 further divided these two equipment classes into the following ten classes:

- Small, gas-fired, hot water boilers;
- Small, gas-fired, steam, all except natural draft;
- Small, gas-fired, steam, natural draft boilers;
- Small, oil-fired, hot water boilers;
- Small, oil-fired, steam boilers;
- Large, gas-fired, hot water boilers;
- Large, gas-fired, steam, all except natural draft boilers;
- Large, gas-fired, steam, natural draft boilers;
- Large, oil-fired, hot water boilers; and
- Large, oil-fired, steam boilers.

EPCA specified minimum Federal standards for commercial packaged boilers manufactured on or after January 1, 1994. (42 U.S.C. 6313(a)(4)(C)–(D); 10 CFR 431.87). The minimum combustion efficiency at the maximum rated capacity of a gas-fired packaged boiler with capacity of 300,000 Btu/h (300 kBtu/h) or more shall be 80 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) The minimum combustion efficiency at the maximum rated capacity of an oil-fired packaged boiler with capacity of 300,000 Btu/h or more shall be 83 percent. (42 U.S.C. 6313(a)(4)(D); 10 CFR 431.87(b))

Table II.1 shows the ten equipment classes and efficiency levels established by ASHRAE.

TABLE II.1.—ASHRAE STANDARD 90.1–2007 ENERGY EFFICIENCY LEVELS FOR COMMERCIAL PACKAGED BOILERS

Equipment type	Size category (Input kBtu/h)	ASHRAE standard 90.1–2007 (effective 3/2/2010)* (percent)	ASHRAE standard 90.1–2007 (effective 3/2/2020)* (percent)
Small, Gas, Hot Water	300–2,500	E_T = 80.0	E_T = 80.0.
Small, Gas, Steam, All Except Natural Draft	300–2,500	E_T = 79.0	E_T = 79.0.
Small, Gas, Steam, Natural Draft	300–2,500	E_T = 77.0	E_T = 79.0.
Small, Oil, Hot Water	300–2,500	E_T = 82.0	E_T = 82.0.
Small, Oil, Steam	300–2,500	E_T = 81.0	E_T = 81.0.
Large, Gas, Hot Water	>2,500	E_C = 82.0	E_C = 82.0.
Large, Gas, Steam, All Except Natural Draft	>2,500	E_T = 79.0	E_T = 79.0.
Large, Gas, Steam, Natural Draft	>2,500	E_T = 77.0	E_T = 79.0.
Large, Oil, Hot Water	>2,500	E_C = 84.0	E_C = 84.0.
Large, Oil, Steam	>2,500	E_T = 81.0	E_T = 81.0.

* E_C, combustion efficiency; E_T, thermal efficiency.

ASHRAE changed the metric for determining energy efficiency for five equipment classes of small commercial packaged boilers and three equipment classes of large commercial packaged boilers in ASHRAE Standard 90.1–2007. The Federal energy conservation standards for these eight equipment classes are expressed in terms of combustion efficiency, whereas the efficiency levels in ASHRAE Standard 90.1–2007 are expressed in terms of thermal efficiency.

The combustion efficiency descriptor used in EPCA for commercial packaged boilers differs from the thermal efficiency descriptor used in Standard 90.1–2007.[13] In general, the energy efficiency of a product is a function of the relationship between the product's output of services and its energy input. A boiler's output of services is measured largely by the energy content of its output (steam or hot water). Consequently, its efficiency is often viewed as the ratio between its energy output and energy input, with the energy output being calculated as the energy input minus the energy lost in producing the output. A boiler's energy losses consist of energy that escapes through its flue (commonly referred to as ''flue losses''), and of energy that escapes into the area surrounding the boiler (commonly referred to as ''jacket losses''). The combustion efficiency descriptor described in EPCA only accounts for flue losses and typically is defined as ''100 percent minus percent flue loss.'' (42 U.S.C. 6313(4)(C)–(D)) The thermal efficiency descriptor, as used in Standard 90.1–2007, accounts for jacket losses as well as flue losses, so it can be considered combustion efficiency minus jacket loss. Because all boilers will have at least some jacket losses (even if small) and because thermal efficiency takes these losses into account, the thermal efficiency for a particular boiler will always be lower than its combustion efficiency.

There is no direct mathematical correlation between these two measures of efficiency. The factors that contribute to jacket loss (*e.g.* , the boiler's design and materials) have little or no direct bearing on combustion efficiency. The lack of correlation between combustion efficiency and thermal efficiency presents some difficulties in determining how an energy conservation standard based on thermal efficiency, rather than combustion efficiency, would affect the energy consumption of commercial packaged boilers.

EPCA provides that DOE may not prescribe any amended standard that increases the maximum allowable energy use, or decreases the minimum required energy efficiency of a product covered product. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) Therefore, in evaluating whether to adopt the thermal efficiency levels in ASHRAE Standard 90.1–2007 for these eight equipment classes, DOE needed to determine whether or not they decrease the efficiency levels of the combustion efficiencies that EPCA currently requires.

DOE used the same methodology established in the March 2006 Notice of Availability and the March 2007 final rule for investigating the metric change for these eight equipment classes. 71 FR 12634, 12639–40 (March 13, 2006); 72 FR 10038, 10043 (March 7, 2007). If the numeric value for the minimum thermal efficiency (expressed as a percentage) were at or above the value for the combustion efficiency (expressed as a percentage), then clearly the ASHRAE Standard 90.1–2007 efficiency levels

[13] The combustion efficiency descriptor and the thermal efficiency descriptor are defined differently for commercial warm air furnaces and commercial packaged boilers. The thermal efficiency descriptor as it applies to commercial warm air furnaces is defined in Subpart D of 10 CFR part 430 as ''one minus flue losses,'' which corresponds to the combustion efficiency descriptor for commercial packaged boilers.

would not be lower than the EPCA energy conservation standard levels. If ASHRAE Standard 90.1–2007's thermal efficiency levels for each product class of commercial boilers were only slightly lower numerically than EPCA's combustion efficiency standards for such equipment, the Standard 90.1–2007 efficiency levels also probably would not represent a reduction in stringency of the minimum efficiency levels (although this would need to be confirmed). However, because the ASHRAE Standard 90.1–2007 thermal efficiency levels for some product classes of commercial packaged boilers have more than a small percentage point difference as compared to EPCA's combustion efficiency levels, DOE must carefully assess whether the Standard 90.1–2007 levels would represent a reduction of existing standards.

To this end, DOE reviewed the AHRI's Institute of Boiler and Radiation Manufacturers (I=B=R) ratings directories for 2008.[14] The I=B=R directory provides efficiency ratings for most of the commercial packaged boilers for sale in the United States. DOE specifically reviewed boilers that fell into each of the eight equipment classes for which a metric change occurred. For each equipment class analyzed, DOE identified the average combustion and thermal efficiencies. DOE also identified the average thermal efficiency for those boilers DOE considers minimally compliant (*i.e.*, those boilers with a combustion efficiency equal to the Federal energy conservation standards).

For approximately 81 percent of the boilers DOE examined, the directory provided both the thermal efficiency and combustion efficiency levels. For 8.5 percent of these boilers, the ratings appear to be erroneous because the directory lists a thermal efficiency rating greater than its combustion efficiency rating, which is physically impossible.[15] As explained above, thermal efficiency includes the effects of jacket losses, whereas combustion efficiency does not. Excluding these boilers, DOE reviewed the thermal and combustion efficiency ratings for the remaining 74.3 percent of the boilers, where both types of efficiency ratings are listed in the 2008 I=B=R directory. DOE presents its review of the efficiency levels in ASHRAE Standard 90.1–2007 for all ten equipment classes of commercial packaged boilers and its review of the I=B=R directory for each of the eight equipment classes where a metric change occurred. DOE's review of each commercial packaged boiler equipment class will provide its planned course of action for each equipment class, along with reasoning for the suggested action. DOE is using its review of the I=B=R directory for each of the equipment classes to determine if ASHRAE raised the efficiency levels and if further DOE action is warranted. In order for DOE to determine whether ASHRAE raised the efficiency levels for each equipment class, DOE has identified the following from the January 2008 I=B=R directory:

- A comparison of the average combustion efficiency and average thermal efficiency values of the models;
- A comparison of the average combustion efficiency and average thermal efficiency values of the minimally compliant models (*i.e.*, those with efficiency levels that minimally comply with EPCA);
- The model with the lower thermal efficiency value and its corresponding combustion efficiency value;
- The model with the highest thermal efficiency value and its corresponding combustion efficiency value; and
- The percentage of models in the January 2008 I=B=R directory that have a thermal efficiency value lower than the efficiency level specified by ASHRAE Standard 90.1–2007.

DOE used these five statistics to determine whether DOE believes the efficiency levels specified within ASHRAE Standard 90.1–2007 for a given equipment class provide reasonable assurance that ASHRAE increased the efficiency levels and further analysis is warranted by DOE. DOE presents its review of the efficiency levels in ASHRAE Standard 90.1–2007 for each equipment class of commercial packaged boilers as well as its review of the market data in the following subsections.

1. Small, Gas-Fired Hot Water Commercial Packaged Boilers

A small, gas-fired hot water commercial packaged boiler is a commercial packaged boiler with a fuel input at or above 300 and less than or equal to 2,500 kBtu/h, fueled by either natural gas or propane, that supplies hot water for space heating. Small, gas-fired hot water commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) This equipment class accounts for 23.6 percent of the total models listed in the January 2008 I=B=R directory that DOE examined.

Among all of the small, gas-fired hot water commercial package boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 0.9 percent lower than the average combustion efficiency. DOE also identified the small, gas-fired hot water commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (*i.e.* , with a combustion efficiency between 80.0 and 81.0 percent). For the minimally compliant small, gas-fired hot water commercial packaged boilers, the average thermal efficiency is 78.1 percent. The model with the lowest thermal efficiency is 76.8 percent, which corresponds to a combustion efficiency of 81 percent. The model with the highest thermal efficiency is 98.1 percent, which corresponds to a combustion efficiency of 98.3 percent. DOE found that of all the models in the 2008 I=B=R directory for this equipment class, 8.9 percent of them have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 80 percent for small, gas-fired hot water commercial packaged boilers. This thermal efficiency value is higher than the 78.1 percent average thermal efficiency of minimally compliant equipment currently on the market. Based on DOE's review of the I=B=R directory and the analysis conducted on the minimally compliant commercial packaged boilers, DOE has tentatively concluded that the thermal efficiency levels in ASHRAE Standard 90.1–2007 would, on average, increase efficiency for small, gas-fired hot water commercial packaged boilers. Consequently, DOE performed a potential energy-savings analysis on this equipment class under section III, as part of DOE's review of amended energy conservation standards.

2. Small, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers

A small, gas-fired, steam, all except natural draft commercial packaged boiler has a fuel input of at or above 300 and less than or equal to 2,500 kBtu/h, is fueled by either natural gas or propane, supplies steam for space heating and other applications, and uses a type of draft system other than natural

[14] The Air-conditioning, Heating, and Refrigerating Institute, *I=B=R Ratings for Boilers, Baseboard Radiation, Finned Tube (Commercial) Radiation, and Indirect-Fired Water Heaters* (Jan. 2008). Available at: *http://www.gamanet.org/gama/inforesources.nsf/vAttachmentLaunch/E9E5FC7199EBB1BE85256FA100838435/$FILE/01-08_CBR.pdf.*

[15] These anomalous ratings are likely due to Hydronics Institute's (HI) de-rating procedures, manufacturers' interpolation of results, varying test chambers and instrument calibration among manufacturers, or submittal of erroneous ratings.

draft (i.e., a forced or induced draft system). Small, gas-fired, steam, all except natural draft commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87) (a)) These boilers account for 18.5 percent of the total models listed in the January 2008 I=B=R directory.

Among all of the small, gas-fired, steam all except natural draft commercial packaged boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 2.6 percent lower than the average combustion efficiency. DOE also identified the boilers in this equipment class with combustion efficiencies that minimally comply with EPCA (i.e., with a combustion efficiency between 80.0 and 81.0 percent). The average thermal efficiency of these minimally compliant boilers is 76.9 percent. The lowest thermal efficiency of these models is 75.4 percent, which corresponds to combustion efficiencies of 80 and 80.5 percent. The highest thermal efficiency is 83.1 percent, which corresponds to combustion efficiencies ranging from 83.7 to 84.8 percent. Of the 18.5 percent of units in the 2008 I=B=R directory for this equipment class, 51.2 percent of them have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 79 percent for small, gas-fired, steam, all except natural draft commercial packaged boilers. This thermal efficiency value is higher than the 76.9 percent average thermal efficiency of minimally compliant equipment on the market. Based on DOE's review of the I=B=R directory and the analysis of minimally compliant commercial packaged boilers, DOE has tentatively concluded that the thermal efficiency levels in ASHRAE Standard 90.1–2007 would, on average, result in an increase in efficiency for minimally compliant equipment. Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

3. Small, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers

A small, gas-fired, steam, natural draft commercial packaged boiler has a fuel input at or above 300 and less than or equal to 2,500 kBtu/h, is fueled by either natural gas or propane, supplies steam for space heating and other applications, and uses a natural draft system (i.e., does not have mechanical draft equipment). Small, gas-fired, steam, natural draft commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) These boilers account for 1.8 percent of the total models listed in the January 2008 I=B=R directory.

ASHRAE Standard 90.1–2007 set a two-tier efficiency level for this equipment, which includes two different thermal efficiency levels, as well as two effective dates. The first efficiency level specified in ASHRAE Standard 90.1–2007 for this equipment class includes a 77 percent thermal efficiency effective March 2, 2010. The second efficiency level specified by ASHRAE Standard 90.1–2007 for this equipment class includes a 79 percent thermal efficiency effective March 2, 2020.

Among all of the small, gas-fired, steam, natural draft commercial packaged boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 3.6 percent lower than the average combustion efficiency. DOE also identified the small, gas-fired, steam, natural draft commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (i.e., with a combustion efficiency between 80.0 and 81.0 percent). The average thermal efficiency for the minimally-compliant equipment of this type is 78.2 percent. The model with the lowest thermal efficiency is 77.6 percent, which corresponds to a combustion efficiency of 80.9 percent. The thermal efficiency of the most efficient models is 80.4 percent, which corresponds to combustion efficiencies of between 83.1 and 83.3 percent. In examining all the models in the 2008 I=B=R directory for this equipment class, DOE found that none has a thermal efficiency level below the ASHRAE Standard 90.1–2007 efficiency level effective in 2010, but 66.7 percent have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level effective in 2020.

Again, ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 77 percent for small, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2010. This is lower than the 78.2 percent average thermal efficiency of minimally-compliant equipment on the market. DOE could not identify any small, gas-fired, steam, natural draft equipment currently in the I=B=R directory with a thermal efficiency value less than 77.6 percent. DOE observed that the minimum thermal efficiency level effective March 2, 2010, in ASHRAE Standard 90.1–2007 appears to be lower than the average thermal efficiencies of boilers that minimally comply with EPCA's combustion energy efficiency standards. DOE believes that the potential consequence of setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment would be equipment with lower combustion efficiencies than EPCA permits, meaning that the current minimum required efficiency would be decreased, thereby resulting in backsliding. Therefore, DOE has tentatively decided not to adopt the stage-1 ASHRAE Standard 90.1–2007 efficiency level for small, gas-fired, steam, natural draft commercial packaged boilers.

Because ASHRAE set a two-tier requirement for this product type, DOE then analyzed the second efficiency level set by the amended ASHRAE standard. ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 79 percent for small, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2020. This thermal efficiency value is higher than the 78.2 percent average thermal efficiency of minimally-compliant equipment on the market. Based on DOE's review of the I=B=R directory and the analysis of minimally-compliant commercial packaged boilers, DOE has tentatively concluded that the second thermal efficiency level in ASHRAE Standard 90.1–2007 would, on average, result in an increase in efficiency for small, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2020. Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

4. Small, Oil-Fired, Hot Water Commercial Packaged Boilers

A small, oil-fired, hot water commercial packaged boiler has a fuel input at or above 300 and less than or equal to 2,500 kBtu/h, is fueled by oil, and supplies hot water for space heating. Small, oil-fired, hot water commercial packaged boilers fall under the oil-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 83.0 percent. (42 U.S.C. 6313(a)(4)(D); 10 CFR 431.87(b)) This equipment class accounts for 6.9 percent of the models listed in the January 2008 I=B=R directory.

Among all of the small, oil-fired, hot water commercial packaged boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 2.3 percent lower than the average combustion efficiency. DOE also identified the small, oil-fired, hot water commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (i.e., with a combustion efficiency between 83.0 and 84.0 percent). The average thermal efficiency of minimally-compliant equipment is approximately 80.7 percent. The thermal efficiency of the least-efficient model is 79.2 percent, which corresponds to a combustion efficiency of 83.2 percent. The thermal efficiency of the most-efficient model is 92.9 percent, which corresponds to a combustion efficiency of 93.3 percent. Of the all the models in the 2008 I=B=R directory for this equipment type, 29.3 percent of them have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 82 percent for small, oil-fired, hot water commercial packaged boilers. This value is higher than the 80.7 percent average thermal efficiency of minimally-compliant equipment on the market. Based on DOE's review of the I=B=R directory and the analysis conducted on the minimally-compliant commercial packaged boilers, DOE has tentatively concluded that the thermal efficiency level in ASHRAE Standard 90.1–2007 would, on average, result in an increase in the efficiency for small, oil-fired, hot water commercial packaged boilers. Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

5. Small, Oil-Fired, Steam, Commercial Packaged Boilers

A small, oil-fired, steam commercial packaged boiler has a fuel input at or above 300 and less than or equal to 2,500 kBtu/h, is fueled by oil, and supplies steam for space heating and other applications. Small, oil-fired, steam commercial packaged boilers fall under the oil-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 83.0 percent. (42 U.S.C. 6313(a)(4)(D); 10 CFR 431.87(b)) These boilers account for 11.6 percent of the total models listed in the January 2008 I=B=R directory.

Among all of the small, oil-fired, steam commercial packaged boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 2.5 percent lower than the average combustion efficiency. DOE also identified the small, oil-fired, steam commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (i.e., with a combustion efficiency between 83.0 and 84.0 percent). The average thermal efficiency of minimally-compliant equipment is 81.6 percent. The thermal efficiency of the least-efficient model is 79.7 percent, which corresponds to a combustion efficiency of 83.3 percent. The thermal efficiency of the most-efficient models is 85.6 percent, which corresponds to a range of combustion efficiencies from 86.2 to 87.5 percent. Of all the models in the 2008 I=B=R directory for this equipment class, 17.5 percent of them have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 81 percent for small, oil-fired, steam commercial packaged boilers. This value is lower than the 81.6 percent average thermal efficiency of minimally-compliant equipment on the market. DOE identified a single minimally-compliant small, oil-fired steam commercial packaged boiler with a thermal efficiency of 79.7 percent, which is lower than the efficiency level in ASHRAE Standard 90.1–2007. DOE observed that the minimum thermal efficiency level in ASHRAE Standard 90.1–2007 for this equipment class appears to be lower than the average thermal efficiencies of boilers that minimally comply with EPCA's combustion energy efficiency standards. The consequence of setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment would be manufacturing of equipment with lower combustion efficiencies than EPCA permits, meaning that the current minimum required efficiency would be decreased in violation of EPCA's ''anti-backsliding'' provision (see Section I.A). (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) Therefore, DOE has tentatively decided not to adopt the ASHRAE Standard 90.1–2007 efficiency level for small, oil-fired, steam commercial packaged boilers, so no further analysis is required.

6. Large, Gas-Fired, Hot Water Commercial Packaged Boilers

A large, gas-fired, hot water commercial packaged boiler has a fuel input of at or above 2,500 kBtu/h, is fueled by either natural gas or propane, and supplies hot water for space heating. Large, gas-fired, hot water commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)). These boilers account for 4.0 percent of the total models listed in the January 2008 I=B=R directory.

The existing Federal energy conservation standard for this equipment class corresponds to the energy conservation standard in EPCA, which specifies a minimum combustion efficiency no less than 80 percent. (42 U.S.C. 6313(4)(C)) ASHRAE Standard 90.1–2007 specifies a more stringent combustion efficiency of no less than 82 percent. Among all of the large, gas-fired, hot water commercial packaged boilers in the I=B=R directory, DOE calculate the average combustion efficiency to be 83.6 percent, which is 1.6 percent higher than the minimum combustion efficiency levels specified by ASHRAE Standard 90.1–2007. However, the combustion efficiency of approximately 17 percent of this equipment is lower than the minimum efficiency level specified by Standard 90.1–2007. For models with a combustion efficiency lower than 82 percent, ASHRAE Standard 90.1 represents a potential for energy savings. Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

7. Large, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers

A large, gas-fired, steam all except natural draft commercial packaged boiler has a fuel input of at or above 2,500 kBtu/h, is fueled by either natural gas or propane, supplies steam for space heating and other applications, and uses a type of draft system other than natural draft (i.e., a forced or induced draft system). Large, gas-fired, steam, all except natural draft commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) These boilers account for 12.1 percent of the models listed in the January 2008 I=B=R directory.

Among all of the large, gas-fired steam, all except natural draft commercial packaged boilers in the I=B=R directory, DOE calculated the average thermal efficiency to be 1.5 percent lower than the average combustion efficiency. DOE also identified those boilers with combustion efficiencies that minimally comply with

EPCA (*i.e.*, with a combustion efficiency between 80.0 and 81.0 percent). The average thermal efficiency of minimally-compliant boilers is 78.5 percent. The thermal efficiency of the least efficient model is 75.4 percent, which corresponds to a combustion efficiency of 80.5 percent. The thermal efficiency of the most efficient model is 83.2 percent, which corresponds to a combustion efficiency of 83.4 percent. Of all the models in the 2008 I=B=R directory for this equipment class, 49.1 percent of them have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 79 percent for large, gas-fired, steam, all except natural draft commercial packaged boilers. This value is higher than the 78.5 percent average thermal efficiency of minimally-compliant equipment on the market. Based on DOE's review of the I=B=R directory and the analysis conducted on the minimally-compliant commercial packaged boilers, DOE has tentatively concluded that the thermal efficiency level in ASHRAE Standard 90.1–2007 would, on average, result in an increase in efficiency for minimally-compliant boilers. Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

8. Large, Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers

A large, gas-fired, steam, natural draft commercial packaged boiler has a fuel input of at or above 2,500 kBtu/h, is fueled by either natural gas or propane, supplies steam for space heating and other applications, and uses a natural draft system (*i.e.*, does not have mechanical draft equipment). Large, gas-fired, steam, natural draft commercial packaged boilers fall under the gas-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 80.0 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) These boilers account for 4.4 percent of the models listed in the January 2008 I=B=R directory.

ASHRAE set a two-tier efficiency level for this equipment, which includes two different thermal efficiency levels and two effective dates. The first efficiency level specified in ASHRAE Standard 90.1–2007 for this equipment class includes a 77 percent thermal efficiency effective March 2, 2010. The second efficiency level specified by ASHRAE Standard 90.1–2007 for this equipment class includes a 79 percent thermal efficiency effective March 2, 2020.

Among all of the large, gas-fired, steam, natural draft commercial packaged boilers, DOE calculated the average thermal efficiency to be 1.8 percent lower than the average combustion efficiency. DOE also identified the large, gas-fired, steam, natural draft commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (*i.e.*, with a combustion efficiency between 80.0 and 81.0 percent). The average thermal efficiency of minimally-compliant boilers is approximately 79.1 percent. The thermal efficiency of the least efficient models is 78.6 percent, which corresponds to a combustion efficiency of 82.1 percent. The thermal efficiency of the most efficient models is 81.1 percent, which corresponds to a range of combustion efficiencies from 82.2 to 82.4 percent. In examining all the models in the 2008 I=B=R directory for this equipment class, DOE found that none has a thermal efficiency level below the ASHRAE Standard 90.1–2007 efficiency level effective in 2010, but 15.5 percent have thermal efficiency levels below the ASHRAE Standard 90.1–2007 efficiency level effective in 2020.

Again, ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 77 percent for large, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2010. This value is lower than the 79.1 percent average thermal efficiency of minimally-compliant equipment on the market. DOE could not identify any large, gas-fired, steam, natural draft equipment in the I=B=R directory with a thermal efficiency value less than 78.6 percent. The minimum thermal efficiency level effective March 2, 2010, in ASHRAE Standard 90.1–2007 appears to be lower than any of the thermal efficiencies of boilers that are currently available on the market. DOE believes that the potential consequence of setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment would be equipment having lower combustion efficiencies than EPCA permits, meaning that the current minimum required efficiency would be decreased, thereby resulting in backsliding. Therefore, DOE has tentatively decided not to adopt the stage-1 ASHRAE Standard 90.1–2007 efficiency level for this equipment class.

Because ASHRAE set a two-tiered requirement for this product type, DOE then analyzed the second efficiency level set by the amended ASHRAE standard. ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 79 percent for large, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2020. This value is slightly lower than the 79.1 percent average thermal efficiency of minimally compliant equipment on the market. However, 15.5 percent of the equipment DOE analyzed has a thermal efficiency lower than the efficiency level in ASHRAE Standard 90.1–2007. Based on DOE's review of the I=B=R directory and the analysis conducted on minimally-compliant commercial packaged boilers, DOE has tentatively concluded that the thermal efficiency level specified by ASHRAE Standard 90.1–2007 effective March 2, 2020 would result in an increase in efficiency for small, gas-fired, steam, natural draft commercial packaged boilers manufactured on or after March 2, 2020 (compared to the EPCA combustion efficiency level). Therefore, DOE performed a potential energy-savings analysis on this equipment class under section III.

9. Large, Oil-Fired, Hot Water Commercial Packaged Boilers

A large, oil-fired, hot water commercial packaged boiler has a fuel input at or above 2,500 kBtu/h, is fueled by oil, and supplies hot water for space heating. Large, oil-fired, hot water commercial packaged boilers fall under the oil-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 83.0 percent. (42 U.S.C. 6313(a)(4)(D); 10 CFR 431.87(b)) These boilers account for 1.9 percent of the models listed in the January 2008 I=B=R directory.

ASHRAE Standard 90.1–2007 adopted a more stringent combustion efficiency of 84 percent. Among all of the large, oil-fired, hot water commercial packaged boilers, DOE calculated the average combustion efficiency to be approximately 86.5 percent, 2.5 percent higher than the minimum combustion efficiency levels specified by ASHRAE Standard 90.1–2007. The minimum combustion efficiency of all large, oil-fired, hot water equipment on the market is 85.5 percent, which is 1.5 percent higher than the minimum level adopted by ASHRAE Standard 90.1–2007. Based on this, DOE believes there will be no potential energy savings resulting from adopting ASHRAE Standard 90.1–2007 for large, oil-fired, hot water commercial packaged boilers. However, DOE did perform a potential energy-savings analysis in section III, which examined efficiency levels more

stringent than those contained within ASHRAE Standard 90.1–2007.

10. Large, Oil-Fired, Steam Commercial Packaged Boilers

A large, oil-fired, steam commercial packaged boiler has a fuel input at or above 2,500 kBtu/h, is fueled by oil, and supplies steam for space heating and other applications. Large, oil-fired, steam commercial packaged boilers fall under the oil-fired commercial packaged boilers equipment class, whose Federal energy conservation standards, as established by EPCA, are a combustion efficiency of no less than 83.0 percent. (42 U.S.C. 6313(a)(4)(D); 10 CFR 431.87(b)) These boilers account for 15.2 percent of the models listed in the January 2008 I=B=R directory.

Among all of the large, oil-fired, steam commercial packaged boilers, DOE calculated the average thermal efficiency to be 1.5 percent lower than the average combustion efficiency. DOE also identified the large, oil-fired, steam commercial packaged boilers with combustion efficiencies that minimally comply with EPCA (*i.e.*, with a combustion efficiency between 83.0 and 84.0 percent). For the minimally-compliant large, oil-fired, steam commercial packaged boilers, the average thermal efficiency is 82.0 percent. The thermal efficiency of the least efficient model is 81.0 percent, which corresponds to a combustion efficiency of 84.6 percent. The thermal efficiency of the most efficient model is 85.8 percent, which corresponds to a combustion efficiency of 86.0 percent. In examining all the models in the 2008 I=B=R directory for this equipment class, DOE found that none had a thermal efficiency level below the ASHRAE Standard 90.1–2007 efficiency level.

ASHRAE Standard 90.1–2007 specifies a thermal efficiency of 81 percent for large, oil-fired, steam commercial packaged boilers. This value is lower than the 82.0 percent average thermal efficiency of minimally-compliant equipment on the market. DOE could not identify any small, gas-fired, steam, natural draft equipment currently in the I=B=R directory with a thermal efficiency value less than 81.0 percent. The minimum thermal efficiency level in ASHRAE Standard 90.1–2007 appears to be lower than the average thermal efficiencies of boilers that minimally comply with EPCA's combustion energy efficiency standards. DOE believes that the potential consequence of setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment would be equipment having lower combustion efficiencies than EPCA permits, meaning that the current minimum required efficiency would be decreased in violation of EPCA's ''anti-backsliding'' provision (see Section I.A). (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) Therefore, DOE has tentatively decided not to adopt the ASHRAE Standard 90.1–2007 efficiency level for large, oil-fired, steam, commercial packaged boilers, so no further analysis is required.

III. Analysis of Potential Energy Savings

As required under 42 U.S.C. 6313(a)(6)(A), DOE performed an analysis to determine the energy-savings potential of amending Federal minimum energy conservation standard levels to the efficiency levels specified in ASHRAE Standard 90.1–2007, as well as more stringent efficiency levels than those specified in ASHRAE Standard 90.1–2007. As explained above, DOE's energy-savings analysis is limited to types of equipment covered by Federal energy conservation standards for which the amended ASHRAE Standard 90.1–2007 increased the efficiency levels. Based upon the analyses performed in section II, DOE is conducting the energy-savings analysis for eight equipment classes of commercial packaged boilers.

The following discussion provides an overview of the energy-savings analysis conducted for those products, which had increased efficiency levels under ASHRAE Standard 90.1–2007, followed by summary results of that analysis. For each efficiency level analyzed, DOE calculated the potential energy savings to the Nation as the difference between a base case forecast (without amended standards) and the standards case (with amended standards). The national energy savings (NES) refers to cumulative energy savings from 2012 through 2042. In the standards case, equipment that is more efficient gradually replaces less efficient equipment over time. This affects the calculation of the potential energy savings, which are a function of the total number of units in use and their efficiencies. Savings depend on annual shipments and equipment lifetime, including changes in shipments and retirement rates in response to changes in equipment costs due to standards.

DOE calculated the potential energy savings by subtracting energy use under a standards scenario from energy use in a base case scenario. DOE estimated unit energy savings for each equipment class based on data from the 2000 Screening Analysis [16] for various heating equipment and the 2008 I=B=R directory. To estimate the total energy savings for each efficiency level, DOE first calculated the national site energy consumption (*i.e.* , the energy directly consumed by the units of equipment in operation) for each class of commercial packaged boilers for the base case forecast and the standards case forecast. Second, DOE determined the annual site energy savings, consisting of the difference in site energy consumption between the base case and the standards case. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of gas generation (the source energy) using a site-to-source conversion factor. Finally, DOE estimated the source energy savings from 2012 to 2042 to calculate the total potential energy savings for that period. DOE performed these calculations for each efficiency level within a given equipment class of commercial packaged boilers. Details of the energy-savings analysis are presented below.

A. Annual Energy Use

DOE started with the annual energy use calculation methodology presented in the 2000 Screening Analysis for today's estimation of potential energy savings. For commercial packaged boilers, DOE used a modified full-load equivalent operating hours (FLEOH) to calculate the annual energy use as estimated in the 2000 Screening Analysis. FLEOH is the ratio of the total annual thermal energy output (either heating or cooling) provided by the equipment over the course of a year divided by equipment capacity. It is equal to the total number of hours that a piece of equipment would have to run at its rated capacity to provide total thermal energy output equivalent to that provided over the course of a year.

The total annual standby loss is largely a function of the period available for operation (hot standby period). Because this period is an operation issue and not specific to equipment design and climate location, DOE believes the standby loss can be captured in a simplified analysis, as in the 2000 Screening Analysis. For that analysis, DOE adjusted the boiler FLEOHs by calculating a standby loss factor (as described in Appendix A of the 2000 Screening Analysis). DOE determined the national average

[16] U.S. Department of Energy, *Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment* (April 2000). Available at: *http://www.eere.energy.gov/buildings/highperformance/pdfs/screening_analysis_main.pdf.*

FLEOHs to be 952 hours, regardless of boiler input fuel type, input capacity, or output type (*i.e.*, steam or hot water).

The Screening Analysis methodology provides a linear relationship between annual energy consumption and thermal efficiency. DOE used this linear relationship and the FLEOHs to calculate the annual energy use per unit within a given equipment class at a specific efficiency level using the following equation:

$$\text{Annual Energy Use} = \frac{\text{FLEOH}_{\text{2000 Screening Analysis}} \times \text{Output Capacity}_{\text{100\% Efficiency}}}{\eta_{\text{Shipment Weighted Average}}}, \qquad \text{(Eq. 1)}$$

Where:

- The annual energy use is the amount of energy used each year for a given equipment class at a given efficiency level in Btus;
- The $\text{FLEOH}_{\text{2000 Screening Analysis}}$ is the FLEOHs calculated in the 2000 Screening Analysis (i.e., 952.2 hours);
- The $\text{Output Capacity}_{\text{100\% Efficiency}}$ is the total output capacity when the equipment is assumed to be at 100 percent efficiency (*i.e.*, output capacity = input capacity) in Btu/h; and
- $\eta_{\text{Shipment Weighted Average}}$ is the average shipment-weighted efficiency, which is calculated for each standards case within each equipment class.

B. Shipments

DOE obtained data on annual shipments for commercial packaged boilers in 2007 from AHRI, totaling approximately 36,000 units. Then, DOE used the 2008 I=B=R directory to determine the percentage of models within each equipment class. DOE applied this percentage to estimate the number of unit shipments for each equipment class. Table III.1 exhibits the total shipment breakdown by equipment class.

TABLE III.1.—TOTAL SHIPMENTS OF COMMERCIAL PACKAGED BOILERS BY EQUIPMENT CLASS

Equipment class	Percentage of models (%)*	Approximate total shipments (units per year)
Small, Gas-Fired, Hot Water	23.6	8,500
Small, Gas-Fired, Steam, All Except Natural Draft	18.5	6,700
Small, Gas-Fired, Steam, Natural Draft	1.8	650
Small, Oil-Fired, Hot Water	6.9	2,500
Small, Oil-Fired, Steam	11.6	4,200
Large, Gas-Fired, Hot Water	4	1,500
Large, Gas-Fired, Steam, All Except Natural Draft	12.1	4,400
Large, Gas-Fired, Steam, Natural Draft	4.4	1,600
Large, Oil-Fired, Hot Water	1.9	700

* Note that the identified boilers in this table do not add to 100 percent of annual shipments, because large, oil-fired, steam boilers (which constitute 15.2 percent of the market) are not included. Large, oil-fired, steam boilers are not included because the efficiency level in ASHRAE Standard 90.1–2007 would result in backsliding and accordingly cannot be adopted as a national standard.

DOE then reviewed the 2008 I=B=R directory to determine the distribution of efficiency levels for commercially-available models within each equipment class. DOE bundled the efficiency levels into ''efficiency ranges'' and determined the percentage of models within each range. DOE applied the percentages of models within each range to the total unit shipments for a given equipment class to estimate the distribution of shipments within the base case. To determine the percentage of models in each efficiency range, DOE considered models greater than or equal to the lower bound of the efficiency range and models with efficiencies less than the upper bound of the efficiency range. For example, for the thermal efficiency range of 79–80 percent, DOE considered models with thermal efficiency levels from 79.0 to 79.9 to be within this range. In the case of the last efficiency range identified for each equipment class, DOE included those models with efficiency levels equal to the higher bound (*i.e.*, the max-tech efficiency levels). The distribution of efficiencies in the base case for each equipment class can be found in the ASHRAE NODA TSD on DOE's Web site.[17]

For the standards case, DOE assumed shipments at lower efficiencies were most likely to roll up into higher efficiency levels in response to more stringent energy conservation standards. For each efficiency level analyzed within a given equipment class, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (*i.e.*, 2012). Information available to DOE suggests that the efficiencies of equipment in the base case that did not meet the standard level under consideration would roll up to meet the standard level. Available information also suggests that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected. Table III.2 shows an example of the distribution of efficiencies within the base-case and the roll-up scenarios to establish the distribution of efficiencies in the standards cases for small, gas-fired, steam, all except natural draft commercial packaged boilers. For all the tables of the distribution of efficiencies in the base case and standards cases by equipment class, see the ASHRAE NODA TSD.

[17] The ASHRAE NODA TSD is available on the Web page for ASHRAE Products at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

TABLE III.2.—DISTRIBUTION OF EFFICIENCIES IN THE BASE CASE AND STANDARDS CASES FOR SMALL, GAS-FIRED, STEAM, ALL EXCEPT NATURAL DRAFT COMMERCIAL PACKAGED BOILERS

Efficiency Range (E_T)	75.4–77 (percent)	77–79 (percent)	79–80* (percent)	80–81 (percent)	81–82 (percent)	82–83 (percent)	83–83.1 (percent)
Base Case—Current Market	18	33	22	19	4	1	3
Efficiency Level 1—ASHRAE (79% E_T)	.....	.....	73	19	4	1	3
Efficiency Level 2—(80% E_T	.....	.....	.....	92	4	1	3
Efficiency Level 3—(81% E_T)	.....	.....	.....	.....	96	1	3
Efficiency Level 4—(82% E_T)	.....	.....	.....	.....	.....	97	3
Efficiency Level 5—"Max-Tech"—(83.1%) E_T)	.....	.....	.....	.....	.....	.....	100

*The highlighted column indicates the efficiency level specified by ASHRAE Standard 90.1–2007 for this equipment class.

DOE seeks input on its determination of the base-case distribution of efficiencies and its prediction on how amended energy conservation standards affect the distribution of efficiencies in the standards case. DOE identified this as Issue 2 under ''Issues on Which DOE Seeks Comment'' in section IV.B of this NODA.

Using the distribution of efficiencies in the base case and in the standards cases for each equipment class of commercial packaged boilers analyzed in today's NODA, DOE calculated the shipment-weighted average efficiency values. The shipment-weighted average efficiency value represents the average efficiency of the total units shipped at a specified amended standard level. DOE used the weighted average efficiency values in Equation 1 (discussed previously) to calculate the annual energy use of the equipment class at a given efficiency level. For the baseline efficiency level, DOE used the average thermal efficiency value for each equipment class of the models below the efficiency level in ASHRAE Standard 90.1–2007. The shipment-weighted average efficiency values for the base case and the standards cases for each efficiency analyzed within the eight equipment classes is provided in the ASHRAE NODA TSD found on DOE's Web site.

For small, commercial packaged boilers, DOE calculated the annual energy consumption based on three input capacities (*i.e.*, 400 kBtu/h, 800 kBtu/h, and 1500 kBtu/h). DOE then reviewed the 2008 I=B=R directory to determine the distribution of input capacities for commercially-available models within each equipment class. DOE bundled the efficiency levels into ''capacity ranges'' and determined the percentage of models within each range. DOE applied the percentages of models within each range to the total unit shipments for a given equipment class to estimate the distribution of capacities within the base case and higher efficiency levels examined. To determine the percentage of models in each capacity range, DOE considered commercial packaged boilers with an input capacity equal to or greater than 300 kBtu/h and less than 600 kBtu/h to be represented by the energy use of the 400 kBtu/h model. DOE considered commercial packaged boilers with an input capacity equal to or greater than 600 kBtu/h and less than 1150 kBtu/h to be represented by the energy use of the 800 kBtu/h model. DOE considered commercial packaged boilers with an input capacity equal to or greater than 1150 kBtu/h and less than 2500 kBtu/h to be represented by the energy use of the 1500 kBtu/h model.

For large, commercial packaged boilers, DOE calculated the annual energy consumption based on one input capacity (*i.e.*, 3000 kBtu/h). DOE considered commercial packaged boilers with an input capacity equal to or greater than 2500 kBtu/h to be represented by the energy use of the 3000 kBtu/h model. The distribution of input capacities in the base case for each equipment class can be found in the ASHRAE NODA TSD.

DOE seeks input on its determination of the base-case distribution of capacities and its prediction on how amended energy conservation standards would affect the distribution of capacities in the standard case. DOE identified this as Issue 3 under ''Issues on Which DOE Seeks Comment'' in section IV.B of this NODA.

C. Other Analytical Inputs

1. Site-to-Source Conversion

DOE converted the annual site energy savings into the annual amount of energy saved at the source of gas generation (*i.e.*, primary energy), using an average site-to-source conversion factor over the analysis period (calculated from the Energy Information Agency's (EIA's) Annual Energy Outlook 2008 (AEO2008) projections).[18] The site-to-source conversion factor is the multiplicative factor DOE uses for converting site energy consumption (the energy used at the end-use site) into primary or source energy consumption (the energy used at the source before transmission or conversion losses). For the NODA, DOE calculated the average site-to-source conversion factor using the same analysis period (*i.e.*, 2012–2042) as EIA's *AEO2008*. DOE derived the annual conversion factors by dividing the total energy used to produce gas in each forecast year in the United States, as indicated in *AEO2008*, by the total gas delivered for each forecasted year. DOE determined the 30-year average to be 1.097.

2. Effective Date

Generally, covered equipment to which a new or amended energy conservation standard applies must comply with the standard if such equipment is manufactured or imported on or after a specified date.

In today's NODA, DOE is evaluating potential energy savings estimates for commercial packaged boilers at the efficiency levels specified by ASHRAE Standard 90.1–2007 and at more stringent efficiency levels than those in ASHRAE Standard 90.1–2007. If DOE were to propose a rule prescribing energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA states that any such standards shall become effective on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard (*i.e.*, ASHRAE Standard 90.1–2007) (42 U.S.C. 6313(a)(6)(D)). DOE has applied this two-year implementation period to determine the effective date of any energy conservation standard equal to the efficiency levels specified by ASHRAE Standard 90.1–2007 prescribed by this rulemaking. Thus, if DOE decides to adopt the levels in ASHRAE Standard 90.1–2007 (*i.e.* , ones where efficiency levels were set in two stages), the rule

[18] U.S. Department of Energy. Energy Information Administration, Annual Energy Outlook 2008 with Projections to 2030 (June 2008). Available at *http://www.eia.doe.gov/oiaf/aeo/index.html.*

would apply to products manufactured on or after 2012 or 2022, respectively, which is two years from the effective date specified in ASHRAE Standard 90.1–2007 since the effective date in ASHRAE Standard 90.1–2007 is January 1, 2010 for certain other equipment classes of commercial packaged boilers or January 1, 2020 for certain equipment classes of commercial packaged boilers.

If DOE were to propose a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA states that any such standards ''shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the **Federal Register**'' (42 U.S.C. 6313(a)(6)(D)). DOE has applied this four-year implementation period to determine the effective date of any energy conservation standard higher than the efficiency levels specified by ASHRAE Standard 90.1–2007 that might be prescribed in a future rulemaking. Thus, for products which DOE might adopt a level more stringent than the ASHRAE efficiency levels, the rule would apply to products manufactured on or after July 2013, which is four years from the date of publication of the final rule since DOE expects to issue a final rule for this proceeding around July 2009.

For each equipment class for which DOE developed a potential energy savings analysis, Table III.3 exhibits the approximate effective dates of an amended energy conservation standard.

TABLE III.3.—APPROXIMATE EFFECTIVE DATE OF AN AMENDED ENERGY CONSERVATION STANDARD FOR EACH EQUIPMENT CLASS OF COMMERCIAL PACKAGED BOILERS

Equipment class	Approximate effective date for adopting the efficiency levels in ASHRAE Standard 90.1–2007	Approximate effective date for adopting more stringent efficiency levels than those in ASHRAE Standard 90.1–2007
Small, Gas-Fired, Hot Water Commercial Packaged Boilers	01/2012	07/2013
Small, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers	01/2012	07/2013
Small, Gas-Fired, Steam, Natural Draft Commercial Packaged Boilers	01/2022	07/2013
Small, Oil-Fired, Hot Water Commercial Packaged Boilers	01/2012	07/2013
Small, Oil-Fired, Steam Commercial Packaged Boilers	01/2012	07/2013
Large, Gas-Fired, Hot Water Commercial Packaged Boilers	01/2012	07/2013
Large, Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers	01/2022	07/2013
Large, Gas-Fired, Steam, Natural Draft Commercial Packaged Boilers	01/2012	07/2013
Large, Oil-Fired, Hot Water Commercial Packaged Boilers	01/2012	07/2013

3. Analysis Period and Lifetime

DOE used an analysis period of 30 years spanning 2012 to 2042 for examining both the ASHRAE efficiency levels and the more stringent efficiency levels that were considered in the analysis. This period coincides with the lifetime of a commercial packaged boiler, which DOE found to be 30 years in the 2000 Screening Analysis.

DOE assumed that the installed base of each equipment class in 2012 will not increase from its current levels (*i.e.*, total unit shipments remain constant). For commercial packaged boilers (which have long equipment lifetimes), the installed base likely will not change significantly by 2012, an assumption based on historical values for shipments of commercial packaged boilers.

DOE calculated the total energy savings from 2012 to 2042 based on the assumption that any new technology or technology switching prompted by an amended energy conservation standard will diffuse into the stock linearly over the lifetime of the equipment (*i.e.*, over the 30-year analysis period). Although manufacturers are required to comply with a new standard level as soon as it becomes effective, the products that are actually being used by consumers are not replaced with more-efficient equipment until the old equipment is retired. Therefore, DOE is assuming that older equipment is retired and replaced with newer, more-efficient equipment linearly over the analysis period. DOE calculated the total actual energy savings over the lifetime of the equipment by calculating the total energy consumption for each equipment class at each efficiency level over the analysis period using the following equation:

$$EnergyUse_{2012-2042} = \sum_{year}^{2042} Shipments_{year} * AEC_{year} * (Minimum\,[Life,\ (2042 - year)\,]\,) \qquad \text{(Eq. 2)}$$

The annual energy savings represents the total energy saved each year by replacing the entire installed stock of the equipment at base-case efficiencies with equipment consuming energy at the amended energy conservation standard level (*i.e.*, at standards case efficiencies).

Special consideration was given to small and large, gas-fired, steam, natural draft, commercial packaged boilers, because for both of these products, ASHRAE Standard 90.1–2007 specifies two tiers of efficiency levels, with one level that goes into effect in the year 2010, and another, more stringent efficiency level that becomes effective in the year 2020.[19] DOE has tentatively decided not to adopt the efficiency levels effective in 2010 because they appear to be less stringent than the

[19] EPCA states if DOE adopts amended national energy conservation standards for commercial packaged boilers based on that ASHRAE Standard 90.1 efficiency levels, such standards shall become effective two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(D)) Thus, for purposes of DOE regulations, the effective dates of the 2010 and 2020 ASHRAE Standard 90.1–2007 efficiency levels would be 2012 and 2022, respectively.

current Federal energy conservation standards, and analyzed only the ASHRAE Standard 90.1–2007 efficiency levels effective 2020 for both of these equipment classes. Because the second tier of efficiency standards becomes effective ten years after the beginning of the analysis period, DOE adjusted the total energy savings to account for the delay in effective date. For the first ten years of the analysis period (*i.e.*, 2012 to 2022), there would be no energy savings for these two equipment classes. Over the remaining 20 years of the analysis period, DOE assumed more-efficient equipment required by an amended energy conservation standard would diffuse into the existing stock of equipment linearly over the analysis period as older equipment is retired.

Because the lifetime of commercial packaged boilers was assumed to be 30 years and because only 20 years is remaining in the analysis period when these latter ASHRAE Standard 90.1–2007 efficiency levels would go into effect for these two equipment classes, only two-thirds of commercial packaged boiler equipment stock would be at efficiency levels at or above those specified by ASHRAE Standard 90.1–2007 at the end of the analysis period. The remaining one-third of the stock would still be at the same efficiency as it was before the standard levels were amended. The remaining one-third of the stock would then be retired over the following 10 years (after the analysis period has ended) and replaced with equipment that meets or exceeds the efficiency levels specified in ASHRAE Standard 90.1–2007.

For efficiency levels more stringent than those efficiency levels specified by ASHRAE Standard 90.1–2007, DOE used a delayed implementation date, which coincides with the effective dates that are required consistent with EPCA. For the first two years of the analysis period (*i.e.*, 2012 to 2014), there would be no energy savings if DOE were to adopt more stringent efficiency levels than those specified in ASHRAE Standard 90.1–2007 when the ASHRAE Standard 90.1–2007 efficiency levels are effective in 2010. For the first 12 years of the analysis period (*i.e.*, 2012 to 2024), there would be no energy savings if DOE were to adopt the efficiency levels specified in ASHRAE Standard 90.1–2007 when the ASHRAE Standard 90.1–2007 efficiency levels are effective in 2020. Over the remaining 28 years of the analysis period for those efficiency levels where ASHRAE specifies an effective date of 2010, DOE assumed more-efficient equipment required by an amended energy conservation standard would diffuse into the existing stock of equipment linearly over the analysis period (commencing in 2012) as older equipment is retired.

D. Estimates of Potential Energy Savings

DOE estimated the potential primary energy savings in trillions of Btus for each efficiency level considered within each equipment class of commercial packaged boilers. DOE did not analyze the first set of ASHRAE Standard 90.1–2007 efficiency levels with 2010 effective dates for large, gas-fired, steam, natural draft commercial packaged boilers and for small, gas-fired, steam, natural draft commercial packaged boilers. Table III.4—Table III.12 show the potential energy savings for commercial packaged boilers resulting from the analyses conducted as part of this NODA.

TABLE III.4.—POTENTIAL ENERGY SAVINGS FOR SMALL, GAS-FIRED, HOT WATER COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—80% E_T	13.3
Level 2—82% E_T	18.7
Level 3—84% E_T	64.0
Level 4—86% E_T	127.5
Level 5—92% E_T	320.0
Level 6—"Max-Tech"—98.1% E_T	483.3

*DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.5.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR SMALL, GAS-FIRED, STEAM, ALL EXCEPT NATURAL DRAFT COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—79% E_T	63.1
Level 2—80% E_T	24.7
Level 3—81% E_T	65.1
Level 4—82% E_T	106.2
Level 5—"Max-Tech"—83.1% E_T	150.9

*DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.6.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR SMALL, GAS-FIRED, STEAM, NATURAL DRAFT COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—79% E_T	1.7
Level 2—"Max-Tech"—80.4% E_T	6.6

*DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.7.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR SMALL, OIL-FIRED, HOT WATER COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—82% E_T	7.9
Level 2—84% E_T	12.5
Level 3—86% E_T	28.1
Level 4—88% E_T	47.4
Level 5—"Max-Tech"—92.9% E_T	84.7

*DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.8.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR SMALL, OIL-FIRED, STEAM COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—81% E_T	5.5
Level 2—82% E_T	10.3
Level 3—83% E_T	29.9
Level 4—84% E_T	53.5
Level 5—"Max-Tech"—85.6% E_T	67.5

*DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.9.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE, GAS-FIRED, HOT WATER COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—82% E_C	5.5
Level 2—83% E_C	13.1
Level 3—84% E_C	34.5
Level 4—85% E_C	57.1
Level 5—"Max-Tech"—96.9% E_C	321.4

* DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.10.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE, GAS-FIRED, STEAM, ALL EXCEPT NATURAL DRAFT COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—79% E_T	53.4
Level 2—80% E_T	47.0
Level 3—81% E_T	118.6
Level 4—82% E_T	190.4
Level 5—"Max-Tech"—83.2% E_T	276.5

* DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.11.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE, GAS-FIRED, STEAM, NATURAL DRAFT COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—ASHRAE—79% E_T	1.8
Level 2—80% E_T	18.5
Level 3—"Max-Tech"—81.1% E_T	34.2

* DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

TABLE III.12.—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE, OIL-FIRED, HOT WATER COMMERCIAL PACKAGED BOILERS

Efficiency level	Primary energy savings estimate* (trillion Btu)
Level 1—86% E_C	**0
Level 2—87% E_C	4.8
Level 3—"Max-Tech"—88.5% E_C	23.3

* DOE calculated the potential energy savings from making the efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007, using the efficiency levels in Standard 90.1–2007 as the baseline.

** The current market average efficiency is 86% combustion efficiency, which is higher than the efficiency level specified by ASHRAE Standard 90.1–2007. Thus, the potential energy savings from adopting the ASHRAE Standard 90.1–2007 efficiency level for large, oil-fired, hot water commercial packaged boilers is zero.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this NODA no later than August 15, 2008. Please submit comments, data, and information electronically to the following e-mail address: *ASHRAE_90.1_rulemaking@ee.doe.gov*. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number, EERE–2008–BT–STD–0013, and/or RIN 1904–AB83, and whenever possible should carry the electronic signature of the author. Alternatively, comments may be submitted to the address provided at the beginning of this notice in the **ADDRESSES** section (which generally provides instructions for submission of comments in both electronic and hard-copy forms). No telefacsimiles (faxes) will be accepted.

Pursuant to 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 shall include all the information believed to be confidential, and the other copy of the document shall have 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.

Factors that DOE considers when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comment

DOE is interested in receiving comments on all aspects of this NODA. DOE especially invites comments or data to improve DOE's analysis, including data or information that will respond to the following questions or concerns:

1. DOE surveyed the AHRI Directory of Certified Product Performance and did not identify any water-cooled and evaporatively-cooled commercial packaged air conditioners on the market with a cooling capacity at or above 240,000 Btu/h. Therefore, DOE did not perform a potential energy-savings analysis on this equipment type. DOE seeks comments from interested parties on the market for and energy-savings potential of water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h.

2. DOE seeks input on the base-case distribution of efficiencies and its prediction of how amended energy conservation standards would affect the distribution of efficiencies in the standards case. DOE used the distribution of models in the 2008 I=B=R directory as the basis for analysis.

3. DOE seeks input on the base-case distribution of capacities and its prediction of how amended energy conservation standards will affect the distribution of capacities in the standards case. DOE used the distribution of models in the 2008 I=B=R directory as the basis for analysis.

Issued in Washington, DC, on July 9, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–16256 Filed 7–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–156779–06]

RIN 1545–BG27

Determining the Amount of Taxes Paid for Purposes of Section 901

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing

SUMMARY: In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The regulations affect taxpayers that claim direct and indirect foreign tax credits. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for December 11, 2008, at 10 a.m. must be received by November 20, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–156779–06), 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–156779–06), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–156779–06). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael I. Gilman, (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) which provide rules relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect individuals and corporations claiming foreign tax credits.

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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In particular, the IRS and Treasury Department continue to study arrangements in which the foreign payments attributable to income of a special purpose vehicle (SPV) do not substantially exceed the foreign taxes that would have been paid by a controlled foreign corporation that owns the SPV in the absence of the arrangement. The IRS and Treasury Department seek additional comments on how to overcome the administrative challenges of determining the amount of foreign taxes that would have been paid but for such arrangement. The IRS and Treasury Department also request comments on whether the regulations should contain additional guidance on the extent to which activities are conducted by an entity's employees or on the treatment of employees of affiliates that are seconded to, or supervised by employees of, the tested entity. Finally, the IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2008, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments by October 14, 2008, and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by November 20, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael I. Gilman, Office of Associate Chief Counsel (International). 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.

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 1.901–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.901–1 Allowance of credit for taxes.

(a) and (b) [The text of proposed § 1.901–2(a) and (b) is the same as the text of § 1.901–1T(a) and (b) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par 3. Section 1.901–2 is amended by revising paragraphs (e)(5)(iii), (e)(5)(iv), and (h)(2) to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iii) and (iv) [The text of proposed § 1.901–2(e)(5)(iii) and (iv) is the same as the text of § 1.901–2T(e)(5)(iii) and (iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) * * *

(2) [The text of proposed § 1.901–2(h)(2) is the same as the text of § 1.901–2T(h)(2) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–16331 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101258–08]

RIN 1545–BH66

Guidance Under Sections 642 and 643 (Income Ordering Rules); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–101258–08) that was published in the **Federal Register** on Wednesday, June 18, 2008 (73 FR 34670) providing guidance under Internal Revenue Code section 642(c) with regard to the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amounts paid to a charitable beneficiary of the trust or estate. The proposed regulations also make conforming amendments to the regulations under section 643(a)(5). The proposed regulations affect estates, charitable lead trusts (CLTs) and other trusts making payments or permanently setting aside amounts for a charitable purpose.

FOR FURTHER INFORMATION CONTACT: Vishal Amin at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 642 and 643 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–101258–08) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–101258–08), which was the subject of FR Doc. E8–13611, is corrected as follows:

1. On page 34671, column 1, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph, line 19, the language ''proposed regulation will amend the'' is corrected to read ''proposed regulations will amend the''.

2. On page 34671, column 2, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph of the column, line 3, the language ''unrelated business tax income and tax-'' is corrected to read ''unrelated business taxable income and tax-''.

3. On page 34671, column 2, in the preamble, under the paragraph heading ''Explanation of Provisions'', first paragraph of the column, line 22, the language ''independent of the income tax'' is corrected to read ''independent of income tax''.

§ 1.642(c)–3 [Corrected]

4. On page 34672, column 1, § 1.642(c)-3, paragraph 2., first entry of the amendatory instructions, the language ''Revising the paragraph heading of paragraph (b) and add a heading to paragraph (b)(1).'' is corrected to read ''Revising the paragraph heading of paragraph (b) and adding a heading to paragraph (b)(1).''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–16178 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120476–07]

RIN 1545–BG71

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The proposed regulations also provide guidance relating to the requirement of a return to accompany payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code and the time for filing that return. These proposed regulations would affect employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 30, 2008, at 10 a.m., must be received by October 13, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120476–07), Internal Revenue Service, room 5203, POB 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–120476–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120476–07). The public hearing will be held in

room 2116, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations as they relate to section 4980E or 4980G, Mireille Khoury at (202) 622–6080; concerning the proposed regulations as they relate to section 4980B or 4980D, Russ Weinheimer at (202) 622–6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:S Washington, DC 20224. Comments on the collection of information should be received by September 15, 2008.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in Q & A–11 in § 4980B–2, Q & A–1 in § 4980D–1, Q & A–1 in § 4980E–1, and Q & A–5 in § 4980G–1. These collections of information result from the requirement to file a return for the payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. The likely respondents are employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

Estimated total annual reporting burden: 2,500 hours.

The estimated annual burden per respondent is 30 minutes.

Estimated number of respondents: 5,000

The estimated frequency of responses per respondent is occasional, less than once per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Code, as amended by Sections 302 and 305 of the Tax Relief and Health Care Act of 2006 (the Act), under paragraph (d) of section 4980G of the Code, as enacted by section 306 of the Act, and under Section 4980E of the Code.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Modernization Act), Public Law 108–173 (117 Stat. 2066, 2003), added section 223 to the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Section 4980G was also added to the Code by the Modernization Act. Section 4980G(a) imposes an excise tax on the failure of an employer to make comparable contributions to the HSAs of its employees for a calendar year. Section 4980G(b) provides that rules and requirements similar to section 4980E (the comparability rules for Archer Medical Savings Accounts (Archer MSAs)) apply for purposes of section 4980G. Section 4980E(b) imposes an excise tax equal to 35% of the aggregate amount contributed by an employer to the Archer MSAs of employees during the calendar year if an employer fails to make comparable contributions to the Archer MSAs of its employees in a calendar year. Therefore, if the employer fails to make comparable contributions to the HSAs of its employees during a calendar year, an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year is imposed on the employer. See sections 4980G(a) and (b) and 4980E(b). See also Notice 2004–2 (2004–2 IRB 269), Q & A–32. On July 31, 2006, final regulations on comparability were published in the **Federal Register,** 72 FR 30501 (2007–26 IRB 1495), TD 9277. In addition, on April 17, 2008, final regulations were published in the **Federal Register,** 73 FR 20794 (2008–20 IRB 975), providing guidance on employer comparable contributions to HSAs in instances where an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. See § 601.601(d)(2).

This document also contains proposed Pension Excise Tax Regulations (26 CFR part 54) under sections 4980B and 4980D of the Code. Under section 4980B of the Code, group health plans maintained by an employer with 20 or more employees must comply with continuation coverage requirements. If a plan does not satisfy these requirements, an excise tax is imposed of $100 per day per affected beneficiary. Final regulations under section 4980B have been published, including provisions concerning the excise tax, but no return filing requirement has previously been imposed. See § 54.4980B–2, Q & A–9 and Q & A–10. Moreover, under chapter 100 of the Code, group health plans must comply with various requirements, including limitations on preexisting condition exclusions, certification of creditable coverage, special enrollments, prohibitions against discrimination based on a health factor, parity in the annual and lifetime dollar limits placed on mental health benefits with those placed on medical/surgical benefits, and minimum hospital lengths of stay in connection with childbirth. If a plan does not satisfy any of these requirements under chapter 100, section 4980D imposes an excise tax of $100 per day per affected individual. Regulations interpreting the substantive requirements of chapter 100 have previously been published, but no regulations have been published concerning the excise tax under section 4980D.

Explanation of Provisions

Special Rule for Contributions to Nonhighly Compensated Employees

New paragraph (d) of section 4980G provides an exception to the comparability rules that allows, but does not require, employers to make larger contributions to the HSAs of nonhighly compensated employees than the employer makes to the HSAs of highly compensated employees. These proposed regulations interpret that requirement. Specifically, the proposed regulations, in § 54.4980G–4, provide that employer contributions to the HSAs of nonhighly compensated employees may be larger than employer contributions to the HSAs of highly compensated employees with comparable coverage during a period. Conversely, employer contributions to the HSAs of highly compensated employees may not exceed employer contributions to the HSAs of nonhighly compensated employees with comparable coverage during a period.

The comparability rules still apply with respect to contributions to the HSAs of all nonhighly compensated employees who are comparable participating employees (eligible individuals who are in the same category of employees with the same category of high deductible health plan (HDHP) coverage) and an employer must make comparable contributions to the HSA of each nonhighly compensated employee who is a comparable participating employee during the calendar year. Similarly, the comparability rules still apply with respect to contributions to the HSAs of all highly compensated employees who are comparable participating employees and an employer must make comparable contributions to the HSA of each highly compensated employee who is a comparable participating employee during the calendar year. Collectively bargained employees are disregarded for purposes of section 4980G, as are HSA contributions made through a cafeteria plan.

For purposes of § 4980G(d), highly compensated employee is defined under section 414(q) and includes any employee who was (1) a five-percent owner at any time during the year or the preceding year; or (2) for the preceding year, (A) had compensation from the employer in excess of $105,000 (for 2008, indexed for inflation) and (B) if elected by the employer, was in the group consisting of the top 20 percent of employees when ranked based on compensation. Nonhighly compensated employees are employees that are not highly compensated employees.

Maximum HSA Contribution Permitted for Employees Who Become Eligible Individuals Mid-Year

Section 305 of the Act provides that individuals who are eligible individuals during the last month of the taxable year (that is, who, in the case of calendar year taxpayers, are eligible individuals on December 1 of the year) may make or have made on their behalf the maximum annual HSA contribution based on their HDHP coverage (self only or family) on that date. A portion of the contribution is included in income and subject to an additional 10 percent tax if the individual fails to remain an eligible individual for 12 months after the last month of the taxable year. See section 223(b)(8). Section 54.4980G–6 of the proposed regulations provides that the employer can contribute up to this maximum contribution on behalf of all employees who are eligible individuals during the last month of the taxable year, including employees who become eligible individuals after January 1st of the calendar year and eligible individuals who are hired after January 1st of the calendar year (both such classes of individuals are hereinafter referred to as ''mid-year eligible individuals''). An employer who makes the maximum calendar year HSA contribution, or who contributes more than a pro-rata amount, on behalf of employees who are mid-year eligible individuals will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

Employers are not required to make these greater than pro-rata contributions and may instead pro-rate contributions based on the number of months that an individual was both employed by the employer and an eligible individual. However, if an employer contributes more than the monthly pro-rata amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must then contribute, on an equal and uniform basis, a greater than pro-rata amount to the HSAs of all comparable participating employees who are mid-year eligible individuals. Likewise, if the employer contributes the maximum annual contribution amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must contribute that same amount to the HSAs of all comparable participating employees who are mid-year eligible individuals.

Special Comparability Rules for Qualified HSA Distributions

Section 302(a) of the Act provides for qualified HSA distributions. See section 106(e) and Notice 2007–22 (2007–10 IRB 670). See § 601.601(d)(2). A *qualified HSA distribution* is a direct distribution of an amount from a health flexible spending arrangement (health FSA) or a health reimbursement arrangement (HRA) to an HSA. The distribution must not exceed the lesser of the balance in the health FSA or HRA on September 21, 2006, or as of the date of the distribution. Section 54.4980G–7 of the proposed regulations would provide that if an employer offers qualified HSA distributions to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, an employer that offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

Requirement of Return and Time for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

The regulations provide that persons who are liable for the excise tax under section 4980B, 4980D, 4980E, or 4980G are required to file a return on Form 8928, ''Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.'' The excise tax under section 4980B, 4980D, 4980E or 4980G must be paid at the time prescribed for filing of the excise tax return (without extensions). With respect to the excise tax under section 4980B or 4980D for employers and third parties such as insurers or third party administrators, the return is due on or before the due date for filing the person's federal income tax return. An extension to file the person's income tax return does not extend the date for filing Form 8928. With respect to the excise tax under section 4980B or 4980D for multiemployer or specified multiple employer health plans, the return is due on or before the last day of the seventh month after the end of the plan year. Finally, with respect to the excise tax under section 4980E or 4980G for noncomparable contributions, the return is due on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made.

Proposed Effective/Applicability Date

The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G are proposed to apply to employer contributions made on or after the first day of the first calendar year after the final regulations are published in the **Federal Register.** However, taxpayers may rely on these regulations for guidance with respect to employer contributions made on or after January 1, 2007, and before the effective date of final regulations.

The sections of these regulations that provide guidance relating to the excise tax under section 4980B, 4980D, 4980E and 4980G are proposed to be effective for calendar years (or plan years, where applicable) beginning after the date the final regulations are published in the **Federal Register.**

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact, as previously noted, the estimated burden associated with the information collection averages thirty minutes per respondent and the estimated number of respondents is 5000. Moreover, the burden imposed under the collection of information in these regulations arises only if there has been a failure that triggers liability for the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing has been scheduled for October 30, 2008, beginning at 10 a.m. in room 2116, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by October 14, 2008, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 13, 2008. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Mireille Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding entries to the table to read in part as follows:

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

Section 54.4980G–6 also issued under 26 U.S.C. 4980G. Section 54.4980G–7 also issued under 26 U.S.C. 4980G. * * *

Par. 2. Section 54.4980B–0 is amended by adding a new Q–11 to § 54.4980B–2 in the list of questions to read as follows:

§ 54.4980B–0 Table of contents.

* * * * *

List of Questions

* * * * *

§ 54.4980B–2 Plans that must comply.

* * * * *

Q–11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

* * * * *

Par. 3. Section 54.4980B–2 is amended by adding a new Q & A–11 to read as follows:

§ 54.4980B–2 Plans that must comply.

* * * * *

Q–11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

A–11: (a) *In general.* Any person who is liable for the excise tax under section 4980B must report this tax by filing Form 8928, ''Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code'', and the tax must be paid at the time prescribed for filing such return (without extensions). The return must include the information required by Form 8928 and the instructions issued with respect to it.

(b) *Due date for filing of return by employers or other persons responsible for benefits under a group health plan.* If the person liable for the excise tax is an employer or other person responsible for providing or administering benefits under a group health plan (such as an insurer or a third party administrator), the return must be filed on or before the due date for filing the person's income tax return and must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the person's taxable year. An extension to file the person's income tax return does not extend the date for filing Form 8928.

(c) *Due date for filing of return by multiemployer plans.* If the person liable for the excise tax is a multiemployer plan, the return must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the plan's plan year.

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A–11, the rules in this Q & A–11 are effective for taxable years beginning after the date the final regulations are published in the **Federal Register**. In the case of a plan mentioned in paragraph (c) of this Q & A–11, the rules in this Q & A–11 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 4. Section 54.4980D–1 is added to read as follows:

§ 54.4980D–1 Requirement of return and time for filing of the excise tax under section 4980D.

Q–1: If a person is liable for the excise tax under section 4980D, what form must the person file and what is the due date for the filing and payment of the excise tax?

A–1: (a) *In general.* Any person who is liable for the excise tax under section 4980D must report this tax by filing Form 8928, ''Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code'', and the tax must be paid at the time prescribed for filing such return (without extensions). The return must include the information required by Form 8928 and the instructions issued with respect to it.

(b) *Due date for filing of return by employers.* If the person liable for the excise tax is an employer, the return must be filed on or before the due date for filing the employer's income tax return and must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the employer's taxable year. An extension to file the employer's income tax return does not extend the date for filing Form 8928.

(c) *Due date for filing of return by multiemployer plans or multiple employer health plans.* If the person liable for the excise tax is a multiemployer plan or a specified multiple employer health plan, the return must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the plan's plan year.

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A–1, the rules in this Q & A–1 are effective for taxable years beginning after the date the final regulations are published in the **Federal Register**. In the case of a plan mentioned in paragraph (c) of this Q & A–1, the rules in this Q & A–1 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 5. Section 54.4980E–1 is added to read as follows:

§ 54.4980E–1 Requirement of return and time for filing of the excise tax under section 4980E.

Q–1: If a person is liable for the excise tax under section 4980E, what form must the person file and what is the due date for the filing and payment of the excise tax?

A–1: (a) *In general.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing Form 8928, ''Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code'', on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. The tax must be paid at the time prescribed for filing such return (without extensions), and the return must include the information required by Form 8928 and the instructions issued with respect to it.

(b) *Effective/applicability date.* The rules in this Q & A–1 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 6. Section 54.4980G–1 is amended by:

1. Revising the last sentence in A–1 and adding a new sentence at the end of paragraph (a) in A–2.

2. Adding a new Q & A–5.

The revisions and addition read as follows:

§ 54.4980G–1 Failure of employer to make comparable health savings account contributions.

* * * * *

A–1: * * * But see Q & A–6 in § 54.4980G–3 for treatment of collectively bargained employees and Q & A–1 in § 54.4980G–6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

A–2: (a) * * * See also § 54.4980G–6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

Q–5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A–5: (a) *In general.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing Form 8928, ''Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code'', on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. The tax must be paid at the time prescribed for filing such return (without extensions), and the return must include the information required by Form 8928 and the instructions issued with respect to it. See Q & A–4 of § 54.4980G–1 for the rules on computation of the excise tax under section 4980G.

(b) *Effective/applicability date.* The rules in this Q & A–5 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 7. Section 54.4980G–3 is amended by:

1. Revising the introductory text in paragraph (a) of A–5.

2. Adding a new sentence at the end of paragraph (c) of A–5 and paragraph (a) of A–9.

The revision and additions read as follows:

§ 54.4980G–3 Failure of employer to make comparable health savings account contributions.

* * * * *

A–5: (a) *Categories.* The categories of employees for comparability testing are as follows (but see Q & A–6 of this section for the treatment of collectively bargained employees and Q & A–1 of § 54.4980G–6 for a special rule for contributions made to the HSAs of nonhighly compensated employees)—

* * * * *

(c) * * * But see § 54.4980G–6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A–9: (a) * * * See § 54.4980G–6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

Par. 8. Section 54.4980G–4 is amended by:

1. Adding a new sentence at the end of paragraph (a) of A–1.

2. Adding paragraphs (h) and (i) to A–2.

The additions read as follows:

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

A–1: (a) * * * But see Q & A–1 of § 54.4980G–6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A–2: * * *

* * * * *

(h) *Maximum contribution permitted for all employees who are eligible individuals during the last month of the taxable year.* An employer may contribute up to the maximum annual contribution amount for the calendar year (based on the employees' HDHP coverage) to the HSAs of all employees who are eligible individuals during the last month of the taxable year, including employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1st of the calendar year. For example, such contribution may be made on behalf of an eligible individual who is hired after January 1st or an employee who becomes an eligible individual after January 1st. Employers are not required to provide more than a pro-rata contribution based on the number of months that an individual was an eligible individual and employed by the employer during the year. However, if an employer contributes more than a pro-rata amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute that same amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A–1 in § 54.4980G–1) who are hired or become eligible individuals after January 1st of the calendar year. Likewise, if an employer contributes the maximum annual contribution amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute the maximum annual contribution amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A–1 in § 54.4980G–1) who are hired or become eligible individuals after January 1st of the calendar year. An employer who makes the maximum calendar year contribution or more than a pro-rata contribution to the HSAs of employees who become eligible individuals after the first day of the calendar year or eligible individuals who are hired after the first day of the calendar year will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

(i) *Examples.* The following examples illustrate the rules in paragraph (h) in this Q & A–2. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example 1. On January 1, 2009, Employer Q contributes $1,000 for the calendar year to the HSAs of employees who are eligible individuals with family HDHP coverage. In mid-March of the same year, Employer Q hires Employee A, an eligible individual with family HDHP coverage. On April 1, 2009, Employer Q contributes $1,000 to the HSA of Employee A. In September of the same year, Employee B becomes an eligible individual with family HDHP coverage. On October 1, 2009, Employer G contributes $1,000 to the HSA of Employee B. Employer Q does not make any other contributions for the 2009 calendar year. Employer Q's contributions satisfy the comparability rules.

Example 2. For the 2009 calendar year, Employer R only has two employees, Employee C and Employee D. Employee C, an eligible individual with family HDHP coverage, works for Employer R for the entire calendar year. Employee D, an eligible individual with family HDHP coverage works for Employer R from July 1st through December 31st. Employer R contributes $1,200 for the calendar year to the HSA of Employee C and $600 to the HSA of Employee D. Employer R does not make any other contributions for the 2009 calendar year. Employer R's contributions satisfy the comparability rules.

* * * * *

Par. 9. Section 54.4980G–6 is added to read as follows:

§ 54.4980G–6 Special rule for contributions made to the HSAs of nonhighly compensated employees.

Q–1: May an employer make larger contributions to the HSAs of nonhighly compensated employees than to the HSAs of highly compensated employees?

A–1: Yes. Employers may make larger HSA contributions for nonhighly compensated employees who are comparable participating employees than for highly compensated employees who are comparable participating employees. See Q & A–1 in § 54.4980G–1 for the definition of comparable participating employee. For purposes of this section, highly compensated employee is defined under section 414(q). Nonhighly compensated employees are employees that are not highly compensated employees. The comparability rules continue to apply with respect to contributions to the HSAs of all nonhighly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each nonhighly compensated employee who is a comparable participating employee.

Q–2: May an employer make larger contributions to the HSAs of highly compensated employees than to the HSAs of nonhighly compensated employees?

A–2: (a) *In general.* No. Employer contributions to HSAs for highly compensated employees who are comparable participating employees may not be larger than employer HSA contributions for nonhighly compensated employees who are comparable participating employees. The comparability rules continue to apply with respect to contributions to the HSAs of all highly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each highly compensated comparable participating employee. See Q & A–1 in § 54.4980G–1 for the definition of comparable participating employee.

(b) *Examples.* The following examples illustrate the rules in Q & A–1 and Q & A–2 of this section. No contributions are made through a section 125 cafeteria plan and none of the employees in the following examples are covered by a collective bargaining agreement. All of the employees in the following examples have the same HDHP deductible for the same category of coverage.

Example 1. In 2009, Employer A contributes $1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A makes no contribution to the HSA of any full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A's HSA contributions for calendar year 2009 satisfy the comparability rules.

Example 2. In 2009, Employer B contributes $2,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B also contributes $1,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B's HSA contributions for calendar year 2009 satisfy the comparability rules.

Example 3. In 2009, Employer C contributes $1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C contributes $2,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C's HSA contributions for calendar year 2009 do not satisfy the comparability rules.

Example 4. In 2009, Employer D contributes $1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer D also contributes $1,000 to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. In addition, the employer contributes an additional $500 to the HSA of each nonhighly compensated employee who participates in a wellness program. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer D's HSA contributions for calendar year 2009 do not satisfy the comparability rules.

Example 5. In 2009, Employer E contributes $1,000 for the calendar year to the HSA of each full-time non-management nonhighly compensated employee who is an eligible individual with family HDHP coverage. Employer E also contributes $500 for the calendar year to the HSA of each full-time management nonhighly compensated employee who is an eligible individual with family HDHP coverage. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer E's HSA contributions for calendar year 2009 do not satisfy the comparability rules.

Q–3: May an employer make larger HSA contributions for employees with self plus two HDHP coverage than employees with self plus one HDHP coverage even if the employees with self plus two are all highly compensated employees and the employees with self plus one are all nonhighly compensated employees?

A–3: (a) Yes. Q & A–1 in § 54.4980G–4 provides that an employer's contribution with respect to the self plus two category of HDHP coverage may not be less than the contribution with respect to the self plus one category and the contribution with respect to the self plus three or more category may not be less than the contribution with respect to the self plus two category. Therefore, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus two category of HDHP coverage than to self plus one coverage, even if the employees with self plus two coverage are all highly compensated employees and the employees with self plus one coverage are all nonhighly compensated employees. Likewise, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus three category of HDHP coverage than to self plus two coverage, even if the employees with self plus three coverage are all highly compensated employees and the employees with self plus two coverage are all nonhighly compensated employees.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–3. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example. In 2009, Employer F contributes $1,000 for the calendar year to the HSA of each full-time employee who is an eligible individual with self plus one HDHP coverage. Employer F contributes $1,500 for the calendar year to the HSA of each employee who is an eligible individual with self plus two HDHP coverage. The deductible for both the self plus one HDHP and the self plus two HDHP is $2,000. Employee A, an eligible individual, is a nonhighly compensated employee with self plus one coverage. Employee B, an eligible individual, is a highly compensated employee with self plus two coverage. For the 2009 calendar year, Employer F contributes $1,000 for to Employee A's HSA and $1,500 to Employee B's HSA. Employer F's HSA contributions satisfy the comparability rules.

Par. 10. Section 54.4980G–7 is added to read as follows:

§ 54.4980G–7 Special comparability rules for qualified HSA distributions contributed to HSAs on or after December 20, 2006 and before January 1, 2012.

Q–1: How do the comparability rules of section 4980G apply to qualified HSA distributions under section 106(e)(2)?

A–1: The comparability rules of section 4980G do not apply to amounts contributed to employee HSAs through qualified HSA distributions. However, in order to satisfy the comparability rules, if an employer offers qualified HSA distributions, as defined in section 106(e)(2), to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, if an employer offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP, the employer is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–16175 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121698–08]

RIN 1545–BI00

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–121698–08) that was published in the **Federal Register** on Wednesday, July 2, 2008 (73 FR 37910) providing updated guidance affecting tax return preparers regarding the disclosure of a taxpayer's social security number to a tax return preparer located outside of the United States in order to provide an exception allowing such disclosure with the taxpayer's consent in limited circumstances.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Mack, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 7216 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking by cross-reference to temporary regulations (REG–121698–08) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking by cross-reference to temporary regulations (REG–121698–08), which was the subject of FR Doc. E8–15047, is corrected as follows:

On page 37911, column 2, in the preamble, under the paragraph heading ''Comments and Public Hearing'', line 4 of the last paragraph, the language ''must submit written comments on'' is

corrected to read ''must submit written comments by''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–16304 Filed 7–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0155]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to decrease the size of Romer Shoal Anchorage Ground in Lower New York Bay. This action is necessary to facilitate safe navigation in the area and to provide safe and secure anchorages for vessels transiting this area. This proposal is intended to increase the safety for life and property for the Port of New York, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of commercial vessels and commerce.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0155 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov*.

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LCDR Michael McBrady, Chief, Waterways Management Division, 718–354–2353. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0155), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0155) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Waterways Management Division, Coast Guard Sector New York, 212 Coast Guard Drive, room 210, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Sandy Hook Pilots Association through the New York/New Jersey Harbor Safety Committee has requested the Coast Guard reduce the size of federal anchorage ground 27(ii) near Romer Shoal located between Ambrose and Swash Channels. The proposed eastern boundary of anchorage ground 27(ii) would move the eastern boundary about 2,860 yards to the west (inshore). The revised anchorage ground would be bound by the following points: 40°28′28.9″ N, 073°56′46.0″ W; thence to 40°29′48.1″ N, 073°56′46.0″ W; thence to 40°31′23.2″ N, 074°00′51.0″ W; thence to 40°32′11.5″ N, 074°01′39.3″ W; thence to 40°32′12.4″ N, 074°02′04.6″ W; thence to 40°31′28.5″ N, 074°02′05.0″ W; thence to 40°30′14.2″ N, 074°00′05.0″ W; thence to the point of origin (NAD 83).

Discussion of Proposed Rule

The Sandy Hook Pilots have observed foreign flag vessels, inbound via the New York Traffic Separation Scheme (TSS), proceeding through the Precautionary Area and the charted pilot area, sometimes at unsafe speeds of up to 18 knots to anchor in the eastern portion of this anchorage ground. The anchorage ground with charted water depths of between 39–63 feet, has obstructions which have the potential to create a grounding situation to certain types of vessels attempting to

anchor there. The Sandy Hook Pilots report that the majority of these foreign flag vessel masters lack the local knowledge required to move to this anchorage without pilot assist and language barriers make it difficult for the pilots to communicate the potential danger to their vessel. As stated, these ships are proceeding at greater speeds for longer periods of time since they are not embarking a pilot enroute this anchorage ground. This also creates hazardous conditions with other vessels slowing down to embark and disembark pilots in the adjacent offshore pilot area. Additionally, during periods of low visibility the presence of an anchored ship in this rarely used section of the anchorage may cause tight passing conditions between tugs and their tows and larger recreational vessels entering or departing the port. Moving the eastern boundary of this anchorage ground to the west will reduce vessel congestion in the area and enhance transit safety for vessels into and out of the Port of NY/NJ.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that the proposed change conforms to the changing needs of commercial vessels and increasing commercial vessel traffic within the Port of NY/NJ.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the charted Pilot Area to anchor in the eastern end of anchorage ground 27(ii). This revised anchorage ground would not have a significant economic impact on a substantial number of small entities for the following reason: These vessels would still be able to anchor in the northeastern quadrant of the Precautionary Area as they have been for several years now while awaiting orders, dock space, or inshore anchorage for conducting lightering, bunkering, crew transfer, or other necessary vessel operations. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Michael McBrady at 718–354–2353. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.155, by revising paragraph (f)(2)(ii) to read as follows:

§ 110.155 Port of New York.

* * * * *

(f) * * *

(2) * * *

(ii) Romer Shoal. All waters bound by the following points: 40°28′28.9″ N, 073°56′46.0″ W; thence to 40°29′48.1″ N, 073°56′46.0″ W; thence to 40°31′23.2″ N, 074°00′ 51.0″ W; thence to 40°32′11.5″ N, 074°01′39.3″ W; thence to 40°32′12.4″ N, 074°02′04.6″ W; thence to 40°31′28.5″ N, 074°02′05.0″ W; thence to 40°30′14.2″ N, 074°00′05.0″ W; thence to the point of origin (NAD 83).

* * * * *

Dated: May 7, 2008.

Timothy V. Skuby,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. E8–16171 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014–AA22

Emergency Transportable Housing Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. This notice announces the dates and times of upcoming committee conference calls.

DATES: The conference calls are scheduled for July 24 and August 21, 2008. Both calls will begin at 10 a.m. and will conclude no later than 1 p.m. (Eastern time).

ADDRESSES: Individuals can participate in the conference calls by dialing a teleconference number which will be posted on the Access Board's Web site at *http://www.access-board.gov/eth/.*

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *mazz@access-board.gov.*

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing (72 FR 48251; August 23, 2007).

The committee will hold conference calls on July 24 and August 21, 2008 (a call that was previously scheduled for July 28 has been cancelled) to discuss a variety of outstanding issues yet to be resolved. Information about the committee, and the agenda, instructions (including information on requesting captioning), and dial in telephone numbers for the conference calls are available at *http://www.access-board.gov/eth/.* The conference calls are open to the public and interested persons can dial in and communicate their views during a public comment period scheduled during each conference call. Participants may call in from any location of their choosing.

To enable individuals who are Deaf or hard-of-hearing to participate, Federal Relay Conference Captioning (RCC) services will be provided on request. Requests for RCC should be made no later than three (3) business days in advance of each scheduled teleconference by contacting Marsha Mazz. Persons wishing to provide handouts or other written information to the committee are requested to provide them in an electronic format to Marsha Mazz preferably by e-mail so that alternate formats such as large print can be distributed to committee members.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E8–16312 Filed 7–15–08; 8:45 am]

BILLING CODE 8150–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 255

[Docket No. RM 2000–7]

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations to clarify the scope and application of the Section 115 compulsory license to make and distribute phonorecords of a musical

work by means of digital phonorecord deliveries.

DATES: Written comments must be received in the Office of the General Counsel of the Copyright Office no later than August 15, 2008. Reply comments must be received in the Office of the General Counsel of the Copyright Office no later than September 2, 2008.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room 401, 101 Independence Avenue, SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, General Counsel, or Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202)–707–8366.

SUPPLEMENTARY INFORMATION:

Background.

The copyright laws of the United States grant certain rights to copyright owners for the protection of their works of authorship. Among these rights are the right to make, and to authorize others to make, a reproduction of the copyrighted work, and the right to distribute, and to authorize others to distribute, the copyrighted work. 17 U.S.C. 106(1) and (3). Both the reproduction right and the distribution right granted to a copyright owner inhere in all works of authorship and are, for the most part, exclusive rights. However, for nondramatic musical works, the exclusivity of the reproduction right and distribution right are limited by the nonexclusive compulsory license set forth in Section 115 of Title 17, which allows third parties to make and distribute phonorecords of nondramatic musical works.

The Section 115 compulsory license can be invoked once a nondramatic musical work embodied in a phonorecord has been distributed ''to the public in the United States under the authority of the copyright owner.'' 17 U.S.C. 115(a)(1). Unless and until such an act occurs, the copyright owner's reproduction and distribution rights remain exclusive, and the compulsory license does not apply. Once distribution has occurred, the license permits anyone to make and distribute phonorecords of the musical work provided that they comply with all of the terms and conditions of Section 115. It is important to note that the compulsory license only permits the making and distribution of phonorecords of a musical work, and does not permit the use of a sound recording created by someone else. The compulsory licensee must either assemble his own musicians, singers, recording engineers and equipment to make a cover recording or obtain permission to use a preexisting sound recording before making a phonorecord that includes that sound recording. One who obtains permission to use another's sound recording is eligible to use the compulsory license to clear the rights for use of the musical work embodied in the sound recording.

The compulsory license was the first statutory license in U.S. copyright law, having its origin in the 1909 Copyright Act. It operated successfully for many years, and it continued under the 1976 Copyright Act with some modifications. However, in 1995, Congress passed the Digital Performance Right in Sound Recordings Act (''DPSRA''), Pub. L. No. 104–39, 109 Stat. 336, which amended Sections 114 and 115 of Title 17 to take into account technological changes which enable digital transmissions of sound recordings on a large scale. With respect to Section 115, the DPSRA expanded the scope of the compulsory license to include the right to distribute or authorize the distribution of a phonorecord by means of a ''digital phonorecord delivery.'' 17 U.S.C. 115(c)(3)(A).

For purposes of Section 115, a ''digital phonorecord delivery,'' is defined as ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real–time, non–interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.'' 17 U.S.C. 115(d).

As a result of the DPSRA, the Section 115 license applies to two kinds of disseminations of nondramatic musical works: 1) the traditional making and distribution of physical phonorecords; and 2) digital phonorecord deliveries, commonly referred to as DPDs. However, in including DPDs within Section 115, Congress directed that rates and terms for DPDs should distinguish between ''(i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general.'' 17 U.S.C. 115(c)(3)(D). This language has led to endless debates as to what constitutes an ''incidental DPD.''

As required by the DPSRA, in 1996 the Library of Congress initiated a Copyright Arbitration Royalty Panel (''CARP'') proceeding to adjust the royalty rates for DPDs and incidental DPDs. 61 FR 37213 (July 17, 1996). The parties to the proceeding avoided arbitration by reaching a settlement as to new rates for DPDs and the time periods for conducting future rate adjustment proceedings for DPDs. The parties could not reach agreement, however, on new rates for incidental DPDs because the representatives of both copyright owners and users of the Section 115 license could not agree as to what was, and what was not, an incidental DPD. The resolution of this impasse was to defer establishing rates for incidental DPDs until the next scheduled rate adjustment proceeding.

The Librarian of Congress accepted the settlement agreement of the parties and adopted new regulations setting rates for DPDs and a timeframe for future rate adjustments. 64 FR 6221 (February 9, 1999). Section 255.5 of 37 CFR specified royalty rates for DPDs ''in general,'' while § 255.6 of the rules expressly deferred consideration of incidental DPDs. The time table for future rate adjustment proceedings for general DPDs and incidental DPDs was set forth in Section 255.7 and provided

for proceedings at two–year intervals upon the filing of a petition by an interested party. The year 2000 was a window year for the filing of such petitions.

In accordance with this timetable, the Copyright Office received on November 22, 2000, a pleading from the Recording Industry Association of America (''RIAA'') styled as a ''Petition for Rulemaking and to Convene a Copyright Arbitration Royalty Panel If Necessary.'' The RIAA petition asked the Office to conduct a rulemaking proceeding to address the issue of what types of digital transmissions of prerecorded music are general DPDs, and what types are incidental DPDs. Specifically, RIAA asked the Office to determine the status of two methods used to deliver music digitally, On–Demand Streams and Limited Downloads, and whether and to what extent they come within the scope of the Section 115 license.

For purposes of the proposed rulemaking, RIAA characterized an ''On–Demand Stream'' as a ''on–demand, real–time transmission using streaming technology such as Real Audio, which permits users to listen to the music they want when they want and as it is transmitted to them,'' and a ''Limited Download'' as an ''on–demand transmission of a time–limited or other use–limited (i.e. non–permanent) download to a local storage device (e.g. the hard drive of the user's computer), using technology that causes the downloaded file to be available for listening only either during a limited time (*e.g.* a time certain or a time tied to ongoing subscription payments) or for a limited number of times.'' RIAA petition at 1.

RIAA steadfastly maintained that a rulemaking is necessary to determine the status of these two types of digital music delivery systems because the record companies and music publishers could not agree how to categorize them for purposes of the Section 115 license. RIAA stated its opinion that On–Demand Streams are more in the nature of an incidental DPD, for which there are currently no established royalty rates, whereas music publishers have taken the position that On–Demand Streams include the making of a general DPD for which they are entitled to full compensation. Consequently, RIAA asked the Office to determine whether On–Demand Streams are incidental DPDs and, if they were, to convene a CARP to set rates for these incidental DPDs.

With respect to Limited Downloads, RIAA suggested that they may be either (1) incidental DPDs or (2) more in the nature of record rentals, leases or lendings. The latter approach is based upon the provision in the Section 115 license which authorizes the maker of a phonorecord to rent, lease or lend it, provided that a royalty fee is paid.

Specifically, the statute states:

> A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work ... to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.

17 U.S.C. 115(c)(4). RIAA noted that the Copyright Office has yet to adopt such regulations.

This provision was added to Section 115 in the Record Rental Amendment of 1984, Pub. L. No. 98–450, which also amended the first sale doctrine codified in section 109 to restrict the owner of a phonorecord from disposing of the phonorecord for direct or indirect commercial advantage by rental, lease or lending without authorization of the sound recording copyright owner. The legislative history of the amendment to Section 115 states that the amendment was made to emphasize ''that the right of authorization accorded to copyright owners of recorded musical works under revised section 109(a) is subject to compulsory licensing under revised Section 115'' and that it gives the copyright owner of a nondramatic musical work recorded under a compulsory license the right to a share of the royalties for rental received by a compulsory licensee (a record company) in proportion equal to that received for distribution under Section 115(c)(2). H.R. Rep. No. 98–987, at 5 (1984).

The Office was to issue appropriate regulations relating to the royalty for rental, lease or lending ''as and when necessary to carry out the purposes'' of Section 115(c)(4). S. Rep. No. 98–162, at 9 (1983). Thus far, there has been no need to issue such regulations because the Office has been unaware of any activity by sound recording copyright owners engaging in or authorizing the rental, lease or lending of phonorecords.

In summary, RIAA asserted that it is unclear whether the Section 115 license permits all of the reproductions necessary to make On–Demand Streams or Limited Downloads, and if it does, what royalty rates apply. Consequently, RIAA petitioned the Office to determine: 1) whether On–Demand Streams are incidental DPDs covered by the license; 2) whether the license includes the right to make server copies or other copies necessary to transmit On–Demand Streams and Limited Downloads; and 3) the royalty rate applicable to On–Demand Streams (if they are covered by the license) and Limited Downloads.

Prior to publication of a notice of inquiry, the Office received unsolicited comments from Napster, Inc. (''Napster''), Digital Music Associates, Inc. (''DiMA''); and MP3.com, Inc. (''MP3'') in response to the RIAA petition. In its comments, Napster opposed the RIAA petition and urged the Copyright Office to defer resolution of the issues to Congress, which it contended is the appropriate forum for resolving the types of questions raised by the petition. On the other hand, MP3 supported the RIAA petition and urged the Office to conduct a rulemaking proceeding to determine whether copies made in the course of On–Demand Streams are incidental DPDs, and whether the copies made that are necessary to stream musical works are covered by the Section 115 license. In the event the Office concluded that the disputed reproductions are covered, it also asked the Library to convene a CARP to ''determine the appropriate rate or rates (if any)'' for incidental DPDs.

Like RIAA and MP3, DiMA was especially concerned with the status of copies of musical works made in the course of streaming. In particular, DiMA noted that the status of temporary RAM buffer copies created in a user's personal computer during audio streaming was raised at the November 29, 2000, Copyright Office/National Telecommunications and Information Administration hearing on the Section 104 study mandated by the Digital Millennium Copyright Act of 1998 (''DMCA'') and urged that consideration of the same issue in a rulemaking proceeding be done in such a way as not to prejudice the outcome of that study. Thus, DiMA indicated that either the issue should be resolved in the Section 104 study, or that the Office should conduct a separate rulemaking proceeding devoted solely to the issue.

DiMA suggested, however, that the complexity of the issue counsels for legislative action rather than agency interpretation of the existing statute.

Although a number of parties urged the Office not to take up the questions, the Copyright Office published a Notice of Inquiry on March 9, 2001, 66 FR 14099, to gather information on the issues raised in the petition. The Notice asked for comments from interested parties on the interpretation and application of the Section 115 compulsory license to certain digital music services, namely, Limited Downloads and On–Demand Streams.

In response to the March 9, 2001, Notice of Inquiry, the Copyright Office received eight comments and ten reply comments. On December 14, 2001, the Office published a follow–up notice seeking comments on the March 9, 2001, Notice of Inquiry in light of an agreement negotiated by RIAA, National Music Publishers Association (''NMPA'') and Harry Fox Agency (''HFA'') concerning the interpretation and application of Section 115 to On–Demand Streams and Limited Downloads. Eight comments were submitted in response to that notice. Some of the comments are discussed below.

Subsequently, Congress passed the Copyright Royalty and Distribution Reform Act of 2003. This Act altered the administrative structure for determining rates and terms for various compulsory licenses in Title 17. It established the Copyright Royalty Judges, who assumed authority for determining rates and terms for the statutory licenses, including the Section 115 license. *See* 17 U.S.C. chapter 8.

Additional legislative activity took place with respect to reform of the Section 115 license, and for several years the Office's rulemaking activities were placed on the back burner as prospects for legislative reform, which could more comprehensively and effectively address the issues, were explored. On March 11, 2004, the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary held a hearing on ''Section 115 of the Copyright Act: In Need of an Update.'' Shortly after that hearing, the chairman of the subcommittee asked the Register of Copyrights to meet with the interested parties to explore ways in which Section 115 could be modernized by means of legislation that would address, among other things, the issues raised in this rulemaking. The Register's discussions with the parties made limited progress, and legislative options were again explored at a hearing of the subcommittee on June 21, 2005. The Subcommittee on Intellectual Property of the Senate Judiciary Committee also conducted a hearing on July 12, 2005. Following those hearings, interested parties continued to discuss legislative reform, leading to the introduction of the proposed Section 115 Reform Act (''SIRA''), H.R. 5553, in the 109th Congress, and a further hearing in the House subcommittee on May 16, 2006.

SIRA would have amended Section 115 to make clear that the compulsory license for DPDs covers ''the making and distribution of general and incidental digital phonorecord deliveries in the form of full downloads, limited downloads, interactive streams, and any other form constituting a digital phonorecord delivery or hybrid offering'' and that it covers ''all reproduction and distribution rights necessary to engage in'' those activities. H.R. 5553, Section 2. It also would have granted a royalty–free license ''for the making of server and incidental reproductions to facilitate noninteractive streaming.'' *Id.* Although SIRA was approved by the House Subcommittee on Courts, the Internet and Intellectual Property, the 109th Congress adjourned without further action on the bill. Since that time, there has been no further legislative action with respect to Section 115.

Early in the current Congress, the House subcommittee once again explored reform of Section 115 at a March 22, 2007, hearing. However, no legislation has been introduced and no visible progress has been made on reform of the section in the 16 months since that hearing.

Because of the lack of progress on legislative reform, the Office once again directed its attention to the possibility of regulatory reform a year ago. On June 15, 2007, the Copyright Office conducted a public roundtable to refresh the record in order to ascertain the scope of the Section 115 license in relation to certain digital music services. The roundtable participants expressed their analyses of the legal implication of current business models and offered insight regarding the technology employed in today's marketplace. Over 20 representatives of organizations and companies representing copyright owners, songwriters, record companies, online music services and others participated in the roundtable. Their views will be discussed below.

Purpose of this proceeding

Having considered the views expressed at the June 15, 2007, roundtable as well as the previous record in this rulemaking proceeding, and mindful of the attempts to develop legislation that would reform Section 115, the Office now proposes to amend its regulations in a way that would enable digital music services to utilize the compulsory license to clear all reproduction and distribution rights in musical works that might be necessary in order to engage in activities such as the making of full downloads, Limited Downloads, On–Demand streams and non–interactive streams.[1] As discussed below, certain parties (including, for example, some digital music services) disputed whether it is necessary to obtain a license for the reproduction or distribution rights in order to engage in some of these activities, while other parties (such as music publishers) contended that it is necessary to clear the reproduction and distribution rights in order to engage in any of these activities lawfully.[2]

The proposed regulatory changes take no position with respect to whether and when it is necessary to obtain a license to cover the reproduction or distribution of a musical work in order to engage in activities such as streaming. However, the amendments would make the use of the statutory license available to a music service that wishes to engage in such activity without fear of incurring liability for infringement of the reproduction or distribution rights. Nor would the proposed regulations preclude licensees from arguing to the Copyright Royalty Judges that the royalty fees for certain of the licensed activities should be nominal or even free. Copyright owners presumably would argue for a substantial royalty. The Copyright Royalty Judges have the authority, based on a review of the record and consideration of the objectives set forth in 17 U.S.C. 801(b)(1), to conclude that the reasonable royalty fee for certain reproductions included within the license would be a rate of zero or, on the other hand, that all reproductions and

[1] The Office notes that the right to make and distribute a DPD does not include the exclusive rights to make and distribute the sound recording itself. These rights are held by the copyright owner of the sound recording and must be cleared through a separate transaction. *See* 17 U.S.C. 115(c)(3)(H). Certain transmission services, which operate under a Section 114(f) license to perform publically the sound recording, may operate under a separate statutory license to reproduce these sound recordings. *See* Section 112(e). However, a the right to distribute a sound recording is not included in the Section 112(e) license.

[2] The position of the music publishers with respect to non-interactive streaming is somewhat ambiguous. Music publishers supported the provision in SIRA which would have offered a royalty–free compulsory license for the reproduction and distribution rights implicated in non-interactive streaming.

distributions of phonorecords included within the license should be subject to the same royalty fee.

More specifically, the proposed regulations would allow the aforementioned services to employ the Section 115 license to cover all musical works embodied in phonorecords made and distributed to the public for private use including those phonorecords made on the end–users' RAM or hard drive, on transmission service's servers, and all intermediate reproductions on the networks through which transmission occurs.

In reaching this tentative interpretation, the Office has considered the parties' various interpretations of Section 115 which have evolved, as has ours, over the course of this proceeding. Moreover, the Office notes that both the continued legal uncertainty associated with operating music services in the current marketplace and the need to establish royalty rates for the statutory license highlight the need to resolve the outstanding questions concerning which reproductions of phonorecords made during the course of a stream falls within the scope of the statutory license and which, if any, do not. Such uncertainty has contributed to the current crisis in the music industry, due to the difficulty of obtaining licenses for all the rights required in order to offer various online music services in an environment in which it is not always apparent which rights must be cleared and how one can obtain them. While reasonable minds can differ on how to interpret Section 115 with respect to these reproductions, the Office proposes an approach which would support the making of all phonorecords made during the course of a transmission without regard to whether that transmission also involves the delivery of a public performance. With the publication of today's notice, the Office seeks public comment on its proposed interpretation.

Regulatory Authority

As a preliminary matter, the Office requested comments on whether the questions raised in this proceeding could be addressed in an administrative rulemaking. While most of the commenters did not challenge the Office's rulemaking authority in this proceeding, NMPA and Songwriter's Guild of America (''SGA'') did suggest that the Office may be without authority to consider which phonorecords made during a digital transmission could be covered under a Section 115 license.

NMPA and SGA argued that the Office has no authority to conduct a rulemaking to formulate a rule that would identify the general characteristics of an incidental DPD that distinguishes it from a general DPD. Moreover, NMPA contended that the Office has no authority to determine what types of activities, e.g., on–demand streams, constitute a DPD. It maintained that such determinations are so complex that they cannot be fixed by regulation and that such questions are best addressed by Congress through legislative changes or by the courts. NMPA also contended that rapid changes in technology would counsel against using a rulemaking proceeding to resolve these issues. The Consumer Electronics Association and Clear Channel Communications, Inc. (''CEA/Clear Channel'') supported NMPA's position with respect to the Office's authority to conduct this rulemaking and maintained that clarification of the law must come from Congress. *See also* Napster Reply Comment (arguing that Congress should balance the specific concerns of the interested parties and enact a legal regime that addresses their concerns).

Other commenters, such as DiMA and RIAA, expressed support for the rulemaking process for the purpose of deciding which activities are covered under the Section 115 license in order to clarify those activities for which rates must be set. But RIAA wanted the rulemaking to accomplish considerably more than just clarifying whether certain activities fall within the scope of the license and asked the Office to adopt rules governing records of use, notice requirements, and rentals, lease and lendings. The Office is likely to address at least some of these issues in a separate proceeding, but not in the current one.

The Office agrees that ideally, the resolution of the issues addressed herein should be made by Congress, and for that reason the Office has deferred moving forward in this rulemaking for several years. However, it seems unlikely that Congress will resolve these issues in the foreseeable future, yet the Office believes resolution is crucial in order for the music industry to survive in the 21st Century. The Copyright Office initiated this proceeding under its authority to establish regulations for the administration of its functions and duties under title 17. 17 U.S.C. 702. The Office exercises its authority under section 702 when it is necessary ''to interpret the statute in accordance with Congress' intentions and framework and, where Congress is silent, to provide reasonable and permissible interpretations of the statute.'' Cable Compulsory License; Definition of Cable System, 57 FR 3284, 3292 (January 29, 1992); *see also* Satellite Carrier Compulsory License; Definition of Unserved Household, 63 FR 3685, 3686 (January 26, 1998) (invoking section 702 authority to determine whether a local over–the–air broadcast signal may be retransmitted into the local market area under the provisions of the section 119 statutory license). Our authority to act is supported by *Satellite Broadcasting and Communications Ass'n of Am. v. Oman*, 17 F.3d 344 (11th Cir. 1994) (''SBCA''), and *Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am., Inc.*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, 487 U.S. 1235 (1988) (''Cablevision''), where the Eleventh Circuit and the D.C. Circuit expressly acknowledged the Office's authority to provide reasonable interpretations of the cable statutory license. *See* SBCA, 17 F.3d at 347 (''The Copyright Office is a federal agency with authority to promulgate rules concerning the meaning and application of section 111''); *Cablevision,* 836 F.2d at 608–09 (same).

Section 115 gives the Register authority to administer the compulsory license insofar as the Register is to prescribe by regulation requirements for the compulsory licensee's Notice of Intention to Obtain a Compulsory License, 17 U.S.C. 115(b)(1), and to issue regulations establishing requirements for the payment of royalties and governing statements of account submitted by compulsory licensees. 17 U.S.C. 115(c)(5).

Moreover, the issues raised in this rulemaking are issues that will necessarily be resolved in the pending proceeding to determine rates and terms for the Section 115 compulsory license, Docket No. 2006–3 CRB DPRA. It will be the responsibility of the Register of Copyrights to review and, if necessary, correct the final determination of the Copyright Royalty Judges on material questions of substantive law, such as the questions addressed herein. 17 U.S.C. 802(f)(1)(D). *See also* 17 U.S.C. 802(f)(1)(B) (mandatory referral of novel material questions of substantive law to the Register of Copyrights). Because these issues will ultimately be presented to the Register for final administrative determination, it makes sense for the Register to offer guidance on those issues at this point in this ongoing rulemaking proceeding.

The scope of the Section 115 license

As a starting point, the parties offered a number of observations about the scope of the Section 115 license and Congress's intent in amending it to include DPDs. In comments early in the proceeding, some commenters maintained that Congress amended

Section 115 in 1995 merely to adapt the license to a digital distribution process and that the changes made to Section 115 did not expand or alter the reproduction and distribution rights, or blur existing lines between these rights and the copyright owner's exclusive right to perform the musical work. DiMA and others also argued that streaming does not involve a digital download of a phonorecord because the process uses a temporary memory buffer to store packets of data that are not fixed for purposes of copyright law. DiMA also maintained that these temporary copies cannot be fairly characterized as DPDs because these copies are not ''specifically identifiable reproductions,'' as required by the statutory definition of a DPD. DiMA and others maintained that unless the reproduction is specifically recognizable to the transmission service that initiated the transmission, it does not comport with the statutory definition.[3] Finally, as a matter of policy, DiMA asserted that there is no economic justification for requiring payment for these intermediate copies because the copies are made to facilitate a licensed performance and are part of a single economic event. The National Association of Broadcasters (''NAB'') concurred, maintaining that ''it would seem to turn the Section 115 license on its head if non–interactive streams required a license under Section 115, even though the recipient listens only once and does not end up with a reusable copy of the recording.''

Others took a different approach and asked the Office to focus on the purpose of the transmission. Some drew a distinction between subscription services and non–subcription services, arguing that in the case where the user cannot choose the song being played at a given time, and a permanent copy is not made, then the purpose of such a transmission is only to offer a performance. Alternatively, if the delivery of the song is interactive, in that the listener can choose to listen to a specific song at any time, the transmission of the song should be subject to the full mechanical rate because it replaces the need for the listener to buy a hard copy of the work.

The Office recognizes that nearly all of the commenters have expressed some preference to distinguish different types of transmissions such as those made by Download Services, Limited Download Services, On–Demand/Interactive Streaming Services, and Non–interactive Streaming Services. The Office understands that distinctions relating to interactivity are appropriate in the context of the Section 114 license and that such distinctions may be appropriate to raise as a matter of economic value or policy before the CRJs – e.g., in setting rates – or Congress. However, distinctions such as these do not appear to be relevant in determining whether particular reproductions of phonorecords may be covered under the current Section 115 license, except perhaps under the last sentence of Section 115(d) which provides, ''A digital phonorecord delivery does not result from a real–time, non–interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.'' 15 U.S.C. 115(d) (emphasis added).

In the course of this proceeding, from the Notice of Inquiry through to the Office's June 15, 2007, Roundtable discussion, no participant offered any evidence or argument that streaming music services, whether they be real–time non–interactive subscription transmission services or on–demand interactive services, are able to operate in a way in which no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient. It appears that in the course of all stream transmissions buffer reproductions are made on the recipient's device. In addition, in the course of at least some interactive stream transmissions, complete reproductions (as well as buffer reproductions) are made and distributed to the recipient. The Office considers whether these reproductions constitute phonorecords, or DPDs, in this Notice. Regardless of that analysis, the Office notes that they are in fact reproductions, making the last sentence of Section 115(d) (which excludes from the definition of DPDs certain non–interactive transmissions when no reproduction is made in the course of the transmission) inapplicable. Therefore, the Office, at this time, can discern no basis for distinguishing between interactive and non–interactive streams in determining whether a particular transmission does or does not result in a DPD and, therefore, it proposes to define a DPD without reference to the transmission types.

We now offer the following analysis regarding whether and how the basic technical activities of reproducing digital copies during a digital transmission fall within the scope of the Section 115 license for making and distributing phonorecords.

Discussion

At the outset, the Office notes that there is general agreement that all transmission services involve the making of complete reproductions known as ''Server Copies,'' which the Office will refer to as ''Server–end Complete Copies.''[4] The parties generally agree that certain transmission services, including Limited and Full Download Services, involve the making of complete reproductions on the recipient's computer. These services may or may not limit a recipient's use of a work. The Office will refer to these reproductions as ''Recipient–end Complete Copies.'' The parties also generally agree that all digital transmission services involve the making of reproductions known as ''Buffer Copies.''[5] The Office understands that buffer copies are made on both the transmitting service's server and on the recipient's computer. The Office will refer to these reproductions as ''Server–end Buffer Copies'' and ''Recipient–end Buffer Copies.'' The Office notes, however, that recognition of the various types of reproductions made during the course of a digital transmission is only the first step in the analysis.

A. Digital Phonorecord Deliveries, in general.

In considering whether the reproductions made by a transmission service are digital phonorecord deliveries and fit within the scope of the Section 115 license, the Office turns to the definition of a DPD. 17 U.S.C. 115(d). The statute defines a DPD , in relevant part, as:

> ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital

[3] By the time of the Roundtable DiMA accepted an alternative interpretation of the ''specifically identifiable'' requirement. *See* Infra, discussion of *Specifically identifiable.*

[4] While we refer to these reproductions as types of ''copies,'' we acknowledge that parties disagree on the copyright implications of the reproductions, which are analyzed herein.

[5] As discussed in greater detail herein, the Office understands that ''buffer copies'' are composed of packets of data that are deposited in temporary computer data storage, such as RAM, where these packets are assembled to an extent such that, while embodying less than the entire composition of a musical work, they constitute a material object from which sound recordings can be perceived, reproduced or otherwise communicated.

> transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real–time, non–interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.'' 17 U.S.C. 115(d).

In order for each type of reproduction identified above to qualify as a DPD under the statutory criteria, the reproduction must meet all the criteria specified in the definition: (1) it must be delivered, (2) it must be a phonorecord, and (3) it must be specifically identifiable.

(1) *Delivery.* No party put forward any arguments that Server–end Copies are delivered as per the statutory requirement for a DPD. Indeed, the record indicates that Server–end Copies are retained by the transmission service. As such, the Office tentatively concludes that Server–end Complete Copies or Server–end Buffer Copies are not delivered and therefore do not satisfy the first requirement for being a DPD.[6] On the other hand, there is general agreement amongst the commenters that the reproductions created by transmission services on recipients' computers are delivered. Despite the fact that several parties chose not to specifically consider whether buffer copies are delivered, this general agreement regarding delivery of recipient–end copies appears to include both Recipient–end Complete Copies as well as Recipient–end Buffer Copies. As such, the Office proposes that such copies are delivered and therefore satisfy the first requirement for being a DPD.

(2) *Phonorecord.* In considering whether the reproductions made by a transmission service are phonorecords, the Office turns to the definition found in 17 U.S.C. 101. The statute defines phonorecords as: ''material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'phonorecords' includes the material object in which the sounds are first fixed.'' 17 U.S.C. 101. The question though is whether each reproduction made during the course of a digital transmission meets this definition and thus satisfies the second prong of the statutory definition for a DPD.

a. Server–end Complete Reproductions. There is general agreement among the commenters that a complete reproduction of a work created on a transmission service's server satisfies the statutory definition of a phonorecord. It is a material object from which fixed sounds can be perceived. While DiMA puts forward the notion that Server–end Copies used to facilitate licensed public performances should be exempted from liability, its argument was based on economic and policy rationales. Furthermore, DiMA did not offer any legal analysis by which such a copy might, under existing law, be excluded from being considered a phonorecord. As such, the Office tentatively finds that a Server–end Complete Copy is a phonorecord and therefore satisfies the second (but, as noted above, not the first) requirement for being a DPD.

b. Recipient–end Complete Reproductions. Likewise, the parties generally agree that the creation of a complete reproduction of a work on a recipient's computer satisfies the statutory definition of a phonorecord. However, certain parties argued that a complete reproduction created on a recipient's computer which is accessible for a limited time or number of plays should be distinguished as a matter of policy or for purposes of valuation. While policy reasons might exist for distinguishing such a limited download from a permanent reproduction, we can find no basis in the statute for considering a limited download to be something other than a phonorecord. Moreover, the fact that a limited download is a phonorecord does not in any way prevent the Copyright Royalty Judges from valuing it differently and setting a lower rate. As such, the Office proposes that a Recipient–end Complete Copy is a phonorecord and therefore satisfies the second requirement for being a DPD.

c. Buffer Reproductions. The Office recognizes that several commenters dispute any finding that buffer copies made by transmission services on either the Server–end or Recipient–end fall within the statutory definition of a phonorecord. The positions advanced by these parties rely on the notion that buffer copies are not sufficiently fixed, that they are fragmentary, that they are temporary, or that they are de minimis. As previously indicated, in the Office's consideration of these issues, it understands that buffer copies are composed of packets of data that are transmitted from one computer location to another temporary computer data storage, such as RAM, where they are assembled to an extent such that, while embodying less than the entire composition of a musical work, they constitute a material object from which sound recordings can be perceived, reproduced or otherwise communicated and, as such, are phonorecords for purposes of the copyright law.

A finding that buffer copies created by transmission services on computer memory devices are phonorecords is also consistent with the legal analysis set forth in the Office's DMCA Section 104 Report as well as subsequent rulings. The Section 104 Report correctly stated that RAM reproductions of copyrighted works are material objects. While allowing that certain RAM reproductions that exist only for a transitory duration may not exist as ''fixed'' copies, the Section 104 Report specifically pointed out that in general RAM copies are sufficiently fixed and noted that permanence is not required for fixation. Section 104 Report at 110–11. With regard to fixation, the Section 104 Report stated that the dividing line can be drawn between reproductions that exist for a sufficient period of time to be capable of being ''perceived, reproduced, or otherwise communicated'' and those that do not. DMCA Section 104 Report at 107–129 (August 29, 2001). The Report further noted that:

> To determine whether the reproduction right is implicated, the focus is on whether there has been a fixation in a material object, not on the quantity of material that has been so fixed. The reproduction right is not limited to copies of an entire work. Photocopying a page or paragraph out of an encyclopedia implicates the reproduction right and may, in appropriate circumstances, be an infringement. Whether or not a copy of a portion of a work is infringing is a question not of whether the reproduction right is implicated, but of whether the copying is substantial.

Id at 123.

The Office understands that individual RAM reproductions made on a recipient's computer in the course of a transmission may, under various models, comprise small portions of copyrighted works. The Office also understands that NAB and DiMA challenged the extent to which such copies of small portions of works enjoy protection. Under their interpretation, the legislative history of DPSRA indicates that only the transmission and storage of an entire sound recording (and not fragments thereof) constitutes the making of a phonorecord. However,

[6] However, the fact that a server copy is not delivered does not necessarily place it outside the scope of the Section 115 license. *See* Infra discussion of Non–DPD copies under the Section 115 License.

the Office understands that title 17's language and purpose are broad and that portions of musical works should be treated the same as any other type of work. As stated in the Office's Ringtone Decision, Section 115 ''does not expressly exclude 'portions of works' from its scope and we cannot assume that such treatment was intended in the absence of clear statutory language to that effect.'' *In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding*, Docket No. RF 2006–1, at 13 (October 16, 2006).

The Office's consistent findings regarding fixation and coverage of fragments of works support a finding that buffer copies meet the statutory definition of phonorecords. Additionally, even if one were to assume that the individual portions of works created by a transmission service on a recipient's RAM were not protectible, questions regarding the reproduction of a phonorecord would still not be settled. The Section 104 Report specifically addressed the matter, stating that ''Even if each individual copy [the assemblage of several data packets] were to be considered a de minimis portion under the test for substantial similarity, the aggregate effect is the copying of the entire work.'' DMCA Section 104 Report at 133. *See also, Twentieth Century Fox Film Corp. v. Cablevision Systems Corp.*, 478 F. Supp. 2d 607, 621 (2007), (creation of a buffer copy is ''copying'').

The Office has no reason to believe that developments in either technology or the law require us to revisit the above–stated conclusions. As such, Server–end Buffer Copies and Recipient–end Buffer Copies appear to be phonorecords and therefore satisfy the second requirement for being a DPD.

(3) *Specifically identifiable*. The Office recognizes that several parties argued that transmissions made by certain types of services should not be deemed to result in ''specifically identifiable reproductions'' within the meaning of the statutory definition of a DPD. More often than not, commenters' views did not delve into legal analysis of this unique phrase and instead put forward arguments based on economic fairness. In addition, the Office notes that certain commenters' interpretations of the phrase appear to have shifted over time. The Office therefore must determine whether and when a digital transmission results in a ''specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording.''[7]

Several commenters urged the Office to adopt an interpretation of ''specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording'' that would require that a reproduction be identifiable to the transmission service. To support this position, they cited to a passage from the legislative history of the DPSRA, which states ''the phrase 'specifically identifiable reproduction,'as used in the definition, should be understood to mean a reproduction specifically identifiable to the transmission service.'' S. Rep. No. 104–128 at 44. Under this interpretation, DiMA argued that Recipient–end Buffer Copies and *certain* Recipient–end Complete Copies (referred to as ''cache copies'' which are complete copies that exist temporarily on a recipient's computer to enable the recipient to hear the sound recording at substantially the same time as the transmission) are not specifically identifiable to the transmission service and therefore such copies do not satisfy the third requirement for being a DPD.

At this point, it is unclear to the Office under what circumstances a service's transmission may result in a reproduction that is specifically identifiable to the transmission service. The Office, therefore, seeks additional information regarding how the different transmission service models might result in Recipient–end Complete Copies or Recipient–end Buffer Copies that are specifically identifiable to the transmission service.

Of course, identification of the reproduction by the transmission service is not the only option. By the time of the Roundtable discussion DiMA had altered its position and joined other parties in advancing an alternative interpretation of ''specifically identifiable.'' *Id.* at 62–63. The alternative interpretation does not look beyond the language of the statute itself. Instead, it focuses on the language of Section 115(d) and simply requires that a transmission of a sound recording result in a reproduction of a phonorecord that is either specifically identifiable by any transmission recipient or specifically identifiable *for* any transmission recipient.

On the present record, the Office understands that reproductions of phonorecords appear to be ''specifically identifiable'' by both of these avenues. As to the first alternative, for the period of time during which each individual reproduction of a phonorecord exists on the recipient's computer, the Office understands that the specific file data for Recipient–end Complete Copies and Recipient–end Buffer Copies can be identified by the transmission recipient. The Office recognizes that it may be rare for a recipient to actually search out and identify the relevant data, and it may not always be easy to identify it. However, the Office understands that such identification is able to be performed by the transmission recipient. Furthermore, the Office notes that it is not actual identification but the possibility of specifically identifying that satisfies the statutory requirement. The Office also understands that the recipient's computer is necessarily able to specifically identify each individual reproduction of Recipient–end Complete Copies and Recipient–end Buffer Copies *for* the transmission recipient. The Office understands that such identification by the computer for the transmission recipient is a necessary step in the computer actually making the phonorecord perceptible to the transmission recipient. In other words, if a computer could not specifically identify each part of a stream, it would be unable to render the stream into a performance by assembling the parts in the proper order for performance. The statutory definition does not appear to require ''identifiability'' beyond that function.

While the Office understands commenters' desire to look to the legislative history (which states at one point that ''the phrase 'specifically identifiable reproduction,' as used in the definition, should be understood to mean a reproduction specifically identifiable to the transmission service'') for the meaning of a phrase that is so unique in copyright law, the parties advocating that interpretation have made no concrete argument why there is any reason to look beyond the plain text of the statute. Therefore, the Office proposes to follow canons of statutory construction which dictate that ''the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law–making body which passed it, the sole function of the courts is to enforce it according to its terms.'' *Caminetti v. United States*, 242 U.S. 470, 485 (1917). As such, the Office tentatively concludes that Recipient–end Complete Copies and Recipient–end Buffer Copies satisfy the requirement that a transmission of a sound recording must result in a reproduction of a

[7] The Office does not consider whether a server copy is specifically identifiable because, under the Office's analysis the server copy is not delivered and therefore does not fall within the definition of DPD. As a result, we only consider if and when Recipient–end Buffer Copies and Recipient–end Complete Copies are ''specifically identifiable.''

phonorecord that is either ''specifically identifiable *by* any transmission recipient'' or ''specifically identifiable for any transmission recipient'' and therefore such copies satisfy the third requirement *for* being a DPD.

The Office seeks comment on the above–stated analysis and proposals, which lead the Office to conclude that Recipient–end Complete Copies and Recipient–end Buffer Copies satisfy the definition for a DPD. 17 U.S.C. 115(d).

B. Incidental DPDs.

The Office recognizes commenters' views that certain reproductions created by transmission services may be categorized as so–called incidental DPDs. Section 115 requires that rates and terms shall distinguish between general DPDs and incidental DPDs. However, the statute does not offer a definition of incidental DPDs. Indeed, the statute does not specifically refer to incidental DPDs; it simply directs the Copyright Royalty Judges to set rates that ''distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general.'' The lack of a specific definition of incidental DPDs has created a great deal of confusion among those parties with an interest in the Section 115 license. Because these parties have been unable to agree upon what constitutes an incidental DPD, they have been unable to negotiate rates for the making and distribution of these reproductions. Moreover, amidst the disagreement over the meaning of incidental DPDs, the Office notes that the parties seem less interested in defining what constitutes an incidental DPD and more concerned about receiving clarification as to whether specific types of digital transmissions services fall within the scope of the statutory license.

RIAA's analysis began with the proposition that an incidental DPD is nothing more than a subset of DPDs. Along with other parties, RIAA encouraged the Office to interpret the meaning of incidental DPD in a rulemaking. NMPA, on the other hand, contended that it is not possible to define incidental DPDs through a definition of general application and suggested that the Office leave the matter to the industry to resolve these issues through negotiations or a rate setting proceeding. However, other parties, including DiMA, objected to the suggestion that the best approach is to leave the matter in the hands of the industry.

In any event, the parties urging the Office to interpret the meaning of incidental DPD have not offered specific suggestions as to how the Office should define the term. Rather they offered conclusions as to which specific types of digital transmission *services* should be deemed to create reproductions that fall inside or outside the definition of incidental DPD. Support for these conclusions was made on policy or economic grounds. The few arguments that certain types of services do not create incidental DPDs were made largely in terms of whether reproductions satisfy the definition of DPDs in general, a matter which the Office has already addressed herein. Commenters also addressed the purpose of the transmission for purposes of characterizing a reproduction as incidental, drawing a distinction between services whose purpose is distribution and those whose purpose is public performance.

As an initial matter, the Office is inclined to agree with the RIAA's analysis that an incidental DPD is nothing more than a subset of DPDs. However, we can find little reason to accept the invitation to delineate the contours of that subset. Whether a DPD is ''incidental'' or ''general,'' it is subject to the compulsory license. Consequently, the Office questions whether the concept of incidental DPDs as set forth in the statute lends itself to further clarification in a regulation of general application. The Office observes that the legislative history of the DPSRA indicates that Congress recognized the likelihood of several different types of digital transmission systems. The Office also recognizes Congress' indication that certain DPDs may be incidental to the*purpose* of the transmission. S. Rep. No. 104–128 at 39. However, the Office notes that, except for one discrete example of a type of service that would result in an incidental DPD, neither the statute nor the legislative history attempts to offer criteria for determining the purpose of a transmission.[8]

The Office understands that neither the statute, the legislative history, nor the proposals submitted by commenters clearly propose any conclusive methods or criteria for determining the purpose of a transmission. Moreover, the only consequence of a determination that a digital phonorecord delivery is ''incidental'' is that a separate rate must be set for an incidental phonorecord delivery (although, in any event, it is inherent in the ratemaking provisions of Section 115 that several different rates may be set for various kinds of digital phonorecord deliveries). In setting rates, the Copyright Royalty Judges are to distinguish between general and incidental DPDs, and they have the authority to set different rates for different types of DPDs, depending on their analysis of the economics of the service and the other circumstances set forth in section 801(b)(1). The Office therefore proposes that any determination regarding the purpose of a transmission, upon which the determination of when a DPD is an incidental DPD appears to turn, should be made in the context of a factual inquiry before the CRJs, if such a determination proves to be relevant.[9]

C. Non–DPD Copies Under the Section 115 License.

RIAA and others acknowledged that certain copies made by transmission services, such as undelivered Server–end Copies, are not DPDs.[10] Such parties have urged the Office to consider whether these copies are covered by the Section 115 license.

RIAA argued that delivery is not always required in order to operate under the Section 115 license and that delivery merely establishes the point at which copyright liability accrues. Thus, it opined that Section 115 covers all copies of a phonorecord made during a transmission, but that copyright liability attaches only upon the distribution of a DPD. Under such an approach, a service would incur liability only for those copies that are delivered and otherwise meet the requirements for DPDs. No obligation for payment would accrue for undelivered Server Copies. DiMA offered a similar approach in arguing that Server Copies are covered within the license, proposing that Server Copies are similar to professional manufacturing equipment used by vinyl record pressing plants or CD stamping facilities, for which no separate license is required. Other parties also argued that certain non–DPD copies are not

[8] ''For example, if a transmission system was designed to allow transmission recipients to hear sound recordings substantially at the time of transmission, but the sound recording was transmitted in a high–speed burst of data and stored in a computer memory for prompt playback (such storage being technically the making of a phonorecord), and the transmission recipient could not retain the phonorecord for playback on subsequent occasions (or for any other purpose), delivering the phonorecord to the transmission recipient would be incidental to the transmission.'' S. Rep. No. 104–128 at 39.

[9] The Office also observes that nothing in the law prevents the CRJs from setting different rates for various kinds of incidental DPDs, or, for that matter, for various kinds of ''general'' DPDs.

[10] The proposals put forward in this NPRM also conclude that Server–end copies are not DPDs.

infringing. Their argument was not that coverage for non–DPD copies comes from Section 115 but rather that such non–DPDs fall within the ''fair use'' doctrine.[11]

The Office recognizes that the Section 115 license has traditionally provided coverage beyond those phonorecords made and distributed to the public for private use, so long as such phonorecords were used to achieve the primary purpose of making and distributing phonorecords under the Section 115 license. Indeed, when it enacted Section 115 in 1976, Congress stated that it intended the license to cover ''every possible manufacturing or other process capable of reproducing a sound recording in phonorecords''[12] In fact, in the recording industry, the right to make master recordings that are used to make the phonorecords that are actually distributed has always been understood to be included in the Section 115 license. Thus, the Office tentatively concludes that Server–end Copies, as well as all other intermediate copies, used to create DPDs under the Section 115 license, perform an identical function in the world of digital phonorecord deliveries and, for the same reasons, fall within the scope of the license. Moreover, the Office notes that such copies are not distributed and, as a result, they do not entitle the owner to separate royalty payments. 17 U.S.C. 115(c)(1).

Threshold requirements for use of the Section 115 license

Under the above–stated proposals, the reproduction of Recipient–end Buffer Copies and certain Recipient–end Complete Copies created by Download Services, Limited Download Services, On–Demand/Interactive Streaming Services, and Non–interactive Streaming Services would satisfy the definition for DPDs. The question then arises whether these Services satisfy the threshold requirement for the Section 115 license. As expressed in Section 115(a)(1), ''A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery.''

The Office understands that digital phonorecord deliveries are, by the fact of their having been delivered, distributed within the meaning of the copyright law. This view is supported by the legislative history of the DPSRA which states that ''the digital transmission of a sound recording that results in the reproduction by or for the transmission recipient of a phonorecord of that sound recording implicates the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein.'' S. Rep. No. 104–128, at 27.

The Office takes notice that some commenters have asserted that certain DPDs, known as ''locked content'' which may be encrypted, otherwise protected by digital rights management, or degraded so as not to substitute for the sale of a non–degraded recording, should not be considered distributed until the product is ''unlocked.'' The Office points out that under the proposed findings contained herein, all delivered DPDs are considered distributed regardless of such so–called ''locks.''[13] Despite the presence of such technological protections, ''locked content'' appears to satisfy the requirements for being both phonorecords and DPDs. Of course, in a ratemaking proceeding a compelling case might be made that the royalties for such locked content should be significantly lower than for other DPDs or that no royalties shall be due for any DPD unless and until it is ''unlocked.''

Questions have also been raised as to whether reproductions which enable the recipient to hear the sound recording at substantially the same time as the transmission can be said to be for the primary purpose of facilitating private use of a phonorecord. It seems apparent that in the usual case, the recipient of a transmission of a phonorecord by an online service under any of the models discussed herein will be making a private use, even if that use is simply to hear the performance of the phonorecord contemporaneously with the transmission. Similarly, it appears that enabling the recipient to make such a private use is the services' primary purpose in making phonorecords on the recipient's device. Moreover, the Office notes that Congress intended the Section 115 license to cover DPDs ''regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein.'' 17 U.S.C. 115(d).

Rental, Lease or Lending.

In its initial petition, RIAA sought clarification on the question of whether a limited download should be considered to be in the nature of a rental, lease or lending. It has also asked the Office, in the event it determines a limited download to be in the nature of a rental, to clarify the interaction of section 109(b)(1)(A) of the Copyright Act, regarding the ''first sale doctrine,'' with Section 115(c)(4).

The National Association of Recording Merchandisers and Video Software Dealers Association (''NARM/VSDA'') opposed the idea that a limited download could be treated as a rental, lease or lending. They maintained that once a consumer receives a copy of a work, that work becomes the property of the consumer and the consumer cannot be made to pay for the use or possession of one's own property. Moreover, they asserted that a limited download cannot qualify as a rental because the recipient does not return anything at the end of the ''rental period.'' They viewed the transaction as substantially the same as the purchase of a CD in a store, even though the limited download transaction would by its very nature limit the use of the file for a period of time or a specified number of plays. The opposition stemmed from a concern that copyright owners would ultimately choose to limit a consumer's choice to limited downloads only, thereby covertly asserting control over private performances by limiting a consumer's right to control one's own purchases.

In the course of the roundtable discussion, the purpose of which was to refresh the record, the discussion turned to the question of whether a limited download may qualify as a rental, lease or lending. At that time, no participant advanced an argument that Download Services constituted a rental, lease or

[11] That argument can also be made with respect to some DPDs. The Office well understands how the fair use doctrine might operate in this context. See Section 104 Report at 133–141. However, we note that the determination of fair use requires a case–specific analysis. Services that wish to rely on the fair use defense are free to do so, knowing that they may have to litigate the issue and that the outcome of such litigation is not necessarily clear. But whether or not such use is fair does not prevent the inclusion of such activity within the scope of the compulsory license. The Section 115 license can operate as a safe harbor for services that wish to use it without testing the question of whether their use is actually fair. Use of the license need not be deemed an admission that the licensed acts would otherwise be infringing. *A fortiori*, a regulation clarifying that all copies made in the course of or for the purpose of making a DPD are included within the Section 115 compulsory license should not be construed as an indication that all such copies would be infringing but for their inclusion within the scope of the license.

[12] H. Rep. No. 94–1476, at 110. *See also*, The Copyright Act of 1976, Transitional and Supplementary Provisions, Sec. 106 (''...parts of instruments serving to reproduce phonorecords mechanically ... such parts made on or after January 1, 1978, constitute phonorecords.''

[13] The Office understands that there may be other so–called ''locked content'' models which may involve the initial distribution of significant quantities of data to a recipient, yet such data may not satisfy the statutory requirements to be considered a phonorecord until subsequent distribution of the remaining essential data. In such cases, there would be no DPD until all of the required data has been delivered.

lending. This prompted the Register to specifically observe that ''nobody today is supporting that it's [a limited download is] a rental, lease, or lending.'' Marybeth Peters, Register of Copyrights, Section 115 Roundtable Transcript, at 26. No participants at the roundtable, which included representatives from the recording industries and NARM, disputed this conclusion. Thus, the Office sees no reason to accept the invitation to consider limited downloads to be acts of rental, lease or lending under Section 115(c)(4) because, as is explained above, limited downloads easily fall into the definition of DPDs and within the scope of the compulsory license for DPDs. Therefore, the Office does not propose to issue a rule that considers limited downloads to be in the nature of a rental, lease or lending.

Issues outside the scope of this proceeding.

A number of commenters raised a variety of issues that fall outside of the scope of the current proceeding. For example, DiMA has articulated a number of revisions that it would like Congress to adopt, including provisions that would expressly exempt transient copies made during the course of an authorized digital performance of a sound recording and declare that server copies made to facilitate an authorized public performance have no independent economic value, but such matters are beyond the scope of the current proceeding.

During the early stages of this rulemaking, some commenters proposed that the Office address additional issues. The Office considers those issues not addressed herein to be either moot due to the passage of time or peripheral, and does not propose to address them in its final rule.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 255

Compulsory license fees, Phonorecords.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend parts 201 and 255 of 37 CFR, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.18 as follows:

a. By redesignating paragraphs (a)(2) through(a)(6) as (a)(4) through (a)(8); and

b. By adding new paragraphs (a)(2) and (a)(3).

The revisions to § 201.18 read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(2) A person is entitled to serve or file a Notice of Intention and thereby obtain a compulsory license pursuant to 17 U.S.C. 115 only if his primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery.

(3) For the purposes of this section, a ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A reproduction is specifically identifiable if it can be identified by the transmission recipient, or if a device receiving it can identify the reproduction for the transmission recipient, for purposes of rendering a performance of the sound recording. A digital phonorecord delivery includes a phonorecord that is made in the course of the transmission for the purpose of making the digital phonorecord delivery, so long as it is fixed for a sufficient period of time to be capable of being perceived, reproduced, or otherwise communicated. A digital phonorecord delivery also includes phonorecords which embody portions of a musical work so long as those portions are, individually or in the aggregate, sufficient to permit the recipient to render the sound recording which embodies the musical work.

* * * * *

3. Amend § 201.19 as follows:

a. By revising paragraph (a)(1) to add '', including by means of a digital phonorecord delivery.'' after ''of nondramatic musical works''.

b. By redesignating paragraphs (a)(3) through (a)(12) as paragraphs (a)(4) through (a)(13); and

c. By adding a new paragraph (a)(3).

The revisions to § 201.19 read as follows:

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic works.

(a) * * *

(3) For the purposes of this section, a ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A reproduction is specifically identifiable if it can be identified by thetransmission recipient, or if a device receiving it can identify the reproduction for the transmission recipient, for purposes of rendering a performance of the sound recording. A digital phonorecord delivery includes a phonorecord that is made in the course of the transmission for the purpose of making the digital phonorecord delivery, so long as it is fixed for a sufficient period of time to be capable of being perceived, reproduced, or otherwise communicated. A digital phonorecord delivery also includes phonorecords which embody portions of a musical work so long as those portions are, individually or in the aggregate, sufficient to permit the recipient to render the sound recording which embodies the musical work.

* * * * *

PART 255—ADJUSTMENT OF ROYALTY PAYMENTS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

4. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 702.

5. Revise § 255.4 to read as follows:

§ 255.4 Definition of digital phonorecord delivery.

A *''digital phonorecord delivery''* is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A reproduction is specifically identifiable if it can be identified by the transmission recipient, or if a device receiving it can identify the reproduction for the transmission recipient, for purposes of rendering a

performance of the sound recording. A digital phonorecord delivery includes a phonorecord that is made in the course of the transmission for the purpose of making the digital phonorecord delivery, so long as it is fixed for a sufficient period of time to be capable of being perceived, reproduced, or otherwise communicated. A digital phonorecord delivery also includes phonorecords which embody portions of a musical work so long as those portions are, individually or in the aggregate, sufficient to permit the recipient to render the sound recording which embodies the musical work.

Dated: July 10, 2008

Marybeth Peters,

Register of Copyrights

[FR Doc. E8–16165 Filed 7–15–08; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1105; FRL–8580–2]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from marine coating operations and wood coating products. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 15, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1105, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MDAQMD Rule 1106 and VCAPCD Rule 74.30. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 3, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–16019 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0176; FRL–8693–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Greene County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Greene County 8-hour ozone nonattainment Area (referred to also as the ''Greene County Area'' or ''Area'') be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for the Greene County Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Greene County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Greene County Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Greene County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for the Greene County Area,

and EPA is proposing to approve that inventory for the Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Greene County Area for purposes of transportation conformity, and is proposing to approve those MVEBs. EPA is proposing approval of the redesignation request, the maintenance plan, and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 15, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0176 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0606, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0176. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What Are the Clean Air Actions EPA Is Proposing to Take?
II. What Is the Background for These Proposed Actions?
III. What Are the Criteria for Redesignation to Attainment?
IV. Why Is EPA Taking These Actions?
V. What Would Be the Effect of These Actions?
VI. What Is EPA's Analysis of the Commonwealth's Request?
VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Greene County Area Plan Adequate and Approvable?
VIII. Proposed Actions
IX. Statutory and Executive Order Reviews

I. What Are the Clean Air Actions EPA Is Proposing To Take?

On January 25, 2007, the PADEP formally submitted a request to redesignate the Greene County Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the Greene County Area as a SIP revision to ensure continued attainment in the Area over the next 10 years. PADEP also submitted a 2002 base-year inventory for the Greene County Area as a SIP revision. On May 23, 2008, PADEP submitted a revision to the January 25, 2007 submittal to include an alternate methodology used to project the 2009 and 2018 nitrogen oxides (NO_X) emissions from stationary point sources. In addition, NO_X emission projections from the January 25, 2007 submittal were changed to reflect the new methodology submitted in the May 23, 2008 revision.

Greene County is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Greene County maintenance plan as a SIP revision for the Area (such approval being one of the Act criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Greene County Area for the next 10 years. EPA is also proposing to approve the 2002 base-year inventory for the Greene County Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Greene County maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC) react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air

quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Greene County Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Greene County Area (as well as most other areas of the country), effective June 15, 2005. *See* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (hereafter ''South Coast''). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under Subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes. Elsewhere in this document, mainly in section VI. B. ''The Greene County Area Has Met All Applicable Requirements Under Section 110 and part D of the Clean Air Act and has a Fully Approved SIP Under Section 110(k) of the Act'', EPA discusses its rationale why the decision in South Coast is not an impediment to redesignating the Greene County Area to attainment of the 8-hour ozone NAAQS.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Greene County Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Area is subject to the requirements of subpart 1 of part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Greene County Area has a design value of 0.081 ppm for the 3-year period of 2003–2005, using complete, quality-assured data. Therefore, the ambient ozone data for the Greene County Area indicates no violations of the 8-hour ozone standard.

B. The Greene County Area

Prior to its designation as an 8-hour ozone nonattainment area, the Greene County Area was an incomplete data 1-hour ozone nonattainment area. *See* 56 FR 56694 (November 6, 1991).

On January 25, 2007, the PADEP requested that the Greene County Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the CAA requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area attained the standard and the area meets the redesignation requirements set forth in section 107(d)(3)(E) of the CAA.

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On January 25, 2007, the PADEP requested redesignation of the Greene County Area to attainment for the 8-hour ozone standard. Simultaneously, PADEP submitted a maintenance plan for the Greene County Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 10 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. PADEP also submitted a revision to the January 25, 2007, submittal on May 23, 2008, to include alternate methodology used to project the 2009 and 2018 emissions amounts from stationary point sources. In addition, NO_X emission projections from the January 25, 2007, submittal were changed to reflect the new methodology submitted in the May 23, 2008, revision. EPA has determined that the Greene County Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Greene County Area for the next 10 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_X and VOC MVEBs for transportation conformity purposes for the years 2004, 2009 and 2018.

These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO_X
2004	2.1	3.6
2009	1.6	2.6
2018	1.0	1.3

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The following is a description of how the PADEP's January 25, 2007, submittal with the May 23, 2008, revision satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Greene County Area Has Attained the 8-Hour NAAQS

EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of Part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Greene County Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2003–2005 (the most recent 3 years of data available as of the time of the redesignation request) for the Greene County Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations for the period from 2003–2005, along with the three-year average, are summarized in Table 2.

TABLE 2.—GREENE COUNTY NON-ATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; GREENE COUNTY MONITOR, AQS ID 42–059–0002

Year	Annual 4th high reading (ppm)
2003	0.083
2004	0.075
2005	0.085
2006	0.077

TABLE 2.—GREENE COUNTY NON-ATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; GREENE COUNTY MONITOR, AQS ID 42–059–0002—Continued

Year	Annual 4th high reading (ppm)
The average for the 3-year period 2003 through 2005 is 0.081 ppm.	
The average for the 3-year period 2004 through 2006 is 0.079 ppm.	

The air quality data for 2003–2005 shows that the Greene County Area has attained the standard with a design value of 0.081 ppm. The data collected at the Greene County Area monitor satisfies the Act requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is below the maximum design value of 0.085 ppm. The PADEP's request for redesignation for the Greene County Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Greene County Area has attained the 8-hour ozone NAAQS.

B. The Greene County Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Greene County Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approvable with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Greene County Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant Clean Air Act requirements that came due prior to the submittal of a complete redesignation request. *See also*, Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the Act that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the Act. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also,* 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alters any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD);
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Greene County Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See*

also, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an'' 'applicable requirement' for purposes of section 110(1) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the Greene County Area prior to submission of the redesignation request.

2. Part D Nonattainment Area Requirements Under the 1-Hour and 8-Hour Standards

The Greene County Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, because the Greene County Area was designated incomplete data/nonattainment under the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements it would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

With respect to the 8-hour standard, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the Greene County Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also,* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (which upheld this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit recognized the inequity in such retroactive rulemaking. *See, Sierra Club* v. *Whitman,* 285 F. 3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plan in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of resedignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request for the Greene County Area. Because the Commonwealth submitted a complete redesignation request for the Greene County Area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to the Greene County Area for the purposes of redesignation.

In addition to the fact that no Part D requirements applicable under the 8-hour standard became due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements of Part D as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See, Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also,* 60 FR 62748 (December 7, 1995).

In the case of the Greene County Area, EPA has also determined that before being redesignated, the Greene County Area need not comply with the requirement that a NSR program be approved prior to redesignation. Additionally, Pennsylvania's preconstruction permitting program regulations in Chapter 127.200–217 of the Pennsylvania Code (approved into the SIP at 40 CFR 52.2020(c)), apply only to ozone nonattainment area sources that are located in areas classified as marginal or worse, *i.e.*, to subpart 2 nonattainment areas. Pennsylvania's NSR regulations do not apply to sources in nonattainment areas classified as basic nonattainment under subpart 1. Consequently, sources in the Greene County Area are subject to Part D NSR requirements of Appendix S to 40 CFR part 51, pursuant to 40 CFR 52.24(k). Appendix S of 40 CFR part 51 contains the preconstruction permitting program that applies to major stationary

sources in nonattainment areas lacking an approved Part D NSR program. Appendix S applies during the interim period after EPA designates an area as nonattainment, but before EPA approves revisions to a SIP to implement the Part D NSR requirements for that pollutant. *See,* 70 FR 71618 (November 29, 2005). The Chapter 127 part D NSR regulations in the Pennsylvania SIP explicitly apply to attainment areas within the Ozone Transport Region (OTR). *See,* Chapter 127 in 40 CFR 52.2020(c)(1); *See,* 66 FR 53094, October 19, 2001. Therefore, after the Greene County Area is redesignated to attainment, sources in the Greene County Area will be subject to Part D NSR applicable under the permitting regulations in Chapter 127, because the Greene County Area is located in the OTR.

All areas in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of Greene County Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001 (66 FR 53094), EPA fully approved the 1-hour Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Greene County Area. The Chapter 127 Part D NSR regulations in the Pennsylvania SIP explicitly apply the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

3. The Greene County Area Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p.3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See,* 68 FR at 25425 (May 12, 2003) and citations therein.

The Greene County Area was a 1-hour incomplete data nonattainment area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the Greene County Area was a 1-hour incomplete data nonattainment area, there are no previous Part D SIP submittal requirements. Also, no Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purpose of redesignation of the Greene County Area the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for the purpose of redesignation have yet become due for the Greene County Area, and therefore they need not be approved in to the SIP prior to redesignation.

C. The Air Quality Improvement in the Greene County Area is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Greene County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Point	Area	Mobile	Nonroad	Total
Volatiles Organic Compounds (VOC)					
2002	1.9	1.9	2.4	1.3	7.5
2004	1.9	1.9	2.1	1.2	7.1
Difference (02–04)	0.0	0.0	−0.3	−0.1	−0.4
Nitrogen Oxides (NO_X)					
2002	64.0	0.2	4.1	4.7	72.9
2004	53.7	0.2	3.6	4.5	62.0
Difference (02–04)	−10.3	0.0	−0.5	−0.2	−10.9

*Totals may not add due to rounding.

Between 2002 and 2004, VOC emissions decreased by 0.4 tpsd from 7.5 tpsd to 7.1 tpsd. During the same period, NO_X emissions decreased by 10.9 tpsd from 72.9 tpsd to 62.0 tpsd. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Greene County Area achieving attainment of the 8-hour ozone standard. These reductions, as well as anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

NO_X SIP Call (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP):

—Tier 1 Rule (56 FR 25724, June 5, 1991);

—Tier 2 Rule (65 FR 6698, February 10, 2000).

Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65FR59896, October 6, 2000).

National Low Emission Vehicle (NLEV) Program (64 FR 72564, December 28, 1999).

Changes to Vehicle Safety Inspection Program in non-I/M Counties (70 FR 58313, October 6, 2005).

4. Non-Road Sources

Non-road Diesel Rule (69 FR 38958, June 29, 2004).

D. The Greene County Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Greene County ozone nonattainment area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 10 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of Clean Air Act section 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Greene County Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) a maintenance demonstration;

(c) a monitoring network;

(d) verification of continued attainment; and

(e) a contingency plan.

Analysis of the Greene County Area Maintenance Plan

(a) *Attainment inventory*—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2003–2005 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2004 and consists of a list of sources and their associated emissions.

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Greene County Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2004 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2004 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Greene County Area. For 2004 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can found in the Technical Appendices, which are part of the January 25, 2007 state submittal and the revision submitted on May 23, 2008.

(b) *Maintenance Demonstration*—On January 25, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Greene County Area maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment inventory year 2004 emissions levels throughout the Area through the year 2018. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also,* 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_X emissions for the Greene County Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the maintenance period. The values in Table 5 reflect the alternative methodology submitted in the May 23, 2008 submittal.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Point	1.9	1.9	2.2
Area	1.9	1.7	1.7
Mobile	2.1	1.6	1.0
Nonroad	1.2	1.0	0.8
Total	7.1	6.1	5.6

TABLE 5.—TOTAL NO_X EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Point	53.7	21.0	23.0
Area	0.2	0.2	0.2
Mobile	3.6	2.6	1.3
Nonroad	4.5	4.1	3.6
Total	62.0	27.9	28.1

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- The Federal Clean Air Interstate Rule (71 FR 25328, April 28, 2006).
- The NO_X SIP Call (66 FR 43795, August 21, 2001).
- Portable Fuel Containers Rule (69 FR 70893, December 8, 2004)
- Consumer Products Rule (69 FR 70895, December 8, 2004)
- Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004).
- Federal Light-duty Highway Vehicle Control Program (FMVCP)-Tier 1/Tier 2 Emissions Standards (Model Year 1994/2004); Tier 1—(56 FR 25724, June 5, 1991), Tier 2—(65 FR 6698, February 10, 2000).
- Federal Heavy-duty Diesel Highway Engine Standards (Model Year 2004/2007)/Low-Sulfur Highway Diesel Fuel Standards (2006); (66 FR 5002, January 18, 2001).
- Federal Nonroad Engine Emission Standards (Model Year 2008) and Nonroad Diesel Fuel 2007); (69 FR 38958, June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999).
- PA Vehicle Emission Inspection and Maintenance Program (70 FR 58313, October 6, 2005).
- Changes to Vehicle Safety Inspection Program for Non-I/M Counties (70 FR 58313, October 6, 2005).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Greene County Area.

(c) *Monitoring Network*—There is one ozone monitor that provided monitoring data to support of the Commonwealth's ozone maintenance plan for the Greene County Area. The Commonwealth has committed to continue to operate its monitoring network in accordance with 40 CFR part 58, with no reduction in the number of sites.

(d) *Verification of Continued Attainment*—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQS in the Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will also continue to operate the existing ozone monitoring station in the Area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the CAA states that eight years following redesignation of the Greene County Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement section 175A(b).

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Greene County Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the Area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentration at the Greene County Area monitor is above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measures that have been adopted but not yet implemented at the time the excessive

ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at the Greene County Area monitor. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Area to attainment with the standard. Contingency measures to be considered for the Greene County Area will include, but not be limited to the following:

Regulatory measures:

—Additional controls on consumer products.
—Additional controls on portable fuel containers.

Non-Regulatory measures:

—Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
—Diesel retrofits, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.
—Idling reduction technology for Class 2 yard locomotives.
—Idling reduction technologies or strategies for truck stops, warehouses and other freight handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (*e.g.*, biodiesel) for home heating and agricultural use.

The plan sets forth a process to have regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Greene County Area Plan Adequate and Approvable?

A. What are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.*, reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed ''on-road mobile source emission budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of a State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, the MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Act. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4)

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBs for the Greene County Area are listed in Table 6 for 2009 and 2018. Table 6 presents the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: the Greene County Area attained the 8-hour ozone NAAQS during the 2003 to 2005 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Greene County Area. The sum total emissions for 2004 for point, area, mobile on-road, and mobile non-road sources for the Area are 7.1 tpsd of VOC and 62.0 tpsd of NO_X. The PADEP projected that total emissions for the year 2018 will be 5.6 tpsd of VOC and 28.1 tpsd of NO_X from all sources in the Area. The Area-wide safety margin for 2018 would be the difference between these amounts, or 1.5 tpsd of VOC and 33.9 tpsd of NO_X. The emissions up to the level of the attainment year, including the safety margins, are projected to maintain the Area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—SAFETY MARGINS FOR GREENE COUNTY AREA (2009 & 2018)

Inventory year	VOC emissions (tpsd)	NO_X emissions (tpsd)
2004 Attainment	7.1	62.0
2009 Interim	6.1	27.9
2009 Safety Margin	1.0	34.1
2004 Attainment	7.1	62.0
2018 Final	5.6	28.1
2018 Safety Margin	1.5	33.9

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Greene County Area are approvable because the MVEBs for VOCs and NO_X continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for MVEBs in the Maintenance Plan?

The MVEBs for the Greene County Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and EPA is proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Area's MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Greene County Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (from there, click on ''Adequacy Review of SIP Submissions'').

VIII. Proposed Actions

EPA is proposing to determine that the Greene County Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Greene County Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Area, submitted on January 25, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Greene County Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Greene County Area, submitted by PADEP on January 25, 2007, along with the revision submitted on May 23, 2008 to include new methodology used to project the 2009 and 2018 emissions amounts from stationary point sources. Finally, EPA is proposing to approve the MVEBs submitted by Pennsylvania for the Greene County Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it

approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule proposing to approve the redesignation of the Tioga Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule, proposing to approve the redesignation of the Greene County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: July 3, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–16278 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0612242911–7380–01]

RIN 0648–AU28

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 14

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the applicable provisions of Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 14 proposes, and this rule would implement, establishment of eight marine protected areas (MPAs) in which fishing for or possession of South Atlantic snapper-grouper would be prohibited. The prohibition on possession would not apply to a person aboard a vessel that was in transit with fishing gear appropriately stowed. Amendment 14 also proposes to prohibit the use of shark bottom longlines within the MPAs, however, NMFS is proposing to implement the prohibition of shark bottom longlines through separate rulemaking. The intended effects of this proposed rule are to protect a portion of the population and habitat of long-lived, slow growing, deepwater snapper-grouper from fishing pressure to achieve a more natural sex ratio, age, and size structure within the proposed MPAs, while minimizing adverse social and economic effects.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on August 15, 2008.

ADDRESSES: You may submit comments, identified by ''0648–AU28'', by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Kate Michie.
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 14 may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: *safmc@safmc.net*. Amendment 14 includes a Final Environmental Impact Statement (FEIS), a Biological Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Kate.Michie@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS issues this proposed rule to implement the applicable provisions of Amendment 14 to the FMP. The Atlantic shark fishery is managed under the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP). The HMS FMP is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 635.

Background

Many snapper-grouper species are vulnerable to overfishing because they are long-lived (e.g., snowy grouper, golden tilefish, red snapper, gag, scamp, red grouper, and red porgy); they are protogynous, i.e., they may change sex from females to males as they grow older/larger (e.g., snowy grouper, speckled hind, Warsaw grouper, yellowedge grouper, gag, scamp, red porgy, and black sea bass); they form spawning aggregations (e.g., snowy grouper, gag, scamp, and red snapper); and they suffer high release mortality when taken from deep water. Deepwater snapper-grouper species (speckled hind, snowy grouper, Warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, and blueline tilefish) are most vulnerable to overfishing because they live longer than 50 years, do not survive the trauma of capture, and are protogynous (groupers) or exhibit sexual dimorphism, i.e., males and females grow at different rates (tilefishes).

Stock assessments indicate that black sea bass, red porgy, and snowy grouper are overfished, i.e., spawning stock biomass is not sufficient to reproduce and support continued productivity. In addition, black sea bass, golden tilefish, snowy grouper, and vermilion snapper are experiencing overfishing, i.e., the current rate of fishing mortality jeopardizes the capacity of the fishery to produce its maximum sustainable yield on a continuing basis. Reductions in catch and protection of habitat are needed.

Proposed Measures

This rule would establish eight MPAs in which a portion of the population and habitat of long-lived, slow growing, deepwater snapper-grouper species would be protected from directed fishing pressure. Fishing for or possession of South Atlantic snapper-grouper would be prohibited in the MPAs. However, the prohibition on possession would not apply to a person aboard a vessel that was in transit with fishing gear appropriately stowed, as specified in § 622.35(i)(2) of this proposed rule. MPAs are considered to be the most effective fishery management tool that would allow deepwater snapper-grouper to reach a more natural sex ratio, age, and size structure, protect spawning locations, and provide a refuge for early developmental stages of fish species.

Using a collaborative process, the Council selected specific sites for MPAs on the basis of maximizing the biological benefits and enhancing enforceability and monitoring while minimizing the adverse social and economic effects. Sizes of the MPAs would range from approximately 5 by 10 nautical miles (nm) to approximately 22 by 23 nm. One would be off North Carolina, three off South Carolina, one off Georgia, and three off the east coast of Florida. An artificial reef may be established at one of the South Carolina sites. The two most southern MPAs would be approximately 9 and 13 nm offshore, respectively, and the others at least 38 nm offshore. The eight proposed MPAs and their relative locations are shown in Figure 1.

The prohibition of use of shark bottom longlines in the MPAs is considered necessary for habitat protection and to prevent the mortality of incidentally caught snapper-grouper. The Council voted to include this prohibition in Amendment 14 because of concerns regarding the enforcement of fishing activities by vessels that hold permits in both the snapper-grouper and shark bottom longline fisheries, both of which deploy similar gear. However, because the Atlantic shark fishery is managed under the HMS FMP, NMFS requested the HMS Division promulgate the prohibition of use of shark bottom longlines within the proposed MPAs. The HMS Division published a final rule on June 24, 2008 (72 FR 35778), prohibiting shark bottom longlining in the proposed MPAs through Amendment 2 to the consolidated HMS FMP.

Availability of Amendment 14

Additional background and rationale for the measures discussed above are contained in Amendment 14. The availability of Amendment 14 was announced in the **Federal Register** on June 6, 2008, (73 FR 32281). Written comments on Amendment 14 will be accepted through August 5, 2008. All comments received on Amendment 14 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 14, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an FEIS for Amendment 14; a notice of availability was published on June 13, 2008 (73 FR 33813).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. 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 objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

This proposed rule would establish eight MPAs in the Federal waters of the South Atlantic and prohibit fishing for or possession of South Atlantic snapper-grouper within any of the MPAs. The purpose of this proposed rule is to assist in the recovery of overfished stocks and persistence of healthy fish stocks, fisheries, and habitats. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

Two general classes of small business entities would be directly affected by the proposed rule, commercial fishing vessels and for-hire fishing vessels. The Small Business Administration defines a small entity in the commercial fishing sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has average annual gross receipts not in excess of $4 million (2002 NAICS 11411). For a for-hire business, the appropriate revenue benchmark is $6.5 million (2002 NAICS 487210).

Average net incomes estimated from boats operating in the South Atlantic snapper-grouper fishery were sampled in a 1994 study that separated the fishery into northern and southern zones. The northern zone includes the area north of 28° N. latitude to the North Carolina/Virginia border. The southern zone includes the area south of 25° N. latitude to the border between the South Atlantic and Gulf of Mexico Fishery Management Councils. The estimated average net incomes, in 1994 (and 2006) dollars, were $83,224 ($113,212) for boats that primarily used bottom longlines in the northern zone, $23,075 ($31,389) for boats that primarily used black sea bass pots in the northern zone, $15,563 ($21,171) for boats that primarily used bottom longlines in the southern zone, $11,649 ($15,842) for boats that primarily used vertical lines in the southern zone, and $8,307 ($11,300) for boats that primarily used

vertical lines in the northern zone. Overall, boats in the northern zone averaged $14,143 ($19,239) in net income based on average revenues of $48,702 ($66,250), while boats in the southern zone averaged $12,388 ($16,852) net income based on average revenues of $39,745 ($54,066). More recent data from the Southeast logbook program show the average annual ex-vessel revenue from landings of snapper-grouper species per vessel from 1999 to 2003 to range from $14,408 to $16,376 (2006 dollars).

Although some fleet activity may exist in this fishery, the extent of such has not been determined. Thus, all vessels are assumed to be unique business entities. Given historic income data and the gross revenue profile captured by the Southeast logbook program, it is determined that all vessels that would be affected by the proposed rule are small entities.

Charterboats are defined as boats for hire carrying six or fewer passengers that charge a fee to rent the entire boat. Headboats tend to be larger, generally can carry a maximum of around 60 passengers, and the fee is paid on an individual angler basis. This analysis, which estimates the range of the average gross revenues in 2006 dollars for this sector, is as follows: $61,714 to $83,820 for charterboats on the Atlantic coast of Florida; $72,768 to $88,778 for charterboats in North Carolina, $31,830 to $38,833 for charterboats in South Carolina; $68,629 to $83,486 for charterboats in Georgia; $170,276 to $362,482 for headboats in Florida; and $148,840 to $317,030 for headboats in the other South Atlantic states. Similar to the situation with the commercial harvest sector, some fleet activity may exist within the for-hire sector. The magnitude and identity of such is unknown, however, and all vessels are assumed to represent unique business entities. Given the gross revenue profiles provided, vessels in the for-hire recreational sector are determined to be small business entities.

There were 1,066 commercial snapper-grouper permitted vessels in the South Atlantic during 2004. A number of these permitted vessels were not active in the snapper-grouper fishery. It is not possible to estimate the total number of true latent permits (i.e., those permits which are not expected to be fished in any given year and may exist only for speculative purposes) since permits with no associated landings could become active in a subsequent year. The number of permitted vessels, however, is an upper bound on the universe of vessels in this fishery. The assumed lower bound of the universe of vessels is the number of active vessels in the latest year for which data are available. This lower bound estimate is 906 vessels, which is the number of vessels/permits with recorded landings of snapper-grouper species in the South Atlantic in 2003. The upper bound is the 1,066 commercial snapper-grouper permitted vessels in the South Atlantic during 2004. Thus, the range of vessels assumed to potentially operate in the commercial snapper-grouper fishery is 906 to 1,066. Currently, there is insufficient information to determine the number of commercial fishing vessels that fish for or possess any snapper-grouper species in the proposed MPAs.

In the for-hire sector, 1,594 snapper-grouper for-hire permits were issued to vessels in the South Atlantic states in 2004. The for-hire fishery operates as an open access fishery, and not all of the permitted snapper-grouper for-hire vessels are necessarily active in this fishery. Some vessel owners have been known to purchase open access permits as insurance for uncertainties in the fisheries in which they currently operate. Currently, there is insufficient information to assess the number of for-hire vessels that fish for or possess any snapper-grouper species in the proposed MPAs.

There is insufficient information to assess the numbers or percentages of commercial and for-hire vessels that fish for or possess snapper-grouper species in the proposed MPAs and would be directly affected by the proposed rule. Consequently, it cannot be determined if the proposed rule would affect a substantial number of small entities. A direct cost of the proposed rule would be the lost revenues and profits derived from fishing for or possessing snapper-grouper species in those areas. It is expected that any vessel that historically fished in these areas would mitigate some of these losses by relocating to other areas. There is insufficient information to quantify any potential losses of revenues and profits from the creation of the MPAs. However, the relatively small sizes of the MPAs suggest there would not be significant adverse economic impact.

Three alternatives, including the status quo, were considered for the first of the eight actions. Both the proposed action (Alternative 1) and Alternative 2 would establish an MPA at the area of the Snowy (Grouper) Wreck off the coast of North Carolina. The proposed MPA is 55 nm southeast of Southport, North Carolina, and Alternative 2 is located approximately 57 nm southeast of Southport. Each MPA is about 15 by 10 nm. Fishermen from Little River, Carolina Beach, and Southport ports would most likely be affected by either alternative. The proposed MPA and the MPA specified by Alternative 2 include an area ranging from 150 meters (m) to 300 m deep. The proposed MPA includes a shallow area ranging from 60 to 100 m, while the MPA specified by Alternative 2 includes a deeper area exceeding 300 m in depth. Alternative 2 could result in the displacement of fewer fishermen than the proposed action, but would not be expected to protect as many mid-shelf species as the proposed action. The status quo alternative (Alternative 3) would not create an MPA in the Snowy (Grouper) Wreck area off the coast of North Carolina, would not increase the protection of mid-shelf and deepwater snapper-grouper species, and would not, therefore, meet the Council's objective.

Four alternatives, including the status quo, were considered for the second action. The proposed action (Alternative 2) and two of the other alternatives (Alternatives 1 and 3) would establish an MPA off the northern South Carolina coast. The proposed MPA is located approximately 54 nm from Murrells Inlet, while Alternative 1 is located approximately 61 nm from Murrells Inlet, and the MPA specified by Alternative 3 is about 65 nm from Murrells Inlet. The proposed MPA and the MPAs specified by Alternatives 1 and 3 are 10 by 5 nm in size. Both the proposed MPA and the MPA specified by Alternative 1 run east to west, while the MPA specified by Alternative 3 runs parallel to shore. Waters in the proposed MPA area range from 50 to 180 m deep. The MPAs specified by Alternatives 1 and 3 share an area ranging in depth from 70 to 140 m, but the MPA specified by Alternative 1 includes more shallow waters, while the MPA specified by Alternative 3 includes a greater area of deep water. The proposed MPA is expected to protect more deepwater and mid-shelf snapper-grouper species than the MPAs specified by Alternatives 1 and 3. The status quo alternative (Alternative 4) would not create an MPA off the coast of northern South Carolina, would not increase the protection of mid-shelf and deepwater snapper-grouper species, and would not, therefore, meet the Council's objective.

Three alternatives, including the status quo, were considered for the third action. Both the proposed action (Alternative 1) and Alternative 2 would establish an MPA off the coast of central South Carolina. The proposed MPA is oriented perpendicular to the coast and is located about 45 nm southeast of

Charleston Harbor. The MPA specified by Alternative 2 is oriented parallel to the shoreline and is located approximately 50 nm southeast of Charleston Harbor. Both MPAs are 10 by 5 nm in size. The proposed MPA is expected to protect more mid-shelf and rare deepwater snapper-grouper species than Alternative 2. The status quo alternative (Alternative 3) would not create an MPA off the coast of central South Carolina, would not increase the protection of mid-shelf and deepwater snapper-grouper species, and would not, therefore, meet the Council's objective.

Three alternatives, including the status quo, were considered for the fourth action. Both the proposed action (Alternative 1) and Alternative 2 would establish an MPA off the coast of Georgia. The proposed MPA is located approximately 69 nm southeast of the mouth of Wassaw Sound, while the MPA specified by Alternative 2 is located about 65 nm southeast of the mouth of Wassaw Sound. Both the proposed MPA and the MPA specified by Alternative 2 are 10 by 10 nm in size, and both share a common area with waters 90 to 210 m deep. However, the proposed MPA also includes waters ranging from 90 to 300 m deep and runs parallel to the shore, while the MPA specified by Alternative 2 includes an area with a wider depth range, from 65 to 380 m and does not run parallel to the coast. The proposed MPA is expected to be easier for industry to maneuver around and may result in greater protection of the mid-shelf habitat that serves as a nursery for deepwater species, notably tilefish, than the MPA specified by Alternative 2. The status quo alternative (Alternative 3) would not create an MPA off the coast of Georgia, would not increase the protection of tilefish, snowy grouper, and mid-shelf snapper-grouper species, and would not, therefore, meet the Council's objective.

Seven alternatives, including the status quo, were considered for the fifth action. The proposed action (Alternative 4) and five of the other alternatives would establish an MPA off the coast of north Florida. The proposed MPA is approximately 60 nm off the mouth of St. John's River near Jacksonville. The MPA specified by Alternative 1 is approximately 57 nm off the mouth of the St. John's River; the MPA specified by Alternative 2 is about 47 nm east of St. Augustine; the MPA specified by Alternative 3 is approximately 43 nm off New Smyrna Beach; the MPA specified by Alternative 5 is about 55 nm east of St. Augustine; and the MPA specified by Alternative 6 is approximately 45 nm off New Smyrna Beach. The proposed MPA and the MPAs specified by Alternatives 1, 2, and 5 are 10 by 10 nm in size, while the MPAs specified by Alternatives 3 and 6 are 22 by 23 nm in size. The proposed MPA shares an area with the MPA specified by Alternative 1 that ranges from 60 to 200 m in depth. The proposed MPA also includes deeper waters, ranging from 200 to 380 m in depth, while the MPA specified by Alternative 1 includes an area of shallower water, ranging from 50 to 80 m in depth. The MPAs specified by Alternatives 2 and 5 share an area with depths ranging from 90 to 150 m. The MPA specified by Alternative 5 also includes a deeper area that ranges from 150 to 390 m, while the MPA specified by Alternative 2 includes a shallower area of 55 to 80 m. Most of the area included by the MPAs specified by Alternatives 3 and 6 overlap in an area ranging from 200 to 690 m deep. The MPA specified by Alternative 3 also includes a deeper area that exceeds 700 m, while the MPA specified by Alternative 6 includes a shallower area of 80 to 150 m. Although the MPAs specified by Alternatives 1 and 2 would protect more mid-shelf snapper-grouper species than the proposed MPA, while the MPAs specified by Alternatives 3, 5 and 6 would protect more deepwater species, these alternatives would also be expected to result in greater adverse economic impacts than the proposed MPA. The status quo alternative (Alternative 7), would not create an MPA off the coast of north Florida, would not increase the protection of mid-shelf and deepwater snapper-grouper species, and would not, therefore, meet the Council's objective.

Two alternatives, including the status quo, were considered for the sixth action. The proposed action would establish an MPA in the area known as Sea Bass Rocks off the coast of Florida. The status quo alternative would not create an MPA in this area, would not increase the protection of deepwater snapper-grouper species in this area, and would not, therefore, meet the Council's objective.

Two alternatives, including the status quo, were considered for the seventh action. The proposed action would establish an MPA in the vicinity of the area known as East Hump and Unnamed Hump off the coast of the Florida Keys. The status quo alternative, would not create an MPA in this area, would not increase the protection of deepwater snapper-grouper and protected species in this area, and would not, therefore, meet the Council's objectives.

Two alternatives, including the status quo, were considered for the eighth action. The proposed action would establish an artificial reef MPA off the coast of South Carolina. The status quo alternative would not create this MPA, would not increase the opportunity to improve snapper-grouper populations in this area, and would not, therefore, meet the Council's objective.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 10, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition of ''MPA'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

MPA means marine protected area.

* * * * *

3. In § 622.35, paragraph (i) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(i) *MPAs.* (1) No person may fish for a South Atlantic snapper-grouper in an MPA, and no person may possess a South Atlantic snapper-grouper in an MPA. However, the prohibition on possession does not apply to a person aboard a vessel that is in transit with fishing gear appropriately stowed as specified in paragraph (i)(2) of this section. In addition to these restrictions, see § 635.21(d)(1)(iii) of this chapter regarding restrictions applicable within these MPAs for any vessel issued a permit under part 635 of this chapter that has longline gear on board. MPAs consist of deepwater areas as follows:

(i) *Snowy Grouper Wreck MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25′	77°04.75′
B	33°34.75′	76°51.3′
C	33°25.5′	76°46.5′
D	33°15.75′	77°00.0′
A	33°25′	77°04.75′

(ii) *Northern South Carolina MPA* is bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(iii) *Edisto MPA* is bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(iv) *Charleston Deep Artificial Reef MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04′	79°12′
B	32°08.5′	79°07.5′
C	32°06′	79°05′
D	32°01.5′	79°09.3′
A	32°04′	79°12′

(v) *Georgia MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43′	79°31′
B	31°43′	79°21′
C	31°34′	79°29′
D	31°34′	79°39′
A	31°43′	79°31′

(vi) *North Florida MPA* is bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(vii) *St. Lucie Hump MPA* is bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(viii) East Hump MPA is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5′	80°45.5′
B	24°32′	80°36′
C	24°27.5′	80°38.5′
D	24°32.5′	80°48′
A	24°36.5′	80°45.5′

(2) For the purpose of paragraph (i)(1) of this section, transit means direct, non-stop progression through the MPA. Fishing gear appropriately stowed means—

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(iii) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(iv) Terminal gear (i.e., hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. A rod and reel must be removed from the rod holder and stowed securely on or below deck.

(v) A crustacean trap, golden crab trap, or sea bass pot cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

4. Add Figure 1 to Part 622 to read as follows:

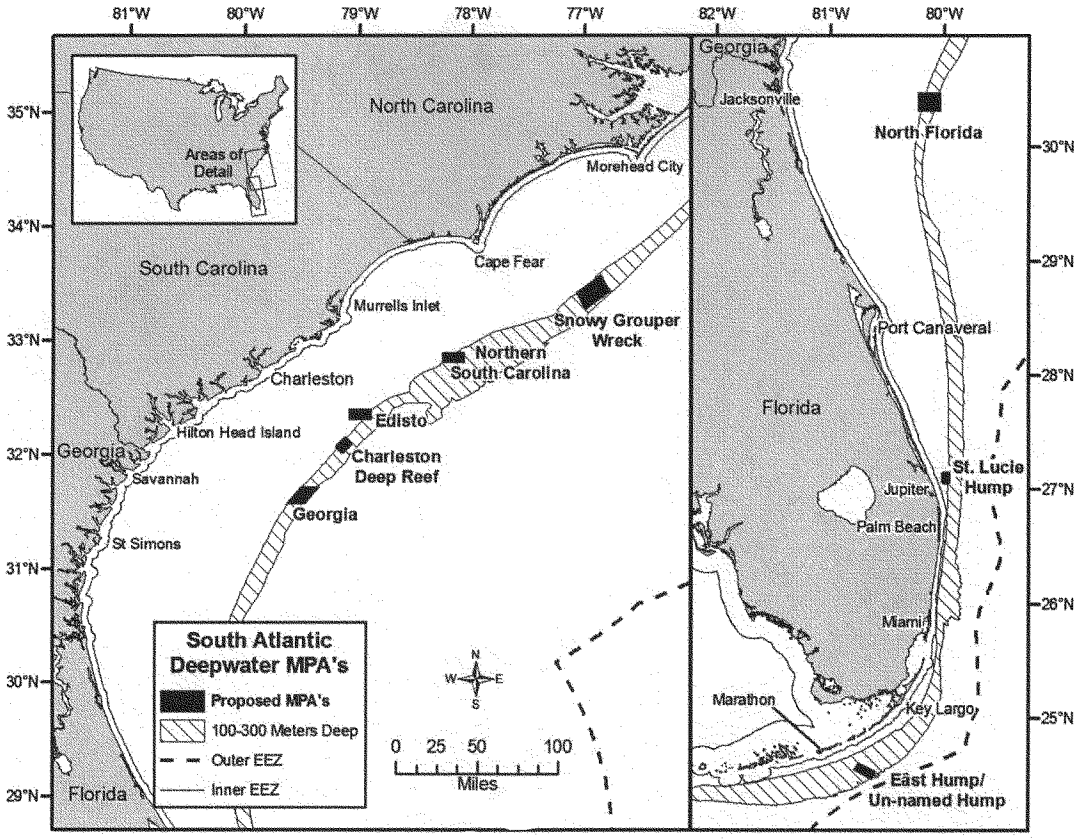


Figure 1 to Part 622. Proposed MPAs off North Carolina, South Carolina, Georgia, and east Florida.

[FR Doc. E8–16252 Filed 7–15–08; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 137

Wednesday, July 16, 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

Cooperative State Research, Education, and Extension Service; Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to revise and extend a currently approved information collection for the Expanded Food and Nutrition Education Program (EFNEP).

DATES: Written comments on this notice must be received by September 15, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods: *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments. *E-mail: jhitchcock@csrees.usda.gov; Mail:* Jason Hitchcock, Information Systems and Technology Management, USDA/CSREES, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216; *Hand Delivery/Courier:* Jason Hitchcock, Information Systems and Technology Management, USDA/CSREES, 800 9th Street, SW., Room 4217, Waterfront Centre, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, (202) 720–4343.

SUPPLEMENTARY INFORMATION:

Title: Expanded Food and Nutrition Education Program.

OMB Number: 0524–0044.

Expiration Date of Current Approval: January 31, 2009.

Type of Request: Intent to seek approval to revise and extend a currently approved information collection for three years.

Abstract: The U.S. Department of Agriculture's (USDA) CSREES Expanded Food and Nutrition Education Program (EFNEP) is a unique program that began in 1969 and is designed to reach limited resource audiences, especially youth and families with young children. Extension professionals train and supervise paraprofessionals and volunteers who teach food and nutrition information and skills to limited resource families and youth. EFNEP operates through the 1862 and 1890 Land-Grant Institutions in all 50 States and in American Samoa, the District of Columbia, Guam, Micronesia, the Northern Marianas, Puerto Rico, and the U.S. Virgin Islands. EFNEP is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 343 (d)) and section 1425 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3175).

The objectives of EFNEP are to assist limited resource families and youth in acquiring the knowledge, skills, attitudes, and changed behaviors necessary to obtain nutritionally sound diets, and to contribute to their personal development and the nutritional well-being of the entire family.

CSREES sponsors an integrated data collection process that is used at the county, State, and federal level. The current data collection system, the Nutrition Education Evaluation and Reporting System (NEERS), is an update to the OMB approved Evaluation and Reporting System (E/RS). NEERS has been developed to capture EFNEP impacts. Its purpose is to gauge if the federal assistance provided has had an impact on the target audience. It also enables CSREES staff to make programmatic improvements in delivering nutrition education. Further, the data collected provide information for program management decisions at the local level, and diagnostic assessments of participant needs. Specifications for this system were developed by a committee made up of representatives from across the United States and are in compliance with Federal standards for maintaining, collecting, and presenting data on race and ethnicity and protecting personally identifiable information.

NEERS stores information on: (1) Adult program participants, their family structure and their dietary practices; (2) youth group participants; and (3) staff. NEERS consists of separate software sub-systems for the county and State/territory levels. County data are exported electronically to the State-level systems. University staff import county level data into the State/territory level system. The State/territory level data is used to generate State/territory level reports for stakeholders and to guide program management decisions. States also export State/territory level data electronically to the Federal-level system for State and national assessments of the program's impact. One revision to the software is that NEERS will not have a formal system for data collection at the Federal level. Instead, the State-compiled data will be aggregated using statistical software and then, as before, will be used to create national reports which are made available to the public.

Other revisions to the currently approved information collection include: Receiving latitude and longitude coordinates on people served, and Metropolitan Statistical Area and Congressional District information related to program participation. This feature can be used to illustrate program reach and impact in a targeted way. NEERS also includes a new foods database and revised client impact reports matching the USDA MyPyramid food groupings, quantities consumed, and physical activity measures of clients. This feature allows EFNEP data collection to be consistent with current Federal dietary recommendations.

The evaluation processes of EFNEP remain consistent with the requirements of legislation and OMB requirements. The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62) and the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda initiatives, Budget

and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures and link them to the budget process. AREERA requires a performance evaluation to be conducted to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance (7 U.S.C. 7671).

Estimate of Burden: The respondents include the 1862 and 1890 Land-Grant Institutions in all 50 States and in American Samoa, the District of Columbia, Guam, Micronesia, the Northern Marianas, Puerto Rico, and the U.S. Virgin Islands. The number of respondents has increased from 56 to 75 institutions (i.e. State/territory level responses annually), thus constituting a total annual estimated burden of 91,982 hours for this data collection process—for participant education and data entry, aggregation, and reporting. Updates to NEERS are still being implemented in some states in FY 08, so burden estimates reflect the previous version of the data collection system.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Jason Hitchcock by telephone, (202) 720–4343, or by e-mail, *jhitchcock@csrees.usda.gov.*

Done in Washington, DC, this 10th day of July, 2008.

Merle Pierson,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. E8–16149 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 6 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is August 25, 2008.

ADDRESSES: The nominee's name, resume, and completed Form AD–755 must be sent to the U.S. Department of Agriculture, National Research, Extension, Education, and Economics Advisory Board Office, 1400 Independence Avenue, SW., Room 344–A, Whitten Building, Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Karen Hunter, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, Whitten Building, Washington, DC 20250–2255, telephone: 202–720–3684; fax: 202–720–6199; e-mail: *khunter@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) was amended by the Farm Security and Rural Investment Act of 2008 by deleting six members to the National Agricultural Research, Extension, Education, and Economics Advisory Board, to total 25 members. Since the inception of the Advisory Board by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for a one-, two-, and three-year terms, respectively. The terms for 6 members who represent specific categories will expire September 30, 2008. Nominations for a 3-year appointment for these 6 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

The 6 slots to be filled are:

Category B. Farm Cooperatives
Category D. Plant Commodity Producer
Category G. National Aquaculture Association
Category J. National Food Science Organization
Category L. National Nutritional Science Society
Category M. Land-Grant Colleges and Universities–1862

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, *or* for more than one person who fits one category, will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person below or may be printed out from the following Web site: *http://www.nareeeab.ree.usda.gov* and then searching for ''AD–755''). All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture.

Done at Washington, DC, this 10th day of July 2008.

Merle D. Pierson,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. E8–16189 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2009 Emerging Markets Program (EMP). The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2009 and award funds in October 2008. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. Applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding should contact the Grants Management Branch, Foreign Agricultural Service, phone: (202) 720–5306, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The EMP is authorized by section 1542(d)(1)(D) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. The EMP regulations appear at 7 CFR part 1486.

1. Purpose: The EMP is designed to assist U.S. entities in developing, maintaining, or expanding exports of U.S. agricultural commodities and products by providing partial funding for technical assistance activities that promote U.S. products in emerging foreign markets. The Program is intended primarily to support export market development efforts of the private sector, but Program resources may also be used to assist public organizations.

All U.S. agricultural commodities, except tobacco, are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Proposals which seek support for multiple commodities are also eligible. EMP funding may only be used to support exports of U.S. agricultural commodities/products through generic activities.

2. Appropriate Activities: Following are illustrative of the types of project activities that may be considered for funding under the EMP:

—Projects designed specifically to improve market access in emerging foreign markets. Example: Activities that mitigate the impact of political or economic events;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: Seminars on U.S. food safety standards and regulations; and assessing and addressing pest and disease problems that inhibit U.S. exports;

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters. Examples: Retail training or transportation/distribution seminars;

—Projects that help foreign governments collect and use market information and develop free trade policies that benefit U.S. exporters as well as the target country or countries. Examples: Agricultural statistical analysis or development of market information systems;

—Assessments and follow-up activities designed to improve country-wide food and business systems or to determine potential use of general export credit guarantees. Examples: Product needs assessments and market analysis;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports. Examples: Grain storage handling and inventory systems; and distribution infrastructure development; and

—Marketing and distribution of value-added products. Example: Market research on the potential for consumer-ready foods or new uses of a product.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source to recover pre-award costs or prior expenses from previous or ongoing projects. Proposals that counter national strategies or duplicate activities planned or already underway by U.S. non-profit agricultural commodity or trade associations (''cooperator'') organizations will not be considered. Other ineligible expenditures include branded product promotions (in-store, restaurant advertising, labeling, etc.); advertising, administrative, and operational expenses for trade shows; Web site development; equipment purchases; and the preparation and printing of brochures, flyers, and posters (except in connection with specific technical assistance activities such as training seminars.) For a more complete description of ineligible expenditures, please refer to the EMP regulations.

3. Eligible Markets: The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward developing a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because EMP funds are limited and the range of potential emerging market countries is worldwide, consideration will be given to proposals that target countries or regional groups with per capita income of less than $11,115 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; July 2007, *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS]*) and populations of greater than 1 million.

Income limits and their calculation can change from year to year with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of ''emerging market'' countries.

A few countries technically qualify as emerging markets but may require a separate determination before funding can be considered because of political sensitivities.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that identify and seek to address specific problems or constraints to trade in emerging markets through technical assistance activities that are intended to expand or maintain U.S. agricultural exports. Priority consideration will also be given to proposals that directly support or address at least one of the goals and objectives in the USDA and FAS Strategic Plans. The applicants' willingness to contribute resources, including cash or goods and services will be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on

the potential benefits to the industry represented by the applicant and the degree to which the proposal demonstrates industry support.

The limited funds and the range of eligible emerging markets worldwide generally preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most projects are funded at a level of less than $500,000 and for a duration of approximately 1 year. Private entities may submit multi-year proposals requesting higher levels of funding that may be considered in the context of a detailed strategic implementation plan. Funding in such cases is generally limited to 3 years and provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. Federal government entities are not eligible for multi-year funding.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide quarterly progress reports and final performance reports. Changes in the original project timelines and adjustments within project budgets must be approved by FAS.

Note: EMP funds awarded to federal government agencies must be expended or otherwise obligated by close of business, September 30, 2009.

III. Eligibility and Qualification Information

1. Eligible Applicants: Any United States private or Government entity with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Government entities consist of Federal, State, and local agencies. Private entities include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups (SRTG), profit-making entities, and consulting businesses. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation in and financial support from the U.S. industry. For-profit entities are also eligible but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities, or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. market development cooperators and SRTGs may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other marketing programs, *e.g.*, the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP). Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing: No private sector proposal will be considered without the element of cost-share from the applicant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost-share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from U.S. Government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a U.S. Government agency. Contributions from USDA or other U.S. Government agencies or programs may not be counted toward the stated cost-share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost-share requirement, but may be counted in the total cost of the project.

3. Other: Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. Address to Request Application Package: EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an on-line system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Organizations are encouraged to submit their application to FAS through the UES application Internet Web site. However, applicants are not required to use the UES format. The Internet-based format reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the on-line UES system must contact the Program Policy Staff at (202) 720–4327 to obtain site access information, including a user ID and password. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html*. A help file is available to assist applicants with the process. Applicants using the online system should also provide, promptly after the deadline for submitting the on-line application, a printed or e-mailed version of each proposal (using Word or compatible format) to the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Grants Management Branch, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

Applicants electing not to use the on-line system must submit both (1) two printed copies of their application to the address above and (2) an electronic version to *emo@fas.usda.gov*.

2. Content and Form of Application Submission: To be considered for the EMP, an applicant must submit to the FAS information required by the EMP regulations 7 CFR part 1486. EMP regulations and additional information are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*.

In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;
(d) Tax ID number;
(e) DUNS number;
(f) Primary contact person;
(g) Full title of proposal;
(h) Target market(s);
(i) Current conditions in the target market(s) affecting the intended commodity or product;
(j) Description of problem(s), i.e., constraint(s), to be addressed by the project, such as inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments (infrastructure, financing, regulatory or other non-tariff barriers), etc.;
(k) Project objectives;
(l) Performance measures: Benchmarks for quantifying progress in meeting the objectives;
(m) Rationale: Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;
(n) Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);
(o) Explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;
(p) Specific description of activity/activities to be undertaken;
(q) Timeline(s) for implementation of activity, including start and end dates;
(r) Information on whether similar activities are or have previously been funded with USDA resources in target country/countries (e.g., under MAP and/or Cooperator programs); and
(s) Detailed line item activity budget; Cost items should be allocated separately to each participating organization. Expense items constituting a proposed activity's overall budget (e.g., salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating:
(1) Which items are to be covered by EMP funding;
(2) Which by the participating U.S. organization(s); and
(3) Which by foreign third parties (if applicable).

Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip. Qualifications of applicant(s) should be included as an attachment.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time on August 15, 2008, in the Grants Management Branch. Proposals received after this date and time will not be reviewed or considered for program funding.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses such as indirect overhead charges, travel expenses, and consulting fees. CCC will also not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal. Full details of the funding restrictions are available in the EMP regulations.

5. Other Submission Requirements and Considerations: All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, August 15, 2008.

All applications on compact disc (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Daylight Time, August 15, 2008, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Grants Management Branch, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. Criteria: Key criteria used in judging proposals include, among others:

—Appropriateness of the activities for the targeted market(s) and the extent to which the project identifies market barriers, e.g., a fundamental deficiency in the market and/or a recent change in market conditions;
—Potential of the project to expand U.S. market share, increase U.S. exports or sales, and/or improve awareness of U.S. agricultural commodities and products;
—Quality of the project's performance measures, and the degree to which they relate to the objectives, deliverables, and proposed approach and activities;
—Justification for Federal funding;
—Overall cost of the project and the amount of funding provided by the applicant and any partners; and
—Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project.

Please see 7 CFR part 1486 for additional evaluation criteria.

2. Review and Selection Process: All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and as needed, by the private sector Advisory Committee on Emerging Markets to determine the qualifications, quality, appropriateness of projects, and reasonableness of project budgets.

3. Anticipated Announcement Date: EMP funding decisions are anticipated in late summer/fall of 2008. However, projects cannot begin before October 1, 2008.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the EMP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*.

3. Reporting. Quarterly progress reports for all programs 1 year or longer in duration are required. Projects of less than 1 year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content requirements for both types of reports are contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project as attachments to the final reports.

VII. Agency Contact(s)

For additional information and assistance, contact the Grants Management Branch, Foreign Agricultural Service, U.S. Department of Agriculture, phone: (202) 720–5306, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov*.

Dated: July 1, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. E8–16372 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2009 Foreign Market Development Cooperator (Cooperator) program. The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2008. The Cooperator program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *://www.fas.usda.gov/mos/programs/fmdprogram.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy, and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the Cooperator program, the FAS enters into agreements with nonprofit U.S. trade organizations which have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations which are nationwide in membership and scope. Cooperators may receive assistance only for the promotion of generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. Eligible Applicants: To participate in the Cooperator program, an applicant must be a nonprofit U.S. agricultural trade organization.

2. Cost Sharing: To participate in the Cooperator program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be stated in dollars and be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator program regulations, in sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost-share contributions.

3. Other: Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit their FMD applications to FAS through the UES application Internet Web site. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet website. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on compact disc.

Applicants planning to use the Internet-based system must contact the FAS/Program Policy Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html*.

Applicants who choose to submit applications on compact disc can obtain an application format by contacting the Program Policy Staff on (202) 720–4327.

2. Content and Form of Application Submission: To be considered for the Cooperator program, an applicant must submit to the FAS information required by the Cooperator program regulations in section 1484.20. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An

applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Technical Assistance for Specialty Crops program, and several Export Credit Guarantee programs. Any organization that is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned should contact the Program Policy Staff on (202) 720–4327.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. All Cooperator program applicants, regardless of the method of submitting an application, also must submit by the application deadline, an original signed certification statement as specified in 7 CFR 1484.20(a)(14). Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the Cooperator program regulations in sections 1484.54 and 1484.55.

5. Other Submission Requirements and Considerations: All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, August 15, 2008. Signed certification statements also must be received by that time at the address listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Standard Time, August 15, 2008, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1484.14 and 1484.20 of the Cooperator program regulations. Applications that meet the requirements then will be further evaluated by the proper Commodity Branch in FAS' Market Development and Grants Management Division. The Commodity Branch will review each application against the criteria listed in sections 1484.21 and 1484.22 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (2004–2009) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to;
- The applicant's 6-year average share (2004–2009) of all Cooperator marketing plan expenditures.

(b) Past Export Performance (20)

- The 6-year average share (2003–2008) of the value of exports promoted by the applicant compared to;
- The applicant's 6-year average share (2003–2008) of all Cooperator marketing plan expenditures plus a 6-year average share (2002–2008) of MAP expenditures and a 6-year average share (2002–2007) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (2003–2008) of the total value of world trade of the commodities promoted by the applicant compared to;
- The applicant's 6-year average share (2003–2008) of all Cooperator marketing plan expenditures plus a 6-year average share (2002–2008) of MAP expenditures and a 6-year average share (2002–2007) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

- The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2014 compared to;
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2007 compared to;
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2007, as specified in the 2004 Cooperator program application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total Cooperator program funds available then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the Cooperator program are anticipated during October 2008.

VI. Award Administration Information

1. Award Notices: The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator program funding, and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the Cooperator program regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/fmdprogram.asp*. Hard copies may be obtained by contacting Program Policy Staff at (202) 720–2379.

3. Reporting: The FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator program regulations in sections 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.*

Signed at Washington, DC on the 2nd of July, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E8–16367 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2009 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2008. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/map.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand, and maintain foreign markets for the United States agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein and the MAP regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy, and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for generic or brand promotion activities. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. Eligible Applicants: To participate in the MAP, an applicant must be a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (SRTGs), a U.S. agricultural cooperative, or a State agency. A small-sized U.S. commercial entity (other than a cooperative or producer association) may participate through a MAP participant.

2. Cost Sharing: To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be stated in dollars, and be at least 10 percent of the value of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be stated in dollars, and be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The MAP regulations, in section 1485.13(c), provide detailed discussion of eligible and ineligible cost-share contributions.

3. Other: Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance, and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit their MAP applications to FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet Web site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork, and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on compact disc.

Applicants planning to use the Internet-based system must contact the FAS/Program Policy Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a help file containing step-by-

step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on a compact disk can obtain an application format by contacting the Program Policy Staff on (202) 720–4327.

2. Content and Form of Application Submission: To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations in section 1485.13. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number.

An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) program, Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, the Technical Assistance for Specialty Crops program, and several Export Credit Guarantee programs. Any organization that is not interested in applying for the MAP, but would like to request assistance through one of the other programs mentioned, should contact the Program Policy Staff on (202) 720–4327.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. All MAP applicants, regardless of the method of submitting an application, must also submit by the application deadline, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in section 1485.16.

5. Other Submission Requirements and Considerations: All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, August 15, 2008. Signed certification statements also must be received by that time at the address listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Daylight Time, August 15, 2008, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review:

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the proper Commodity Branch in FAS' Market Development and Grants Management Division. The Commodity Branch will review each application against the criteria listed in section 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review:

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2005–2009) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to;
- The applicant's 4-year average share (2005–2009) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (2005–2007) of the value of exports promoted by the applicant compared to;
- The applicant's 2-year average share (2007–2008) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program and, the 2-year average share (2007–2008) of Cooperator marketing plan budgets.

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2009 compared to;
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 2007 as reported in the 2009 MAP application compared to;
- Past projections of exports for 2007 as specified in the 2007 MAP application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total MAP funds available then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the MAP are anticipated during October 2008.

VI. Award Administration Information

1. Award Notices: The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the MAP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/map.asp.* Hard copies may be obtained by contacting Program Policy Staff at (202) 720–4327.

3. Reporting: The FAS requires various reports and evaluations from MAP participants. Reporting requirements are detailed in the MAP regulations in section 1485.20(b) and (c).

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsdmin@fas.usda.gov.*

Signed at Washington, DC on the 2nd of July, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E8–16370 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605

SUMMARY: The Commodity Credit Corporation (CCC) announces it is inviting proposals for the 2009 Quality Samples Program (QSP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2008. QSP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. Applications received after this date will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Grants Management Branch, Foreign Agricultural Service, phone: (202) 690–4058, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/QSP.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price, the cost of transporting the samples domestically to the port of export, and then to the foreign port or point of entry. Transportation costs from the foreign port or point of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (e.g., not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and audiences who:

- Have not previously purchased the U.S. commodity which will be transported under QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (e.g., because of improper specification, blending, formulation, sanitary, or phytosanitary issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity; or
- Need technical assistance in processing or using the U.S. commodity.

II. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis only; and cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. Applicants: Any United States private or Government entity with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups (SRTGs), and profit-making entities.

2. Cost Sharing: FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit applications to FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal, which incorporates requests for funding and recommendations, for virtually all the FAS marketing programs, financial assistance programs, and market access programs. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet Web site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork, and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on compact disc.

Applicants planning to use the UES Internet-based system must contact the FAS Program Policy Staff at (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on compact disc can obtain an application format at the following URL address: *http://www.fas.usda.gov/mos/programs/qsp_appl.html* .

2. Content and Form of Application Submission: To be considered for QSP, an applicant must submit to FAS information detailed in this notice. Additionally, in accordance with the Office of Management and Budget's policy directive regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component.

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 2002–2008;

(c) Project information, including:

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2009–2011, which will be used to measure the effectiveness of the project, a benchmark performance measure for 2007, the viability of long-term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (i.e. , commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought;
- Beginning and end dates for the proposed project; and
- The importer's role in the project regarding handling and processing the commodity sample;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash and goods and services.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, August 15, 2008. Applications received after this date will be considered only if funds are still available.

4. Funding Restrictions: Proposals which request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

5. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, August 15, 2008.

All applications on compact disc (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Daylight Time, August 15, 2008, at the following address:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available QSP funds.

FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services

of the U.S. industry, and foreign third parties; and

• How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals that target countries meeting either of the following criteria:

• Per capita income less than $11,115 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators, July 2007]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or

• U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

Proposals will be evaluated by the applicable FAS Commodity Branches in the Market Development and Grants Management Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs.

2. Anticipated Announcement Date: Announcements of funding decisions for QSP are anticipated during October 2008.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding, and any cost-share contribution requirements.

2. Administrative and National Policy Requirements: The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of the effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP agreements are subject to review and verification by the FAS Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. Reporting: A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Grants Management Branch, Foreign Agricultural Service, phone: (202) 690–4058, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov*.

Signed at Washington, DC on the 2nd of July, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E8–16368 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2009 Technical Assistance for Specialty Crops (TASC) program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2009 and award funds in October 2008. The TASC program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: See paragraph IV.4 below for a detailed description of relevant dates.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Grants Management Branch, Foreign Agricultural Service, U.S. Department of Agriculture, phone: (202) 720–0866, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/tasc/tasc.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The TASC program is authorized by section 3205 of Pub. L. 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, or related technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC program, are defined to include all cultivated plants, or the products thereof, produced in the United States, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC program projects should be designed to address the following criteria:

• Projects should address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;

• Projects should demonstrably benefit the represented industry rather than a specific company or brand; and

• Projects must address barriers to exports of commercially-available U.S. specialty crops for which barrier removal would predominantly benefit U.S. exports.

Examples of expenses that CCC may agree to reimburse under the TASC program include, but are not limited to: Initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadlines will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty

crops worldwide preclude CCC from approving large budgets for individual projects.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. Please see 7 CFR part 1487 for additional restrictions.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

III. Eligibility Information

1. Eligible Applicants: Any United States organization, private or government, with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing or Matching: FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. Application through the Unified Export Strategy (UES): Organizations are encouraged to submit their applications to FAS through the UES application Internet Web site. Using the UES application process reduces paperwork and expedites FAS' processing and review cycle. Applicants planning to use the UES Internet-based system must contact FAS Program Policy Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

2. Application through electronic and hard copies: Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to FAS by e-mail or on compact disc. The application format is available on the Internet at: *http://www.fas.usda.gov/mos/tasc/proposals.html.*

3. Content and Form of Application Submission: All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC program regulations. In addition, in accordance with the Office of Management and Budget's policy directive (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

4. Submission Dates and Times: TASC funding is limited, and in order to assure sufficient resources are available to meet unanticipated needs during the fiscal year, TASC proposals will, generally, only be evaluated on a semi-annual basis. That is:

- Proposals received prior to, but not later than, 5 p.m. Eastern Daylight Time, August 15, 2008, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, August 15, 2008, will be considered for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an expedited evaluation.

FAS will track the time and date of receipt of all proposals.

5. Funding Restrictions: Although funded projects may take place in the United States, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, such as the costs of market research, advertising, or other promotional expenses. CCC will also not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

6. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, on August 15, 2008, to be considered.

All applications on diskette (with two accompanying paper copies) and any other applications must be received by 5 p.m. Eastern Daylight Time, on August 15, 2008, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Grants Management Branch, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

V. Application Review Information

1. Criteria: FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations.

2. Review and Selection Process: FAS will review proposals for eligibility and will evaluate each proposal against the factors referred to above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs and the Administrator, FAS. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. Administrative and National Policy Requirements: The agreements will incorporate the details of each project as approved by FAS. Each agreement will

identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC program regulations found at 7 CFR part 1487 in addition to this announcement.

3. Reporting: TASC participants are required to submit a written report(s), on no less than an annual basis, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal.

VII. Agency Contact

For additional information or assistance, contact the Grants Management Branch, Foreign Agricultural Service, U.S. Department of Agriculture, phone: (202) 720–0866, fax: (202) 690–0193, e-mail: *emo@fas.usda.gov.*

Signed at Washington, DC, on the 2nd of July, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E8–16369 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kalispell Line Valve 5 to 6 Loop Natural Gas Pipeline Project, Flathead National Forest, Flathead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice: Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal by NorthWestern Energy (NWE) to construct and operate a loop natural gas pipeline on the Hungry Horse Ranger District of the Flathead National Forest. The new loop pipeline would be installed underground and generally parallel Highway 2 and an existing natural gas transmission line currently authorized to NWE under a Forest Service special use permit (SUP). NWE proposes to construct approximately 12 miles of 12-inch diameter steel pipe from an existing natural gas valve station near Marias Pass on the Continental Divide westward to another existing valve station near the junction of Bear Creek and the Middle Fork Flathead River. The SUP would be amended to include the new loop pipeline. The project area is approximately 25 miles SW of Browning, Montana and approximately 50 highway miles SE of Columbia Falls, Montana.

DATES: Substantive comments regarding the proposal and the scope of the analysis should be received in writing on or before July 31, 2008. The draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency and made available for public review in October 2008. When the DEIS is available a Notice of Availability (NOA) will be published in the **Federal Register**. The final EIS (FEIS) is expected to be published in February 2009.

ADDRESSES: Send written comments to Jimmy DeHerrera, District Ranger. The mailing address is Hungry Horse Ranger District, P.O. Box 190340, Hungry Horse, Montana 59919. Electronic comments may be e-mailed to *comments-northern-flathead-hungry-horse-glacier-view@fs.fed.us* with ''Kalispell Line Valve 5 to 6 Loop Natural Gas Pipeline Project'' in the subject line and must be submitted in MS Word (*.doc), rich text format (*.rtf), or portable document format (*.pdf). Comments received in response to this request will be available for public inspection and will be released in their entirety if requested, pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: David Ondov, Project Manager, Flathead National Forest, 650 Wolfack Way, Kalispell, MT 59901, (406) 758–5364.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this project is to increase capacity and supply and to maintain reliable natural gas service to the Kalispell and Flathead Valley area of northwestern Montana. The integrity of the existing 10-inch diameter pipeline, constructed in 1962, is good, but NWE projects that its capacity will be reached within two years due to the continuing strong population growth in the Flathead Valley area. The existing pipeline is the Flathead Valley's only source of natural gas. During the past several years, the demand for natural gas has increased in western Montana as a result of steady population and economic growth. Kalispell, the largest town to be serviced by the proposed pipeline, grew from a population of 11,917 in 1990 to 19,432 in 2006.

Proposed Action

The proposed action includes construction and the long-term operation and maintenance of approximately 12 miles of 12-inch diameter steel pipe from an existing natural gas valve station near Marias Pass on the Continental Divide westward to another existing valve station near the junction of Bear Creek and the Middle Fork Flathead River. Approximately 11 miles of the new pipeline would be on National Forest System land and one mile would be on private lands in the central portion of the project area. The project area lies within the Hungry Horse Ranger District of the Flathead National Forest.

The new loop pipeline would be installed underground and generally parallel the existing natural gas pipeline that is currently authorized under a SUP to NWE. NWE would attempt to build the new pipeline as close as feasibly and technically possible to the existing line, but may have to diverge in some locations due to terrain, BNSF railroad tracks, highway right-of-way (ROW), environmental concerns, other utilities, engineering needs, or other technical factors. A portion of the new pipeline may need to be constructed in an inventoried roadless area due to a combination of these factors.

The authorized ROW for the existing pipeline in this area is 50 feet wide. The proposed action would require up to an additional temporary 50-foot wide working ROW to construct the new pipeline, with a final 50–80 foot total long-term operational ROW. The proposed action would, wherever possible, utilize the existing cleared, authorized 50 foot ROW to minimize the amount of new vegetation clearing and to combine maintenance access points. Pipeline operations require that the ROW remain free of heavy tree cover. Within the ROW, native forbs and shrubs would be maintained for the lifespan of the pipeline. Noxious weeds would be monitored and abated throughout the lifespan of the authorized use. The total new area affected for the 11 miles of ROW on National Forest land would be less than approximately 70 acres.

Underground installation would be conducted to comply with Department of Transportation (49 CFR 192.327) and NWE standards. Pipeline burial depths would allow for 42 inches of soil cover in normal soil, 60 inches at stream crossings, and 48 inches near public roads and railroads. Bedrock installations would be covered to a depth of 30 inches.

Areas of temporary disturbance would include temporary use areas for equipment and materials staging and construction access routes. Some of these would be on private lands. Native grasses and herbaceous plants would be restored in all areas where ground

disturbance or vegetation removal occurs. Revegetation progress would be monitored for two growing seasons or until 80% native cover is achieved.

Two shed-sized structures and three above-ground pipe assemblies would be constructed at the valve station at the west end of the proposed project area. Federal pipeline inspection rules would require long-term motorized and non-motorized maintenance access at selected points along the pipeline route.

Construction of the loop pipeline would take approximately 90 to 120 days, depending on fire restrictions and other unforeseen delays. After construction, NWE would utilize both the new 12-inch diameter pipeline and the existing 10-inch diameter pipeline, with the pipelines interconnecting at the valve stations to create a ''loop system.'' Looping pipelines has been shown to be a cost-effective method for increasing system capacity.

A temporary special use construction permit would be issued to NWE following completion of the EIS and a Record of Decision approving the pipeline. Following construction planned for summer 2009, the existing SUP would be amended to include the new loop pipeline.

More detailed scoping information and maps can be accessed on the Flathead National Forest Internet site at *http://www.fs.fed.us/r1/flathead/.*

Possible Alternatives

Alternative 1 is the no-action alternative. Alternative 2, the proposed action described above, was developed by NWE to respond to the purpose and need and may be modified for the draft EIS upon consideration of field engineering studies during the summer of 2008. A route that does not enter inventoried roadless areas may also be included in another alternative. Other viable alternatives may be developed by modifying the proposed action to respond to significant issues identified during the public involvement and scoping process.

Responsible Official

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 650 Wolfpack Way, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision (ROD).

Nature of Decision To Be Made

The scope of this project is limited to decisions concerning activities related to the construction and operation of a new natural gas loop pipeline, as described earlier. The Forest Supervisor will decide whether to authorize the construction and long-term operation of the new loop pipeline with additional ROW. Related decisions may address ancillary activities such as weed control and vegetation monitoring on the pipeline ROW, access to the pipeline ROW, etc.

The Forest Supervisor will make decisions regarding this proposed project only for National Forest System lands. Her decision will determine whether a construction SUP is issued and the existing permit is amended.

This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of January 1986, and its subsequent amendments, which provide overall guidance for land management activities on the Flathead National Forest.

Scoping Process

The Forest Service is seeking input concerning comments and concerns about this proposal from Federal, State, and local agencies, Native American tribes, and other individuals and organizations that may be interested in or affected by the proposed action. This input will be used to identify issues and develop alternatives during preparation of the EIS. Comments should be as specific as possible to assist the Forest Service in this manner. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the DEIS.

Preliminary Issues

Preliminary issues and concerns that will likely be evaluated in the EIS include potential effects of the proposed action related to the following: Threatened or endangered species such as the grizzly bear, lynx, and bull trout; inventoried roadless areas; motorized access; noxious weeds; wetlands; scenic qualities; and sensitive plant and animal species.

Permits or Licenses Required

The Forest Supervisor would authorize NWE to construct, maintain, and use the new natural gas loop pipeline through the issuance of a temporary construction SUP and amendment of the existing SUP.

NWE may need to obtain additional permits and approvals to construct the pipeline. These could include: Section 404 Permit by the U.S. Army Corps of Engineers; Section 106 National Historic Preservation Act Concurrence issued by the State Historical Preservation Office; National Pollutant Discharge Elimination System General Construction Permit issued by Montana's Department of Environmental Quality; Montana Joint Application for Proposed Work in Streams, Lakes and Wetlands issued by the Montana Department of Natural Resources and Conservation; and a Utility Crossing Permit issued by the Montana Department of Transportation. A complete list of required permits and authorizations will be included in the EIS.

Comment Requested

The Forest Service is seeking public and agency comment on the proposed action in order to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated. Comments received on this notice, including the names and addresses of those who comment, will be considered as part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without names and addresses, within a specified number of days.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the

reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F2.d 1016, 1022 (9th Circ. 1986) and *Wisconsin Heritages, Inc* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 27, 2008.

Cathy Barbouletos,

Forest Supervisor—Flathead National Forest.

[FR Doc. E8–15828 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Status of Travel Management Planning and Providing Access for Subsistence Purposes Within the USDA Forest Service, Alaska Region

AGENCY: Forest Service, USDA.

ACTION: Notice to inform.

SUMMARY: The USDA Forest Service, Alaska Region, is notifying the public of the process for making travel management decisions on National Forest System (NFS) lands in Alaska, consistent with both Subpart B of the Travel Management Rule (36 CFR 212) and the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII, Sections 810 and 811. The Tongass National Forest initiated travel management analyses, and will be completing National Environmental Policy Act (NEPA) and producing Motor Vehicle Use Maps (MVUMs) over the next 18 months, pursuant to 36 CFR 212 Subpart B. The analysis and associated NEPA will evaluate the effects on subsistence uses (Section 810 of ANILCA) and subsistence access (Section 811 of ANILCA); the public involvement requirements of ANILCA 810 and 811 will run concurrent with the NEPA public comment period, including notice and hearings; the NEPA documentation (for example, environmental assessment) and decision document (for example, Decision Notice and Finding of No Significant Impact) will be prepared to document the travel management route and area designation decisions. The prohibition on motor vehicle use off the designated system (36 CFR 261.13) and the closures or restrictions to access for subsistence purposes (Section 811(b) of ANILCA) will go into effect and are enforceable when each MVUM is completed, published, and made available to the public.

The Chugach National Forest and Sitka Ranger District, Tongass National Forest, completed their NEPA process and associated MVUM's pursuant 36 CFR 212 Subpart B. The Wrangell Ranger District, Tongass National Forest, completed their travel management NEPA, and is scheduled to publish their MVUM in 2009. The prohibition on motor vehicle use off the designated system (36 CFR 261.13) and closures or restrictions to access for subsistence purposes (Section 811(b) of ANILCA) go into effect and are enforceable when the MVUMs are published and made available to the public.

DATES: The Alaska Region is scheduled to complete all MVUMs by December 2009.

ADDRESSES: Chugach National Forest, Supervisor's Office, 3301 C Street, Suite 300, Anchorage, AK 99503–3993: Tongass National Forest, Supervisor's Office, Federal Building, Ketchikan, AK 99901–6591.

FOR FURTHER INFORMATION CONTACT: For questions and to obtain information on the completed MVUM for the Chugach National Forest, contact Steve Hennig (907) 743–9509 or visit the Web site at *http://www.fs.fed.us/r10/chugach/recreation/mvum.html.* For questions and to obtain information on the schedule for completing travel management and MVUMs for the Tongass National Forest, contact Hans von Rekowsi (907) 747–4217, or visit the Web site at: *http://www.fs.fed.us/r10/tongass/projects/projects.shtml.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In November 2005, the Forest Service published a rule at 36 CFR 212 (Travel Management Rule). Subpart B of the rule addresses designation of roads, trails, and areas for motor vehicle use. The rule requires responsible officials on each administrative unit or ranger district to designate those roads, trails, and areas open to motor vehicle use. Designated routes and areas will be identified on a MVUM. Once the MVUM is published, motor vehicle use that is inconsistent with the designations will be prohibited. If any routes are identified for closure, they will not be closed until after completion of the NEPA planning process and publishing of the MVUM. The following are exempted from designations: Fire, military, emergency and law enforcement vehicles for emergency purposes, limited administrative use by the Forest Service, and use authorized under written authorization from the Forest Service.

Motor vehicle access for subsistence purposes will be identified through travel management NEPA analysis being conducted on each ranger district. NEPA documents will clearly display and analyze subsistence uses and access, and the effects of route and area designations (and associated closures if applicable) on these uses and access. ANILCA 811(a) requires the Forest Service to ensure rural residents reasonable access to subsistence resources on NFS lands. ANILCA 811(b) requires the Forest Service to permit on NFS lands in Alaska the appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation. Decisions about closures and restrictions will be made by the responsible official.

Dated: June 30, 2008.

Paul K. Brewster,

Deputy Regional Forester, Alaska Region.

[FR Doc. E8–15873 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Solicitation of Nominations for Advisory Committee on Agriculture Statistics Membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

On April 3, 2007, the Secretary of Agriculture re-established the Advisory Committee charter for another 2 years. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc., of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views and needs for data of major suppliers and users of agriculture statistics.

DATES: Nominations must be received by August 8, 2008 to be assured of consideration.

ADDRESSES: Nominations should be mailed to Joe Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5041A South Building, Washington, DC 20250–2000. In addition, nominations may be mailed electronically to *hq_aa@nass.usda.gov.* In addition to mailed correspondence to the addresses listed above, nominations may also be faxed to (202) 720–9013.

FOR FURTHER INFORMATION CONTACT: Joe Reilly, Associate Administrator, National Agricultural Statistics Service, (202) 720–4333.

SUPPLEMENTARY INFORMATION: Nominations should include the following information: name, title, organization, address, telephone number, and e-mail address. Each person nominated is required to complete an Advisory Committee Membership Background Information form. This form may be requested by telephone, fax, or e-mail using the information above. Forms will also be available from the NASS home page *http://www.nass.usda.gov* by selecting ''About NASS,'' ''Advisory Committee on Agriculture Statistics.'' The ''Advisory Committee for Agriculture Statistics'' button is in the right column. Completed forms may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet site.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keeps NASS informed of emerging issues in the agriculture community that can affect agriculture statistics activities.

The Committee, appointed by the Secretary of Agriculture, consists of 25 members representing a broad range of disciplines and interests, including, but not limited to, producers, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for 10 open Committee seats. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected by members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture; Under Secretary for Research, Education, and Economics; or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members are reimbursed for official travel expenses only.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

Signed at Washington, DC, June 27, 2008.

Joseph T. Reilly,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. E8–16190 Filed 7–15–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Aerospace Supplier Development Mission to China; October 26–November 4, 2008

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Description

The Aerospace Supplier Development Mission to China was developed in response to requests from many small and medium-sized enterprises (SMEs) supplying the aviation industry, and is intended to include representatives from a variety of U.S. aerospace industry manufacturers and service providers. The mission will introduce these suppliers to end-users and prospective partners whose needs and capabilities are targeted to each U.S. participant's strengths. Participating in an official U.S. industry delegation will enhance the companies' ability to secure meetings in China. The mission will include appointments and briefings in Beijing, Shanghai, Suzhou, and Guangzhou, some of China's major aerospace industry hubs, as well as participation in Airshow China in Zhuhai to conclude the mission. The mission participants will also have opportunities to interact extensively with CS China aviation specialists.

Commercial Setting

The Chinese aerospace sector ranks among the world's most dynamic, going far beyond the country's massive investment in aircraft (mainland carriers anticipate doubling the size of their fleets to 1,500 by 2010, reaching 4,000 by 2025). Chinese aerospace companies have rapidly developed into serious players in the industry's global value chain. Chinese aerospace firms, including those linked to U.S. and European ''primes,'' now frequently make their own sourcing decisions, participate as ''risk sharing partners'' in new airframe and engine development programs, or take on the role of first-tier suppliers on Chinese programs.

The evolution of China's aerospace industry is part of a broader industry

trend toward supply chain consolidation and the embrace of lean manufacturing. Many traditional Tier 1 supplier responsibilities are being pushed down the supply chain to second- and third-tier suppliers. As the larger firms move into aerospace system integration, the lower-tier suppliers have little choice but to globalize themselves. This involves supplying China with products and services that might historically have been provided to U.S. and European suppliers that have since shifted production. In many cases, once established in China, the first-tier firms require their supply chain partners to begin dealing directly with Chinese members of the supply chain. While extremely challenging for SME suppliers, these new relationships bring an added benefit—the opportunity for additional sales with other aerospace companies doing business in China.

China Aviation Industry Corporation I and II (AVIC I and II), conglomerates of hundreds of companies, control the country's aerospace industry. Over the years, the main AVIC companies have formed joint-venture companies with key Western aerospace partners. The larger AVIC companies also have so-called ''foreign divisions'' engaged in manufacturing, design and engineering for Western customers on a semi-autonomous basis.

Mission Goals

The goals of the Aerospace Supply Chain Development Mission to China are threefold: (1) To introduce U.S. companies to Chinese joint-venture groups and Western original equipment manufacturers (OEMs); (2) to explore supplier opportunities under other aerospace programs (including Chinese programs and Western programs with Chinese firms ''risk sharing''); and (3) to facilitate an effective U.S. presence at Airshow China.

Mission Scenario

The mission's first stop is Beijing, home to AVIC's headquarters and the China National Aero-Technology Import and Export Corporation (CATIC), AVIC's trading and purchasing division. The second and third stops are Shanghai and nearby Suzhou, home to many AVIC companies (including the former MD–88 assembly site), AVIC joint-ventures, and autonomous Western OEMs. The fourth stop, Guangzhou, provides the opportunity to focus on Guangzhou Aircraft Maintenance Engineering Company Limited (GAMECO) as an example of a maintenance/repair/overhaul operation and a meeting with China Southern Airlines. The mission will conclude in nearby Zhuhai, at the China International Aviation and Aerospace Exhibition (known as Airshow China), the only Chinese aerospace exhibition endorsed by the Chinese central government. The last Airshow China, in 2006, showcased 52 aircraft and attracted some 550 exhibitors from more than 33 countries, as well as 90,000 trade visitors and 1,500 journalists. CS Guangzhou will provide entry to the trade show, manage a booth, and organize one half day of meetings with business and industry contacts for each of the mission participants.

Matchmaking efforts will involve coordination with the American Chamber of Commerce in China's U.S.-China Aviation Cooperation Program (ACP), a public/private partnership promoting technical, policy and commercial cooperation between the two countries' aviation sectors, and with other relevant groups, such as the Suzhou Economic Development Zone. Also, through an exclusive arrangement with Airshow China exhibition organizers, the mission participants will gain access to VIP receptions and additional assistance with matchmaking appointments at the show. U.S. participants will be counseled before, during, and after the mission by U.S. Export Assistance Center trade specialists, primarily by members of the Aerospace and Defense Technology Team.

Participation in the Aerospace Supply Chain Development Mission to China will include the following:

- Pre-travel briefings/webinar on subjects ranging from Chinese business practices to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Beijing, Shanghai, Suzhou, Guangzhou, and at Airshow China in Zhuhai;
- Transportation to airports in Beijing and Shanghai;
- Coach class airline ticket between Beijing and Shanghai;
- Bus transportation between Shanghai and Suzhou;
- Coach class airline ticket between Shanghai and Guangzhou;
- One Airshow China entry pass per company representative;
- Participation in industry receptions at Airshow China;
- Meetings with CS China aviation industry specialists in Beijing, Shanghai and Guangzhou.

PROPOSED TIMETABLE

Sunday, October 26, 2008	Participants arrive in Beijing on their own schedule. Afternoon briefing at Kerry Centre Hotel.
Monday, October 27, Tuesday, October 28	Pre-scheduled matchmaking appointments, focusing on contacts at AVIC 1 and CATIC. Briefing on Civil Aviation Administration of China (CAAC) standards and regulations. Roundtable with the ACP. Networking reception.
Wednesday, October 29	Flight to Shanghai. Single Company Promotion/U.S. Aerospace Suppliers' Technical Sales Forum. Half day of one-on-one meetings.
Thursday, October 30	One-on-one appointments, visits to major Shanghai Aerospace firms (*e.g.,* SAIC). Afternoon bus travel to nearby Suzhou. Appointments, coordinated with the Suzhou Economic Development Zone.
Friday, October 31	Appointments continue.
Saturday, November 1	Follow-up appointments, as needed, and optional sightseeing.
Sunday, November 2	Flight to Guangzhou.
Monday, November 3	Networking breakfast with the American Chamber of Commerce. Meeting with GAMECO's Procurement Department and China Southern Airlines' Procurement Department, with technical tour of the facilities. Afternoon bus trip to Zhuhai (approximately 1 hour). Attend Airshow China's official opening (early evening).
Tuesday, November 4	Pre-scheduled appointments at Airshow China. VIP reception (by special invitation). Mission concludes in evening.

PROPOSED TIMETABLE—Continued

	Participants free to depart Zhuhai via the ferry to Hong Kong.

Participation Requirements

All parties interested in participating in the Aerospace Supplier Development Mission to China must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will open on a first come first served basis to 10 qualified U.S. companies.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $5,000 for large firms and $4,150 for a small or medium-sized enterprise (SME), which includes one principal representative.* The fee for each additional firm representative (large firm or SME) is $600. Expenses for lodging, some meals, incidentals, and travel (except for in-country arrangements previously noted) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals
- Consistency of the company's goals and objectives with the stated scope of the trade mission
- Timeliness of company's signed application and participation agreement
- Timely and adequate provision of information on company's products/services and market objectives, in order to facilitate appropriate matching with potential business partners

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar *(http://www.ita.doc.gov/doctm/tmcal.html)* and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than August 29, 2008. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

Mr. Eric Nielsen, ITA Aerospace and Defense Technology Team, Arizona U.S. Export Assistance Center, Tel: (520) 670–5808, E-mail: *eric.nielsen@mail.doc.gov;*

Mr. William Lawton, ITA Aerospace and Defense Technology Team, Miami U.S. Export Assistance Center, Tel: (305) 526–7425, ext. 26, E-mail: *William.lawton@mail.doc.gov.*

Eric Nielsen,

Director, Arizona U.S. Export Assistance Center.

[FR Doc. E8–15838 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–DS–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Silicon Metal from the Russian Federation: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on silicon metal from the Russian Federation (Russia), would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation for this antidumping duty order.

EFFECTIVE DATE: July 16, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3586 or (202) 482–4146, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated and the ITC instituted sunset reviews of the antidumping duty order on silicon metal from Russia, pursuant to Section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five–year (''Sunset'') Reviews*, 73 FR 6128 (February 1, 2008) (*Notice of Initiation*).

As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping, and therefore notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked. *See Silicon Metal from the Russian Federation: Final Results of Expedited Sunset Review of Antidumping Order*, 73 FR 31064 (May 30, 2008).

On June 30, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on silicon metal from Russia would likely lead to a continuation or recurrence of material injury to an

industry in the United States within a reasonably foreseeable time. *See Silicon Metal from Russia*, USITC Pub. 4018, Inv. No. 731–TA–991 (Review), June 2008; *see also* Silicon Metal from Russia, 73 FR 38467 (July 7, 2008).

Scope of the Order

The product covered by this order is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this order also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS). This order covers all silicon metal meeting the above specification, regardless of tariff classification.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on silicon metal from the Russian Federation. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation, in July 2013.

This five–year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 9, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–16316 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Manufacturing and Technology Trade Mission to Australia; November 17–21, 2008

AGENCY: Department of Commerce, ITA.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Manufacturing and Technology Trade Mission to Sydney and Melbourne, Australia, November 17–21, 2008, to be led by the Assistant Secretary for Trade Promotion or another U.S. Department of Commerce senior official.

The mission will help participating firms gain market information, make business and government contacts, solidify business strategies, and advance specific projects, towards the goal of increasing U.S. exports to Australia. The mission will include business-to-business matchmaking appointments with local companies, as well as meetings with key government officials, and American and local chambers of commerce. The delegation will be comprised of U.S. firms representing a cross section of U.S. industries with growing potential in Australia, including, but not limited to, automotive parts; building and construction, including green building; energy production, including renewable energy, coal production, and mineral extraction; transportation, including intelligent transportation systems; and water resources.

Commercial Setting

Macro measures of opportunity in the Australian market include high per capita income, rising terms of trade, and substantial purchasing power, in addition to the favorable foreign exchange rate, which gives a strong boost to U.S. exports. Australia ranks as the United States' 15th largest export market, and the Australia-U.S. Free Trade Agreement (AUSFTA) has enhanced our long and successful trading relationship by eliminating tariffs on nearly all manufactured and agricultural goods. U.S. goods and services exports to Australia reached $29 billion in 2007, an increase of 10 percent over 2006, and first-quarter figures for 2008 (provided by the Bureau of Economic Analysis) show continued growth.

The following sectors hold considerable promise for U.S. firms:

Automotive: Australia's $12 billion automotive aftermarket provides excellent opportunities for U.S. suppliers of specialty products, accessories, and necessary parts such as tires, carburetors, engine parts, piston rings, fuel injection products, transmission and ignition products, lubricants and fuel pumps, and body repair tools.

Construction: Imports dominate Australia's $1.3 billion market for construction machinery, of which U.S. imports account for $578.3 million. AUSFTA's elimination of import duty on construction machinery from the United States, together with a favorable exchange rate, puts U.S. imports in a stronger competitive position, as the import duty rate from other countries is five percent. The Australian government allocated $18.6 billion in the 2007 budget to improve the country's inland transport system over the next five years. Australia's expanding ''green'' building market also offers opportunities for U.S. suppliers of innovative technologies.

Energy: Power generation is an important sector in Australia, including around 81 billion in generation, transmission and distribution assets. Coal-fired generators account for the bulk of electricity generated. In 2000, the Australian government provided a stimulus by requiring electricity retailers to source an additional two percent of their supply from renewable or specified waste sources. In December 2007, the new Australian government ratified the Kyoto Protocol and has set a target to reduce greenhouse gas emissions by 60 percent on 2000 levels by 2050. Australia's federal government is expected to develop grants and policy initiatives to help increase the number of renewable energy projects substantially.

Mining: Australia is among the world's leading exporters of black coal, diamonds, iron ore, lead, rutile, zinc and zirconium, gold; aluminum, and bauxite. The United States is Australia's major supplier of mining equipment, claiming 35 percent of the import market share. Continuing high mineral prices throughout 2007 have led to further exploration across the country. In 2006–2007 private enterprises spent 55 percent more ($3.1 billion) on mineral exploration than in the previous fiscal year.

Oil and gas: Australia continues to be a good market for U.S. oil and gas equipment and service suppliers. Increasing demand for petroleum products (particularly liquefied natural gas) is fueling the exploration, development and production of both

existing and new fields across Australia. The United States is the major supplier of pumps, valves, gauges, and other types of oil and gas equipment demanded by Australia's $2.5 billion market for technology for upstream and downstream projects.

Water resources: Australia spends an estimated $4.2 billion on water and wastewater treatment annually, 70 percent on water collection and distribution and 30 percent on product quality and treatment. Imports supply approximately 60 percent of the market, for which the United States is the third largest supplier. Water storage levels remain critically low in many areas, and all levels of government are grappling with strategies aimed at securing future water supply.

Mission Goals

The Manufacturing and Technology Trade Mission to Australia will help U.S. firms initiate or expand their exports to Australia's leading industry sectors by providing business-to-business introductions, market access information, and information on U.S. Government trade financing programs.

Mission Scenario

The mission will include stops in Sydney and Melbourne. In each city, participants will meet with government officials, potential buyers, agents/distributors, and partners. They will also attend market briefings by Embassy officials, as well as networking events offering further opportunities to speak with local business and government representatives.

PROPOSED MISSION TIMETABLE

Monday, November 17, 2008	Mission begins in Sydney; Market briefing; Business matchmaking; Networking reception.
Tuesday, November 18, 2008	Business matchmaking.
Wednesday, November 19, 2008	Travel to Melbourne. Evening reception.
Thursday, November 20, 2008	Briefing; Business matchmaking.
Friday, November 21, 2008	Business matchmaking.

Criteria for Participation and Selection

All parties interested in participating in the Manufacturing and Technology Trade Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A maximum of 22 companies will be selected to participate in the mission from the interested applicants. U.S. companies already doing business with Australia as well as U.S. companies seeking to enter Australia for the first time may apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $5,580 for large firms and $3,500 for a small or medium-sized enterprise (SME).* The fee for each additional firm representative (large firm or SME) is $850. Expenses for travel, lodging, most meals, and any incidentals will be the responsibility of each mission participant. The option to participate in the mission is also being offered to U.S.-based firms with an established presence in Australia or neighboring countries; the same fee structure applies.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, or request additional information.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria: Selection will be based on the following criteria:

- Suitability of the company's products or services in Australia.
- Applicant's potential for business in Australia, including likelihood of exports resulting from the mission
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and close September 26, 2008. Applications are available on-line on the Australia Trade Mission Web site at *http://www.export.gov/australiamission.* They can also be obtained by contacting the Mission Project Officers listed below. Applications received after September 26, 2008, will be considered only if space and scheduling permit.

Contacts

Mr. Louis Quay, Global Trade Programs, Commercial Service Trade Missions Program, Tel: 202–482–3973, E-mail: *australia.mission@mail.doc.gov.*

Jessica Arnold,

International Trade Specialist, Commercial Service Trade Missions Program.

[FR Doc. E8–15837 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–DS–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Motion to Terminate Panel Review of the final results of the eleventh countervailing duty administrative review respecting Pure and Alloy Magnesium from Canada (Secretariat File No.: USA–CDA–2004–1904–01).

SUMMARY: Pursuant to the Notice of Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of July 9, 2008. A panel was appointed to this panel review and has been dismissed pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* effective July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: July 10, 2008.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E8–16186 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ08

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP).

DATES: The meeting will be held on August 6 & 7, 2008.

ADDRESSES: The meeting will be held at the Gulf Hills Hotel & Conference Center, 13701 Paso Road, Ocean Springs, MS 39564.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the Law Enforcement Advisory Panel (LEAP) to develop the 2009–2010 Operations Plan to their Strategic Plan and discuss the status of each states' Joint Enforcement Agreements.

The LEAP consists of principal law enforcement officers in each of the Gulf States, as well as the NMFS, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and NOAA's General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the LEAP 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 of the LEAP will be restricted to those issues specifically identified in the agendas 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 Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: July 11, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–16213 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ05

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings regarding Amendment 7 to the Shrimp Fishery Management Plan (FMP) for the South Atlantic Region and Amendment 16 to the Snapper Grouper FMP for the South Atlantic Region. Amendment 7 to the Shrimp FMP addresses requirements for South Atlantic rock shrimp endorsements, Vessel Monitoring System (VMS) verification for the rock shrimp fishery, and economic reporting for the shrimp fishery.

Amendment 16 to the Snapper Grouper FMP ends overfishing of gag and vermilion snapper and proposes interim allocations for commercial and recreational sectors. A series of public hearings for Amendment 16 were held from May 7 - 15, 2008. Since that time, additional management alternatives have been included in the amendment.

DATES: The series of 3 public hearings will be held August 7th, 8th, and 12th, 2008. All public hearings will be open from 3 p.m. - 7 p.m. Written comments must be received in the South Atlantic Council's office by 5 p.m. on August 15, 2008.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405. Email comments on Shrimp Amendment 7 to *ShrimpAmend7@safmc.net*. Email

comments for Snapper Grouper Amendment 16 to *SGAmend16SecondPH@safmc.net*.

Copies of the Public Hearing Documents are available at the Council's web site at *www.safmc.net* or from Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Proposed actions in Amendment 7 to the Shrimp FMP address: (1) the current 15,000–pound landing requirement for rock shrimp; (2) loss of limited access rock shrimp endorsements due to not meeting the landing requirement by December 31, 2007; (3) loss of limited access rock shrimp endorsements due to failing to renew within the specified timeframe; (4) renaming the rock shrimp permit and endorsement to minimize confusion, (5) requirements for Vessel Monitoring System verification; and (6) requirements for the provision of economic data by shrimp permit holders.

A series of public hearings were held May 7–15, 2008 on management alternatives in Amendment 16 to the Snapper Grouper FMP. The amendment updates management reference points for gag grouper and vermilion snapper, including Maximum Sustainable Yield (MSY), Optimum Yield (OY), Maximum Fishing Mortality Threshold (MFMT) and Minimum Stock Size Threshold (MSST), which reflect current scientific information as provided by stock assessments and approved by the Scientific and Statistical Committee. In addition, the amendment would either alter current management measures or implement new management measures that would reduce current harvest levels to yields associated with the optimum yield and end overfishing of both stocks in the South Atlantic. The Council will also specify interim allocations between the commercial and recreational sectors.

As a response to public input and recommendations from its Snapper Grouper Advisory Panel, in June 2008, the Council agreed to add four additional management alternatives for consideration and analysis in Amendment 16. The new alternatives include: (1) a commercial trip limit of 1,000 pounds for gag with a fishing year start date of May 1. In addition, during March and April, no fishing for and/or possession of the following species would be allowed: gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney; (2) a commercial trip limit of 1,000 pounds for gag with a fishing year start date of January 1. In addition, during February, March, and April no fishing for and/or possession of the following species would be allowed: gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney; (3) implement a May 1 fishing year start date for the commercial vermilion snapper fishery and a 1,000 pound trip limit for the commercial vermilion snapper fishery; and 4) South of the Miami-Dade/Monroe County line, no fishing for and/or possession of the following species would be allowed during June 1 - December 31: gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney. No fishing for and/or possession of gag would be allowed year- round south of the Miami-Dade/Monroe County line. Fishing for black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney would be allowed January 1 through May 31 for Monroe County (Southern region). Alternative 4 would apply to both commercial and recreational fisheries.

Council staff and area Council members will be available for presentations, informal discussions, and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing issues for Council consideration.

Hearing Dates and Locations

The public hearings will be held at the following locations:

1. *August 7, 2008* - Hyatt Regency Jacksonville Riverfront, 225 Coast Line Drive East, Jacksonville, FL 32202, telephone: (904) 588–1234;
2. *August 8, 2008* - Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920, telephone: (321) 784–0000;
3. *August 12, 2008* - Hilton Garden Inn Charleston Airport, 5265 International Blvd., North Charleston, SC 29418, telephone: (843) 308–9330.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 5, 2008.

Dated: July 11, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–16242 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

July 11, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

EFFECTIVE DATE: July 16, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain polyester/nylon corduroy fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2043.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 69.2008.06.12.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified

pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On June 12, 2008, the Chairman of CITA received a commercial availability request from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain polyester/nylon corduroy fabrics, of the specifications detailed below. On June 16, 2008, CITA notified interested parties of, and posted on its website, the accepted request and requested that interested entities provide, by June 26, 2008, a response advising of its objection to the commercial availability request or its ability to supply the subject product. CITA also explained that rebuttals to responses were due to CITA by July 2, 2008.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Corduroy fabric specifications:

Polyester/Nylon Corduroy Fabric
HTS: 5801.32.00
Fiber Content: 60 to 90% polyester/40 to 10% nylon
Yarn:
Warp - Polyester filament between 100-200 Denier (111-222 decitex), dispersed dyed
Fill - Polyester filament between 100-200 Denier (111-222 decitex), dispersed, and nylon filament between 120-220 Denier (133-244 decitex), acid dyed
Construction: 65 to 85 warp ends x 150 to 170 fill picks per inch (25 to 34 warp ends x 59 to 67 fill picks per cm).
Number of Wales: 4 to 6 wales per cm (10 to 16 wales per inch)
Weight: 240 to 280 g/m2 (7.08 to 8.26 oz./sq.yd.)
Width: 56 to 64 inches (142 to 162 cm)
Finish: Dyed

R. Matthew Priest,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–16313 Filed 7–15–08; 8:45 am]
BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

July 11, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: July 16, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain uncut polyester/nylon corduroy fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2043.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 68.2008.06.12.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On June 12, 2008, the Chairman of CITA received a commercial availability request from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain uncut polyester/nylon corduroy fabrics, of the specifications detailed below. On June 16, 2008, CITA notified interested parties of, and posted on its website, the accepted request and requested that interested entities provide, by June 26, 2008, a response advising of its objection to the commercial availability request or its ability to supply the subject product. CITA also explained that rebuttals to responses were due to CITA by July 2, 2008.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Corduroy fabric specifications:

Polyester/Nylon Uncut Corduroy Fabric
HTS: 5801.31.00
Fiber Content: 60 to 90% polyester/40 to 10% nylon

Yarn:
Warp - Polyester filament between 100-200 Denier (111-222 decitex) dispersed dyed;
Fill - Polyester filament between 100-200 Denier (111-222 decitex), dispersed, and nylon filament between 120-220 Denier (133-244 decitex), acid dyed
Construction: 55 to 75 warp ends x 145 to 165 fill picks per inch (21 to 30 warp ends x 57 to 65 fill picks per cm)
Weight: 210 to 235 g/m2 (6.19 to 6.93 oz/sq. yd.)
Width: 56 to 64 inches (142 to 162 cm)
Finish: Dyed

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–16315 Filed 7–15–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 17, 2008. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 15, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of the Under Secretary

Type of Review: New.

Title: Study of Pell Grant Recipients Who Transfer Among Eligible Institutions.

Abstract: This is a request for clearance for a survey of Pell Grant recipients who transferred from one institution to another. The general purpose of the survey is to determine the satisfaction of Pell Grant recipients with the financial aid process, while a more specific purpose is to identify and describe problems that Pell Grant recipients may encounter when attempting to transfer credits/courses from one institution to another.

Additional Information:

The U.S. Department of Education (the Department) requests that OMB grant an emergency clearance of the Study of Pell Grant Recipients Who Transfer Among Eligible Institutions. This study is designed to determine the satisfaction of Pell Grant recipients with the financial aid process and to identify and describe problems that they may encounter when attempting to transfer credits/courses from one institution to another. This study is particularly relevant, given the timing of the following factors: First, the Congress is currently working on reauthorization for the Higher Education Act/ reauthorization will likely include new requirements for disclosing institutions' transfer of credit policies. Implementation of these requirements by the Department would be best informed by the results of this study. Second, the Department of Education currently has the best sample with the most recent contact information for the population of interest. Given that this population is particularly difficult to reach, there is significant risk that our sample may degrade if we delay data collection further. Finally the information obtained from this study will assist in improving the Department's customer service functions for students who receive federal student aid for the 2009–10 school year. Data from this study will inform messaging to federal student aid applicants who appear to transfer to ensure that the credits that they have earned are considered by their receiving institution. Delays in conducting this study would prevent the Department from providing this service to federal student aid applicants. We respectfully request OMB approval by July 17, 2008.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500.

Burden Hours: 375.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3758. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–16151 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 15, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.

Title: Application for Grants Under the State Charter School Facilities Incentive Grants Program.

Frequency: Semi-annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 12. Burden Hours: 4,800.

Abstract: The Department of Education will use the application to award grants under the State Charter School Facilities Incentive grants program. These grants are made to States to provide them with an incentive to create new or enhance existing per-pupil facilities for charter schools.

Requests for copies of the proposed information collection request may be accessed from *http: //edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3715. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–16157 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 15, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: The Evaluation of the Implementation of the Rural and Low-Income Schools (RLIS) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 666. Burden Hours: 250.

Abstract: This OMB package requests clearance for data collection instruments to be used in the Evaluation of the Implementation of the Rural and Low-Income Schools (RLIS) Program which will be administered by Berkeley Policy Associates (BPA). The purpose of the study is to obtain information useful for the management and improvement of the RLIS program. In particular, the study will obtain information that will be used for preparing the Biennial Report to Congress on the RLIS program (mandated by Section 6224(c) of Title VI, Part B of the Elementary and Secondary Education Act), providing information for the next Office of Management and Budget (OMB) Program Assessment Rating Tool (PART), and providing context and greater depth of understanding when reporting on Government Performance and Results Act (GPRA) measures.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3760. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–16158 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 9, 2008, the Department of Education published a comment period notice in the **Federal Register** (Page 39286, Column 1) for the information collection, ''FRSS Educational Technology in Public Schools.'' This notice hereby corrects the title to ''FRSS 96—District Survey of Alternative Schools and Programs: 2007–2008.'' The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E8–16172 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 9, 2008, the Department of Education published a comment period notice in the **Federal Register** (Page 39286, Column 3) for the information collection, ''Application for Grants under the Student Support Services Program.'' This notice hereby corrects the Responses to 1,500 and the Burden Hours to 66,000. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E8–16173 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 15, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.* , 'Upward Bound Evaluation']''. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Teachers' Use of Educational Technology in U.S. Public Schools.

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,400; Burden Hours: 2,100.

Abstract: This survey will collect information from a sample of 4,000 public elementary and secondary school teachers about their use of education technology. The survey will ask about teachers' use of technology in their teaching; their preparation to use these technologies; and how well prepared they feel to use these technologies.

Requests for copies of the information collection submission for OMB review may be accessed from http://

edicsweb.ed.gov, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3677. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–16217 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On June 12, 2008, the Department of Education published a comment period notice in the **Federal Register** (Page 33414, Column 3) for the information collection, ''Consolidated State Performance Report (Part I and II).'' This notice hereby corrects the Focused Question for Public Comment to read:

Focused Question for Public Comment: EDF*acts* Data Linkages for Prepopulation of CSPR.

The SY 2006–07 CSPR contained questions that were ''Initially Pre-populated from ED*Facts*.'' The ''*Initial Prepopulation*'' strategy allowed CSPR coordinators the flexibility to use either the data submitted through ED*Facts* or an alternative data source to respond to questions on the CSPR.

It is ED's intention and desire to move as many of those questions, which were ''Initially prepopulated'' in 2006–07 to full utilization of ED*Facts* Submissions for 2007–08. As a result, CSPR coordinators will only be able to amend responses to those questions on the CSPR by working with their ED*Facts* coordinator to resubmit a file through ED*Facts*. The Department plans to move cautiously towards this new strategy by carefully reviewing each state's ED*Facts* transition agreement to ensure that all states will continue to have the capacity to submit their CSPR to the Department in a timely manner and with complete and accurate information.

The Department is soliciting public comment from the states on the viability of moving any or all of the following questions, which were initially pre-populated in 2006–07 to exclusive pre-population for 2007–08 or 2008–09.

Questions on the 2007–08 CSPR which were ''Initially Prepopulated from ED*Facts*'' in 2006–07 are listed below:

Question No.	Descriptor
1.3.1	Student Achievement in Mathematics.
1.3.2	Student Achievement in Reading Language Arts.
1.4.3	Accountability of Districts That Received Title I Funds.
1.4.9.1.2	Public School Choice—Students.
1.4.9.1.3	Funds Spent on Public School Choice.
1.4.9.2.2	Supplemental Educational Services—Students.
1.4.9.2.3	Funds Spent on Supplemental Educational Services.
1.6.5.1	Immigrant Students.
1.8.1	Graduation Rates.
1.9.2.1	Homeless Children and Youths Served by McKinney-Vento Subgrants.
1.9.2.2	Subpopulations of Homeless Students Served.
1.9.2.5.1	Reading Assessment.
1.9.2.5.2	Mathematics Assessment.
1.10.1	Category 1 Child Count.
1.10.2	Category 2 Child Count.
2.3.1.1	Eligible Migrant Children.
2.3.1.2	Priority for Services.
2.3.1.3	Limited English Proficient.
2.3.1.4	Children with Disabilities (IDEA).
2.3.2.1	Dropouts.
2.3.2.3.1	Reading/Language Arts Participation.
2.3.3.1.1	MEP Students Served During the Regular School Year.
2.3.3.1.2	Priority for Services—During the Regular School Year.
2.3.3.3	MEP Participation—Program Year.
2.3.4.1	Schools and Enrollment.
2.3.4.2	Schools Where MEP Funds Were Consolidated in Schoolwide Programs.
2.3.6.1.2	MEP Staff.
2.4.1.2	Students Served—Subpart 1.
2.4.1.6.1	Academic Performance in Reading—Subpart 1.
2.4.1.6.2	Academic Performance in Mathematics—Subpart 1.
2.4.2.6.1	Academic Performance in Reading—Subpart 2.
2.4.2.6.2	Academic Performance in Mathematics—Subpart 2.
2.7.2.1	State Definitions.
2.7.2.2.1	Out-of-School Suspensions for Violent Incident Without Physical Injury.
2.7.2.2.2	Out-of-School Expulsions for Violent Incident Without Physical Injury.
2.7.2.3.1	Out-of-School Suspensions for Violent Incident with Physical Injury.
2.7.2.3.2	Out-of-School Expulsions for Violent Incident with Physical Injury.
2.7.2.4.1	Out-of-School Suspensions for Weapons Possession.
2.7.2.4.2	Out-of-School Expulsions for Weapons Possession.
2.7.2.5.1	Out-of-School Suspensions for Alcohol-Related Incidents.
2.7.2.5.2	Out-of-School Expulsions for Alcohol-Related Incidents.
2.7.2.6.1	Out-of-School Suspensions for Illicit Drug-Related Incidents.
2.7.2.6.2	Out-of-School Expulsions for Illicit Drug-Related Incidents.

The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E8–16160 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 21, 2008. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: July 31–August 2, 2008.

Times:

July 31:

Committee Meetings:

Assessment Development Committee: Closed Session—8:30 a.m. to 1:45 p.m.

Ad Hoc Committee on NAEP Testing and Reporting: Open Session—2:15 p.m. to 4:15 p.m.

Executive Committee: Open Session—4:30 p.m. to 5 p.m.; Closed Session—5 p.m. to 6 p.m.

August 1:

Full Board: Open Session—8:30 a.m. to 9 a.m.; 12:30 p.m. to 4 p.m.

Committee Meetings:

Assessment Development Committee: Closed Session—9:15 a.m. to 12:15 p.m.

Committee on Standards, Design and Methodology: Open Session—9:15 a.m. to 10:30 a.m.; Closed Session—10:30 a.m. to 12:15 p.m.

Reporting and Dissemination Committee: Open Session—9:15 a.m. to 12:15 p.m.

August 2:

Nominations Committee: Closed Session—8:15 a.m. to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: Mandarin Oriental Washington DC, 1330 Maryland Avenue, SW., Washington DC 20024.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On July 31 from 8:30 a.m. to 1:45 p.m. the Assessment Development Committee will meet in closed session to review secure test items for grades 4, 8, and 12 for the 2009 National Assessment of Educational Progress (NAEP) science assessments and for the 2010 NAEP pilot assessments in civics and geography at grades 4, 8, and 12. The meeting must be conducted in closed session as disclosure of proposed test items for the assessments would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On July 31, the Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners will meet in open session from 2:15 p.m. to 4:15 p.m. The Executive Committee will meet in open session from 4:30 p.m. to 5 p.m. on July 31 and in closed session from 5 p.m. to 6 p.m. During the closed session the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering the 2008–2012 assessment years, based on funding for Fiscal Year 2010. The discussion of contract options and costs will address the implications for congressionally mandated goals and adherence to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contract awards, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The second item of discussion during the Executive Committee's closed session is a discussion of personnel matters and the nomination of the Board Vice Chair for the one-year term beginning October 1, 2008. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On August 1, the full Board will meet in open session from 8:30 a.m. to 9:00 a.m. The Board will approve the agenda and the May 2008 Board minutes. Thereafter, the Governing Board will receive a report from the Executive Director of the Governing Board, and hear an update on the work of the National Center for Education Statistics (NCES).

On August 1, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design and Methodology; and the Reporting and Dissemination Committee will meet from 9:15 a.m. to 12:15 p.m.

The Assessment Development Committee will meet in closed session from 9:15 a.m. to 12:15 a.m. on August 1 to review secure hands-on tasks and computer based tasks for the 2009 NAEP science assessment in grades 4, 8, and 12. The meeting must be conducted in closed session as disclosure of proposed test items for the science assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On Friday, August 1, the Committee on Standards, Design and Methodology will meet in open session from 9:15 a.m. to 10:30 a.m. and in closed session from 10:30 a.m. to 12:15 p.m. During the closed session, the Committee will first receive results of a study conducted by

NCES on test items for the NAEP 2009 reading and math assessments to demonstrate the effectiveness of new item development strategies. The second portion of the closed session briefing from NCES is to receive preliminary results of NAEP studies to maintain trend lines for the 2009 NAEP reading and mathematics assessments. The meeting must therefore be conducted in closed session in order to allow the Committee to receive and discuss confidential test items and results of NAEP studies that have not been publicly released. This would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Reporting and Dissemination Committee will meet in open session on August 1 from 9:15 a.m. to 12:15 p.m.

On August 1, from 12:30 p.m. to 1:30 p.m. the full Board will meet in open session to hear a presentation from the Virginia Superintendent of Public Instruction and the Chair of the Governing Board's Policy Task Force that works with the Council of Chief State School Officers. From 1:30 p.m. to 2:30 p.m. the Board will receive a briefing from the Chair of the Board's 12th Grade Technical Panel on Preparedness Research. From 2:45 p.m. to 4 p.m., the Board will hear a presentation from the Executive Director of the Council of the Great City Schools on how Trial Urban Districts make use of NAEP data. The August 1 session of the Board meeting is scheduled to adjourn at 4 p.m.

On August 2, the Nominations Committee will meet in closed session from 8:15 a.m. to 8:45 a.m. to receive an update on the status of the 2008 Board nominations and to review and discuss confidential information regarding nominees for Board vacancies for terms beginning on October 1, 2009. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 2 from 8:15 a.m. to 12 p.m. to hear a presentation on ''Inside NAEP: Background Variables.'' From 10:15 a.m. to 12 p.m. the Board will receive and take action on Committee reports and elect the Board Vice Chair. The August 2, 2008 session of the Board meeting is scheduled to adjourn at 12 p.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 11, 2008.

Mary Crovo Clark,

Deputy Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. E8–16223 Filed 7–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Electric Transmission Congestion Study

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy (DOE).

ACTION: Notice of date and time Changes for technical workshops.

SUMMARY: On June 4, 2008, DOE published a notice that DOE was initiating preparations for the 2009 National Electric Transmission Congestion Study pursuant to section 216(a)(1) of the Federal Power Act (73 FR 31846). In the June 4 notice, DOE stated that it would be hosting six regional technical workshops to receive and discuss input concerning electric transmission-level congestion. The date for the workshop in Atlanta and the starting time of the workshop in Chicago have been changed. The locations of the workshops remain the same.

DATES: See **SUPPLEMENTARY INFORMATION** section for workshop date and time changes.

FOR FURTHER INFORMATION CONTACT: David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Date and Time Changes for Technical Workshops

Workshops dates and times: The date for the Atlanta and the starting and ending time for the Chicago technical workshops are:

1. July 29, 2008, 9 a.m. to 12:30 p.m., Atlanta, GA.
2. September 17, 2008, 8:30 a.m. to 12 p.m., Chicago, IL.

Issued in Washington, DC on July 10, 2008.

Marshall E. Whitenton,

Deputy Assistant Secretary, Permitting, Siting and Analysis, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–16222 Filed 7–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9988–015]

Augusta Canal Authority; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 9, 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.:* P–9988–015.

c. *Date filed:* May 31, 2007.

d. *Applicant:* Augusta Canal Authority.

e. *Name of Project:* King Mill Hydroelectric Project.

f. *Location*: The King Mill Project is located on the Augusta Canal about 6 miles downstream of the Augusta Diversion Dam, adjacent to the Savannah River, Richmond County, Augusta, GA. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Dayton Sherrouse, Executive Director, Augusta Canal Authority, 1450 Green Street, Suite 400, Augusta, GA 30901; Telephone (706) 823–0440, Ext. 1.

i. *FERC Contact:* Sarah Florentino, Telephone (202) 502–6863, or e-mail *sarah.florentino@ferc.gov*. Additional information on Federal Energy Regulatory Commission (FERC) hydroelectric projects is available on FERC's Web site: *http://www.ferc.gov/industries/hydropower.asp*

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice (September 8, 2008) and reply comments are due 105 days from the issuance date of this notice (October 21, 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions 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.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project description:* The existing King Mill Hydroelectric Project consists of: (1) Intake works consisting of a 50-foot-long, 15-foot-high headgate and intake structure; (2) primary and secondary steel trash racks; (3) a 200-foot-long, 40-foot-wide, concrete-lined, open flume head race; (4) a 435-foot-long, 30-foot-wide brick and masonry powerhouse; (5) two vertical shaft turbine/generator units with an installed capacity of 2.25 megawatts; (6) a 435-foot-long, 30-foot-wide, concrete-lined, open tailrace section which returns flows to the Augusta Canal; and (7) appurtenant facilities. There is no dam or impoundment, as approximately 881 cfs of water is withdrawn from the Augusta Canal when operating at full capacity. Developed head is approximately 32 feet. The estimated generation is 14,366 MWh annually. Nearly all generated power is utilized by the Standard Textile Plant, located within the King Mill building, for textile production. No new facilities or changes in project operation are proposed.

m. 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.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16201 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 13103–000 and 13104–000]

Birch Power Company; BPUS Generation Development LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 9, 2008.

On February 1, 2008, at 8:32 a.m. and 8:39 a.m. respectively, Birch Power Company (Birch Power) and BPUS Generation Development LLC (BPUS Generation) filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Coffeeville Lock and Dam Hydroelectric Project, to be located at the existing U.S. Army Corp of Engineers (Corps) Coffeeville Lock and Dam on the Tombigbee River in Choctaw and Clarke Counties, Alabama.

The proposed projects would use the existing Corps Coffeeville Lock and Dam and would respectively consist of, for Birch Power and BPUS Generation: (1) A proposed powerhouse containing several generating units having total installed capacities of 9.55 and 24 megawatts, (2) a proposed intake and tailrace, (3) a proposed transmission line, and (4) appurtenant facilities. The projects would, respectively, have an annual generation of 62 and 48 gigawatt-hours that would be sold to a local utility.

Applicant Contact: for Birch Power—Mr. Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404; phone: 208–522–8069; for BPUS Generation—Mr. Jeffrey M. Auser, BPUS Generation Development LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088; phone: 315–413–2700. FERC Contact: Tom Papsidero, 202–502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For

more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13103–000 or P–13104–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16203 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309–062]

Brookfield Power Piney & Deep Creek, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

July 9, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 309–062.

c. *Date Filed:* January 22, 2008.

d. *Applicant:* Brookfield Power Piney & Deep Creek, LLC.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* The project is located on the Clarion River, in Clarion County, Pennsylvania. 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 Contacts:* Mr. David Barnhart, West Virginia Production Center, P.O. Box 849, Gauley Bridge, WV 25085, (304) 981–6504, and Mr. Glen Neiport, Brookfield Power Piney & Deep Creek, LLC, Piney Station, 2000 River Road, Clarion, PA 16214, (814) 226–8630.

i. *FERC Contact:* Kelly Houff, (202) 502–6393, and e-mail *Kelly.Houff@ferc.gov*.

j. Deadline for filing comments, protests, motions to intervene, recommendations, preliminary terms and conditions, and fishway prescriptions is due 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. 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. Please include the project number (P–309–062) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The existing licensed project consists of (1) A 784-foot-long and 125-foot-high concrete arch dam; (2) an 800-surface-acre reservoir, which operates at a minimum water surface elevation of 1,090 feet msl from June 21 through October 31, 1,085 feet msl from November 1 through March 31, and 1092.5 ± 0.5 feet msl from April 1 through June 20; (3) three 14-foot-diameter penstocks between 232 and 300 feet long; and (4) a powerhouse with three generating units totaling 29.08 megawatts installed capacity.

The licensee proposes to amend the license to implement the following: (1) To operate the reservoir on non-holiday weekdays from June 21 through October 31, between water surface elevations of 1,089 and 1,093 feet msl, a change from the current reservoir range of 1,090 and 1,093 feet msl. However, the licensee will maintain a minimum water surface elevation in the reservoir no lower than 1,090 feet msl, on weekends, where the weekend is defined as between 2400 hours on Friday through 2400 hours on Sunday. Additionally, the minimum reservoir surface elevation for the July 4 and Labor Day holidays shall be 1,090 feet msl, where the minimum reservoir level shall start at 1800 hours the day before the holiday and end on the holiday at 2400 hours; (2) repair, replace or extend the Mill Creek boat launch ramp as necessary so it can function at 1,089 feet; and (3) on the fifth anniversary date of the license, contribute $100,000 to an interest-bearing account (recreational account), whose funds shall be used by the licensee to pay for recreational and boating access enhancements that are agreed upon as necessary by the Piney Lake Advisory Council. The additional one-foot drawdown will increase the average annual generation at the project by approximately 675 megawatt hours per year.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests, interventions, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

o. *Filing and Service of Responsive Documents:* All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and

conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment.

Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16209 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–433–000]

Canyon Creek Compression Company; Notice of Application

July 9, 2008.

Take notice that on June 30, 2008, Canyon Creek Compression Company (Canyon), 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA), and Sections 157.7 and 157.18 of the Commission's regulations for an order granting a certificate of public convenience to abandon: (1) Its 22,000 horsepower (HP) compressor station and other appurtenant facilities located in Uinta County, Wyoming (CS 730) as authorized in Docket No. CP80–547, as amended; (2) its blanket certificate issued in Docket No. 89–1497–000 which authorized Canyon to compress/transport natural gas in interstate commerce for interstate pipelines and others pursuant to Subpart G of Part 284 of the Commission's regulations; (3) its blanket certificate issued in Docket No. CP92–18–000 which authorized Canyon to engage in certain routine jurisdictional activities and for permission and approval to abandon certain services and facilities, as specified in Subpart F of Part 157 of the Commission's regulations; and (4) its 10-inch tap located in Uinta County, Wyoming constructed under Canyon's blanket certificate in Docket No. CP92–18–000 used to deliver gas to Kern River Gas Transmission Company (Kern River). Canyon is also seeking authorization to be granted a three year period in which to determine the ultimate disposition of its facilities, whether it is by sale or physical removal of all or a portion of the facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Bruce H. Newsome, Vice President, Canyon Creek Compression Company, 3250 Lacey Road, Downers Grove, Illinois 60515–7918, or (630) 725–3070, or *bruce_newsome@kindermorgan.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16212 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2004–249]

City of Holyoke Gas and Electric; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters and Amendment of Project Boundary.

b. *Project No:* 2004–249.

c. *Date Filed:* May 28, 2008.

d. *Applicant:* City of Holyoke Gas and Electric.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* The proposal would be located on the Connecticut River, in Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Paul Ducheney, 99 Suffolk Street, Holyoke, MA 01040; (413) 536–9340.

i. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, and *e-mail: Gina.Krump@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* August 11, 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The City Holyoke Gas and Electric (City) is requesting approval to amend the project boundary to add 17.37 acres of land in the Bachelor Brook natural area and to remove 4.62 acres of project lands owned by Mount Holyoke College (College), giving a net increase of 12.75 acres of project lands. Additionally, the City is seeking Commission approval to issue a permit to the College to construct a seasonal gangway and floating dock on project property. No fill, excavation or other ground disturbing activities are proposed. The proposed facilities would serve the students and members of the College.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16208 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12879–000]

Hydro Green Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 9, 2008.

On July 24, 2007, Hydro Green Energy, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the ''Alaska 31'' Project, located in the Kuskokwim River, in Bethel Borough, Alaska.

The proposed project would consist of: (1) 5 arrays, each consisting of ten 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed 2000-foot-long, 13.6-kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an annual generation of 32.872 gigawatthours, which would be sold to a local utility.

Applicant Contact: Wayne Krouse, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; *phone:* 877–556–6566.

FERC Contact: Kelly Houff, 202–502–6393.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–12879) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16202 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13161–000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 9, 2008.

On April 1, 2008, Hydrodynamics, Inc. filed an application, pursuant to

section 4(f) of the Federal Power Act, proposing to study the feasibility of the Sun River Diversion Dam Project, to be located on an existing dam owned by the U.S. Bureau of Reclamation (USBR), on the Sun River in Teton and Lewis and Clark Counties, Montana, on lands administered by the USBR.

The proposed project would consist of: (1) A proposed 900-foot-long, 10-foot-wide penstock, (2) a proposed powerhouse containing two generating units having a total installed capacity of 12 megawatts, (3) a proposed one-quarter-mile-long, 15-kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 50 gigawatt-hours that would be sold to a local utility.

Applicant Contact: Mr. Roger Kirk, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: 406–587–5086. FERC Contact: Tom Papsidero, 202–502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13146) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16205 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–503–048]

Idaho Power Company; 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 9, 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.:* P–503–048.

c. *Date Filed:* June 26, 2008.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* The Swan Falls Hydroelectric Project is located on the Snake River at river mile (RM) 457.7 in Ada and Owyhee counties of southwestern Idaho and lies about 35 miles southwest of Boise. Access to the Swan Falls Project is by road from Kuna, located about 19 miles north of the project. The application states that the project occupies 528.84 acres of lands of the United States within the Snake River Birds of Prey National Conservation Area, including 30.66 acres of federally administered lands set aside in the early 1900's for power production development.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Saldin, Senior Vice President and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707, (208) 388–2550.

i. *FERC Contact:* Jim Puglisi (202) 502–6241 or *james.puglisi@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 Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of 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 26, 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 Swan Falls Project consists of: (1) A 1,218-foot-long concrete gravity and rock-fill dam composed of an abutment embankment, a spillway section, a center island, the old powerhouse section, the intermediate dam, and the new powerhouse; (2) a 12-mile-long, 1,525-acre reservoir with a normal maximum water surface elevation of 2,314 feet mean sea level (msl); (3) twelve equal-width, concrete spillways with a capacity of 105,112 cubic feet per second (cfs) at reservoir elevation 2,318 msl, divided into two sections (western and eastern)—the western section, contiguous with the abutment embankment, is a gated, concrete ogee section with eight radial gates, and the eastern section, which is adjacent to the island, contains four radial gates; (4) two concrete flow channels (instead of penstocks); (5) two pit-bulb turbine generators with a nameplate rating of 25 megawatts; (6) a powerhouse completed in 1994; (7) a 1,400-foot-long, 120-foot-wide excavated tailrace channel; (8) a 33,600-kilovolt ampere main power transformer; (9) a 1.2-mile-long, 138-kilovolt transmission line; and (10) appurtenant equipment.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the

document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Idaho State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency/Additional Information Request Letter (if needed)	September 2008
Issue Acceptance Letter	November 2008.
Issue Scoping Document 1 for comments	December 2008.
Issue Scoping Document 2 (if needed)	February 2009.
Notice of application ready for environmental analysis	April 2009.
Notice of the availability of the draft EIS	December 2009.
Notice of the availability of the final EIS	March 2010.

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. E8–16211 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13146–000]

Utah Independent Power; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 9, 2008.

On March 24, 2008, Utah Independent Power filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Long Canyon Pumped Storage Project, to be located in the Long Canyon and the Little Valley in Grand County, Utah.

The proposed project would consist of: (1) Proposed earth and rock-filled dams, 130-foot-high and 3,470-foot-long and 200-foot-high and 790-foot-long, respectively, for the upper and lower reservoirs which would have water surface elevations of 6,010 and 2,400 feet, MSL, respectively, (2) a proposed powerhouse containing three generating units having a total installed capacity of 800 megawatts, (3) a proposed 22,400-foot-long concrete/steel penstock, (4) a proposed 40-mile-long, 250-kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 1,077 gigawatt-hours that would be sold to a local utility.

Applicant Contact: Mr. Frank L. Mazzone, President, Utah Independent Power, 957 Fairway Drive, Sonoma, CA 95476; phone: 707–996–2573. FERC Contact: Tom Papsidero, 202–502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13146) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16204 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13227–000]

Utah Independent Power; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

July 9, 2008.

On May 9, 2008, Utah Independent Power filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Bull Canyon Pumped Storage Project, to be located in the Bull Canyon area in Grand County, Utah.

The proposed project would consist of: (1) Proposed earth and rock-filled dams, 100-foot-high and 4070-foot-long and 300-foot-high and 730-foot-long, respectively, for the upper and lower reservoirs which would have water surface elevations of 6,020 and 4490 feet, MSL, respectively, (2) a proposed powerhouse containing three generating units having a total installed capacity of 800 megawatts, (3) a proposed 18890-foot-long penstock, (4) two proposed 40-mile-long, 250-kV transmission lines, and (5) appurtenant facilities. The project would have an annual generation of 1,077 gigawatt-hours that would be sold to a local utility.

Applicant Contact: Mr. Frank L. Mazzone, President, Utah Independent Power, 957 Fairway Drive, Sonoma, CA 95476; phone: 707–996–2573. FERC Contact: Alyssa Dorval, 202–502–6735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically

via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13227) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16206 Filed 7–15–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8693–6]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new reference method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of carbon monoxide (CO) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD-D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–5691, e-mail: *Kaushik.Surender@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of a new reference method for measuring concentrations of CO in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on December 18, 2006 (71 FR 61271).

The new reference method for CO is an automated method that utilizes the measurement principle based on non-dispersive infrared adsorption photometry (combined with gas filter correlation) and the calibration procedure specified in Appendix C of 40 CFR part 50. The newly designated reference method is identified as follows:

RFCA–0708–172, ''SIR, S.A. Model S–5006 Ambient CO Analyzer,'' operated with full scale fixed measurement ranges 0–50 ppm at any environment temperature in the range of 20 °C to 30 °C.

An application for a reference method determination for the candidate method was received by the EPA on April 29, 2008. The sampler is commercially available from the applicant, SIR, S.A., Avenida de la Industria, 3, 28760 Tres Cantos, Madrid, Spain.

A test analyzer representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.* , configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or

equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E8–16267 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0534; FRL–8373–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 1, 2008 through June 20, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before August 15, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0534, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0534. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0534. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding

Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 1, 2008 through June 20, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 29 PREMANUFACTURE NOTICES RECEIVED FROM: 06/01/08 TO 06/20/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0456	05/30/08	08/27/08	CBI	(G) Polyester resin	(G) Polyester
P–08–0457	05/30/08	08/27/08	CBI	(G) Flame retardant for plastics	(G) Polyglycidyl ether
P–08–0458	06/02/08	08/30/08	CBI	(G) Thermal paper technology	(G) Bisphenol derivative
P–08–0459	06/02/08	08/30/08	CBI	(G) Manufacture of polymeric materials	(G) Soybean oil, modified, epoxidized, hydrolyzed, alkyl ether
P–08–0460	06/02/08	08/30/08	CBI	(G) Intermediate for biobased products	(G) Soybean oil, modified, epoxidized
P–08–0461	06/02/08	08/30/08	Henkel Corporation	(S) Polyurethane adhesive for lamination and assembly	(G) Isocyanate terminated polyurethane
P–08–0462	06/03/08	08/31/08	CBI	(G) Flexible foam	(G) Polyester polyol
P–08–0463	06/04/08	09/01/08	Mane, USA	(G) Perfumery ingredient	(S) 2*H* pyran-2-one, tetrahydro-5-propyl
P–08–0464	06/05/08	09/02/08	Millennium Inorganic Chemicals, Inc.	(S) A pigment dispersant for use in latex paints	(G) Diethanolamine salt of polymeric acid

I. 29 PREMANUFACTURE NOTICES RECEIVED FROM: 06/01/08 TO 06/20/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0465	06/05/08	09/02/08	Huntsman International, LLC	(S) Exhaust dyeing of cotton	(G) Reaction product of substituted dioxazine compound and substituted alkyl sulfonyl compound
P–08–0466	06/05/08	09/02/08	CBI	(G) Integrated circuit chips manufacture	(G) Phenolic resin
P–08–0467	06/06/08	09/03/08	CBI	(S) Adhesive for metal to substrate bonds	(G) 1,3-butadiene, homopolymer, modified with a cyanoalkylacrylate and aromatic carbamate
P–08–0468	06/06/08	09/03/08	CBI	(G) Polyester substrate application auxiliary	(G) 5-[disubstituted phenylazo]-trisubstituted phthalimide
P–08–0469	06/06/08	09/03/08	Marchem Corporation	(G) Adhesion promoter	(G) Isocyanate terminated hydroxypolyalkyl polyurethane prepolymer
P–08–0470	06/09/08	09/06/08	CBI	(G) Colored coatings and related vehicles	(G) Reaction products of fatty acids and hydroxy acids
P–08–0471	06/12/08	09/09/08	CBI	(G) Chemical intermediate	(G) Tricyclo amine salt
P–08–0472	06/13/08	09/10/08	Wacker Chemical Corporation	(S) Crosslinker of adhesives/sealants	(S) Morpholine, 4-[(triethoxysilyl)methyl]-
P–08–0473	06/16/08	09/13/08	CBI	(S) Intermediate product used as a component of multipurpose additive in gasoline	(G) Fatty acids, reaction products with alkanolamine
P–08–0474	06/16/08	09/13/08	CBI	(S) Resin solution used as a coating component for automobile finishing	(G) Polyester
P–08–0475	06/13/08	09/10/08	CBI	(G) Vinyl acrylic pressure sensitive adhesive	(G) Vinyl acetate - acrylic copolymer
P–08–0476	06/17/08	09/14/08	CBI	(G) Component of industrial use coating	(G) Amine functional acrylic polymer
P–08–0477	06/17/08	09/14/08	CBI	(G) Component of coating formulation	(G) Hexyl carbamate
P–08–0478	06/13/08	09/10/08	CBI	(G) Component of detergent	(G) Acrylic polymer, polymers with acrylates and polyethylene glycol acrylate ethers
P–08–0479	06/16/08	09/13/08	CBI	(S) Component of multipurpose additive in gasoline	(G) Fatty acid, reaction products with alkanolamine alkyloxide
P–08–0480	06/16/08	09/13/08	CBI	(S) Component of multipurpose additive in gasoline	(G) Fatty acids, reaction products with alkanolamine and alkyloxide
P–08–0481	06/18/08	09/15/08	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Amides, coco, *N,N*-bis (2-hydroxypropyl)
P–08–0482	06/18/08	09/15/08	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Amides, sesame-oil, *N,N*-bis (2-hydroxypropyl)
P–08–0483	06/18/08	09/15/08	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Amides, avocado-oil, *N,N*-bis (2-hydroxypropyl)
P–08–0484	06/18/08	09/15/08	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Amides, corn-oil, *N,N*-bis (2-hydroxypropyl)

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 15 NOTICES OF COMMENCEMENT FROM: 06/01/08 TO 06/20/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–0370	06/04/08	01/24/08	(S) 1,3-benzenedicarboxylic acid (9ci) polymer with 1,4-benzenedicarboxylic acid, 2,5-furandione, 2,2′-oxybis(ethanol) and 1,2-propanediol
P–06–0146	06/02/08	05/09/08	(G) Phenol, polymer with substituted benzenre, glycidyl ether
P–06–0472	06/18/08	06/09/08	(G) Fluoroalkyl methacrylate copolymer
P–07–0157	06/16/08	05/10/08	(G) Vinylamine copolymer
P–07–0476	06/09/08	05/14/08	(S) Dodecanoic acid, methyl-2-sulfoethyl ester, sodium salt (1:1)
P–07–0484	06/05/08	04/25/08	(G) Mixed glycol adipate polyester polyol
P–07–0605	06/05/08	04/26/08	(G) Mdi modified polyester mixture
P–07–0608	05/30/08	04/04/08	(G) Aliphatic polyurethane acrylate
P–08–0038	06/11/08	05/06/08	(G) Tertiary amine acrylate
P–08–0045	06/18/08	04/07/08	(G) Aliphatic urethane acrylate oligomer
P–08–0065	06/06/08	05/27/08	(G) Urethane-urea
P–08–0066	06/06/08	05/27/08	(G) Urethane-urea
P–08–0190	06/16/08	05/14/08	(S) D-glucopyranose, oligomeric, C_{10-16}-alkyl decyl octyl glycosides, 2-hydroxy-3-(trimethylammonio)propyl ethers, chlorides

II. 15 NOTICES OF COMMENCEMENT FROM: 06/01/08 TO 06/20/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–08–0204	06/04/08	05/20/08	(G) Methacrylate copolymer
P–08–0240	06/04/08	05/14/08	(G) Organic silicone intermediate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 2, 2008.

Vanessa Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–16121 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8693–7]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting on August 4–5, 2008. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities. A meeting of the full board will be held to discuss progress with work products under EFAB's current Strategic Action Agenda and develop an action agenda to direct the Board's ongoing and new activities through FY 2009. Topics of discussion include financial assurance mechanisms; financing ecosystem services; leveraging the state revolving funds; and use of assessments and special districts in air pollution. The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Monday, July 21, 2008.

DATES: August 4, 2008 from 1 p.m.–5 p.m. and August 5, 2008 from 8:30 a.m.–5 p.m.

ADDRESS: Hyatt at Fisherman's Wharf, 555 North Point St., San Francisco, CA 94133.

REGISTRATION AND INFORMATION CONTACT: For information on access or services for individuals with disabilities, please contact Alecia Crichlow at (202) 564–5188 or *crichlow.alecia@epa.gov*. To request accommodations of a disability, please contact Alecia Crichlow at least ten days prior to the meeting date.

Dated: June 27, 2008.

Charles Young,

Acting Director, Office of Enterprise, Technology and Innovation.

[FR Doc. E8–16265 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0014; FRL–8373–1]

Tetramethrin; Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide tetramethrin. The Agency's risk assessments and other related documents also are available in the Tetramethrin Docket. Tetramethrin is a broad spectrum, synthetic pyrethroid insecticide used to control flying and crawling insects in a number of commercial, horticultural, and residential areas. EPA has reviewed tetramethrin through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (215) 814-2184; fax number: (215) 814-3113; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0014. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. On June 23, 2008, EPA completed a RED for the pesticide, tetramethrin under section 4(g)(2)(A) of FIFRA. Tetramethrin is a broad-spectrum, first-generation pyrethroid insecticide used as a rapid knockdown agent against flying and crawling

insects. Tetramethrin is used for both indoor and outdoor residential (including pets and clothes), institutional, industrial, and horticultural sites. There are no registered food sites. Tetramethrin is applied by aerosol can, handheld sprayers, foggers, and mechanical sprayers. EPA has determined that the database to support reregistration is substantially complete and that products containing tetramethrin are eligible for reregistration, provided the labels are amended in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing tetramethrin.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, tetramethrin was reviewed through the modified 4–Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for tetramethrin.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. A public comment period for the Tetramethrin RED is not needed because all comments received during the risk assessment public comment period were addressed in the Agency's response to public comment documents, which are available in the public docket, and because there are no risks of concern for the registered use patterns. The Agency therefore is issuing the Tetramethrin RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 7, 2008.

Steven Bradbury

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–16016 Filed 7–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0518; FRL–8372–3]

Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide Reregistration Eligibility Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decisions (REDs) for the soil fumigant pesticides chloropicrin, dazomet, metam sodium/potassium, and methyl bromide, and opens a public comment period on these documents. The Agency's risk assessments and other related documents also are available in the Dockets for these pesticides, listed in the Table in Unit II. Soil fumigants are used to kill soil-borne pests in producing many crops, including primarily potatoes, tomatoes, strawberries carrots, and peppers. EPA has reviewed chloropicrin, dazomet, metam sodium/potassium, and methyl bromide through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 15, 2008.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number(s) for the specific pesticide(s) of interest provided in the Table in Unit II., by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the Docket ID number(s) listed in the Table in Unit II. for the pesticide(s) you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov

website to view the docket index or access available documents. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For pesticide-specific information contact the Chemical Review Manger identified in the Table in Unit II. for the pesticide of interest.

For general information contact: John Leahy, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6703; fax number: (703) 308–8090; e-mail address: *leahy.john @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed REDs for the soil fumigant pesticides, chloropicrin, dazomet, metam sodium/potassium, and methyl bromide under section 4(g)(2)(A) of FIFRA. Soil fumigants are used to kill soil-borne pests in producing many crops, including primarily potatoes, tomatoes, strawberries, carrots, and peppers. EPA has determined that the data base to support reregistration is substantially complete and that products containing these pesticides are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing chloropicrin, dazomet, metam sodium/potassium, and methyl bromide.

TABLE 1.—REREGISTRATION ELIGIBILITY DECISION DOCKETS OPENING

Reregistration Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Chloropicrin, 0040	EPA–HQ–OPP–2007–0350	Andrea Carone (703) 308–0122 *COM001**carone.andrea@epa.gov*
Dazomet, 2135	EPA–HQ–OPP–2005–0128	Cathryn O'Connell (703) 308–0136 *o'connell.cathryn@epa.gov*
Metam sodium/potassium, 2390	EPA–HQ–OPP–2005–0125	Dirk Helder (703) 305–4610 *helder.dirk@epa.gov*

TABLE 1.—REREGISTRATION ELIGIBILITY DECISION DOCKETS OPENING—Continued

Reregistration Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Methyl bromide, 0335	EPA–HQ–OPP–2005–0123	Steven Weiss (703) 308–8293 *weiss.steven@epa.gov*

EPA is applying the principles of public participation to all pesticides undergoing reregistration . The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to their uses, risks, and other factors, chloropicrin, dazomet, metam sodium/potassium, and methyl bromide were reviewed through the full 6–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for these pesticides.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the chloropicrin, dazomet, metam sodium/potassium, and methyl bromide REDs for public comment. This comment period is intended to provide an additional opportunity for public input in particular with regard to implementation of risk mitigation measures, and a mechanism for initiating any necessary amendments to the REDs. To assist readers in providing information that would be most useful to the Agency, EPA is providing a Commenter's Guide to the Soil Fumigant REDs. This document is available in the individual dockets listed in the Table in this Unit, and on EPA's soil fumigants Web page, http://www.epa.gov/oppsrrd1/reregistration/soil_fumigants/ . All comments should be submitted using the methods in **ADDRESSES** and the Docket ID numbers in the Table in this Unit, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for these pesticides. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For each pesticide, the Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the chloropicrin, dazomet, metam sodium/metam potassium, and methyl bromide REDs will be implemented as now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 8, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–16266 Filed 7–15–08; 8:45 a.m.]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, July 22, 2008, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED

Open Session

1. Announcement of Notation Votes,
2. Issues Facing Asian Americans and Pacific Islanders in the Federal Workplace—Invited Panelists,
3. Compliance Manual Section on Religious Discrimination, and
4. Resolution Honoring Commission Employee on Her Retirement.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer at (202) 663–4070.

Dated: July 14, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 08–1441 Filed 7–14–08; 4:04 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 9, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501—3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 15, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0532.

Title: Section 2.1033, Application for Certification and Section 15.121, Scanning Receivers and Frequency Converters Used with Scanning Receivers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 25 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25 hours.

Annual Cost Burden: $1,250.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission's rules require that certain portions of scanning receiver applications for certification will remain confidential after the effective date of the grant of the application. No other assurances of confidentiality are provided to respondents.

Needs and Uses: This collection will be submitted as an extension (no change in reporting and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The FCC rules under 47 CFR 2.1033 and 15.121 require manufacturers of scanning receivers to design their equipment so that it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission's rules also require manufacturers to submit information with any application for certification that describes the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following as described in section 15.121:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

The Commission uses the information required in this equipment authorization process to determine whether the equipment that is being marketed complies with the Congressional mandate in the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) and applicable Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16319 Filed 7–15–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age (''Diversity Committee'') will hold a meeting on July 28, 2008, at Barnard College, Columbia University, New York. Reports from the subcommittees will be presented. Barbara Kreisman is the Diversity Committee's Designated Federal Officer.

DATES: July 28, 2008.

ADDRESSES: Barnard College, Columbia University, 3009 Broadway, New York, NY 10027.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Designated Federal Officer of the FCC's Diversity Committee (202) 418–1600 or e-mail: *Barbara.kreisman@fcc.gov.*

SUPPLEMENTARY INFORMATION: At this meeting, the Diversity Committee will discuss and consider possible areas in which to develop recommendations that will further enhance the ability of minorities and women to participate in the telecommunications and related industries. It will also consider issues related to the Federal Communications Commission's *En Banc* Hearing and Conference on Barriers to Communications Financing.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission,

Room 2–A665, 445 12th Street, SW., Washington, DC 20554).

Reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFACA*.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division.

[FR Doc. E8–16030 Filed 7–15–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, July 10, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202)694–1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8–15745 Filed 7–15–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202) 523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010050–019.

Title: U.S. Flag Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; and Hapag-Lloyd USA, LLC.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes Croatia and Macedonia from the geographic scope of the agreement.

Agreement No.: 011435–013.

Title: APL/HLCL Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment revises the vessel strings deployed under the agreement. It also narrows the geographic scope, revises the duration, and restates the agreement.

Agreement No.: 011960–003.

Title: The New World Alliance Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd. (''MOL'').

Filing Party: Eric C. Jeffrey, Esq.; Counsel for APL; Goodwin Procter LLP; 901 New York Avenue, NW., Washington, DC 20001.

Synopsis: The amendment increases the number of slots that APL charters to CMA CGM under a separate agreement on a string operated between Far East and the United States East Coast via Suez Canal, and authorizes APL to charter space to Hapag-Lloyd under a separate agreement on a string operated in between the Far East and California.

Agreement No.: 012008–003.

Title: The 360 Quality Association Agreement.

Parties: NYKCool AB and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment would add Green Chartering AS as a party to the agreement.

Agreement No.: 201190.

Title: Marine Terminal Services Agreement between Port of Houston Authority (''PHA''); China Shipping Container Lines Co., Ltd., and China Shipping Container Lines (Hong Kong) Co. Ltd.

Parties: Port of Houston Authority; China Shipping Container Lines Co, Ltd.; and China Shipping Container Lines (Hong Kong) Co. Ltd.

Filing Party: Erik A. Eriksson, Esq.; General Counsel; Port of Houston Authority, PO Box 2562, Houston, TX 77252–2562.

Synopsis: The agreement authorizes PHA to establish discounted rates and preferential berthing rights for China Shipping's vessels calling at the port.

Dated: July 10, 2008.

By order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–16196 Filed 7–15–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202)–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011579–013.

Title: Inland Shipping Service Association Agreement.

Parties: APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; and Seaboard Marine of Florida, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds the Dominican Republic to the scope of the agreement, and corrects the address of Seaboard Marine.

By order of the Federal Maritime Commission.

Dated: July 11, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–16253 Filed 7–15–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Martinez Cargo Express, Corp., 8026 Sunport Drive, Unit 301, 302, Orlando, FL 32809. Officer: Jose R. Martinez, President (Qualifying Individual).

Universal Concord, Inc., 141 South Ave., Ste. 202, Fanwood, NJ 07023. Officer: Minmin Wang, President (Qualifying Individual).

Fax Cargo Corporation, 10913 NW 30 Street, Ste. 107, Doral, FL 33172. Officer: Yudith B. Perez, Traffic and Operations (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

FedEx Trade Networks Transport & Brokerage, Inc., 128 Dearborn Street, Buffalo, NY 14207. Officer: Leman G. Brown, Jr., Asst. Secretary (Qualifying Individual).

Continental Shipping Inc., 11950 New Kings Road, Jacksonville, FL 32219. Officer: Bina P. Desai, Vice President (Qualifying Individual).

A. Naimoli Freight Forwarding, Inc. dba ARJE Logistics, 105–08 93rd Street, Ozone Park, NY 11417. Officer: Anthony Naimoli, President (Qualifying Individual).

Dated: July 11, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–16255 Filed 7–15–08; 8:45 am]

BILLING CODE 6730–01–P

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 31, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Northern Trust Corporation, Chicago, Illinois; to acquire all of the assets and liabilities of Lakepoint Investment Partners LLC, Cleveland, Ohio, and thereby engage in financial and investment advisory activities pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–16244 Filed 7–15–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08BH]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Health survey of former Marines, dependents, and employees potentially exposed to contaminated drinking water at USMC Camp Lejeune—New—Agency for Toxic Substances and Disease Registry (ATSDR), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On January 28, 2008, President Bush signed H.R. 4986: National Defense Authorization Act for Fiscal Year 2008 which requires ATSDR to develop a health survey of individuals possibly exposed to contaminated drinking water at Camp Lejeune. The survey will collect personal health information that may provide a basis for further reliable scientific studies of potentially adverse

health impacts of exposure to contaminated water at Camp Lejeune. The Act requires the survey to be developed within 120 days of enactment and to be conducted within one year of enactment.

Additionally, in 2005, a panel of independent scientists convened by ATSDR to explore opportunities for conducting additional health studies at Camp Lejeune recommended that the agency:

• Identify cohorts of individuals with potential exposure, including adults who lived on base; adults who resided off base, but worked on base; children who lived on base; and those who may have been exposed while in utero; and

• Conduct a feasibility assessment to address the issues involved in planning future studies of mortality, cancer incidence, and other health outcomes of interest at the base.

In response, ATSDR prepared a report on the feasibility of conducting future epidemiological studies at the base. ATSDR determined that available databases could be used to identify adults who lived at the base or civilians who worked at the base during the period when drinking water was contaminated with volatile organic compounds (VOCs).

In addition to questions on cancers, the health survey will include questions on non-fatal diseases that can be confirmed by medical records and are known or suspected of being associated with solvent exposures.

This project proposes to examine the relationship between medically confirmed cancers and trichloroethylene—(TCE) or perchloroethylene—(PCE) contaminated drinking water by mathematically modeling the exposure to contaminated drinking water while living or working at Camp Lejeune.

The relationship between the following non-fatal diseases that can be confirmed by medical records and TCE- or PCE-contaminated drinking water will also be examined: Parkinson's disease, kidney failure and other severe kidney diseases, severe liver diseases, lupus, aplastic anemia, TCE-related skin disorders, and scleroderma. In addition, the health survey will include questions on miscarriages occurring to women who were pregnant while residing or working on base.

The health survey will request information about the type of cancer or non-fatal, non-cancer disease, date of diagnosis, hospital of diagnosis, and doctor who diagnosed the disease to facilitate the acquisition of medical record confirmation. Because medical records are usually unavailable for miscarriages, the survey will not request information to facilitate medical record confirmation of this adverse outcome. For cancers, state of diagnosis will also be obtained to facilitate acquisition of cancer registry data. Self-reported cancers and other diseases will be confirmed by medical records or cancer registrations. To facilitate medical record confirmation, the participant will be asked to provide a copy of the medical record to ATSDR or to sign a medical records release form allowing ATSDR to gain access to the medical record. The survey will also collect information on residential history on base, occupational history, and information on several risk factors (e.g., socio-economic status, demographics, smoking, alcohol consumption, etc). A space will also be provided so that the respondent can report other disease conditions. The collected information will be used to assign exposure status and to assess potential confounding.

To improve the credibility of the study, it is necessary to include an external, unexposed comparison group, similar in all respects to the Marines and civilian workers at Camp Lejeune except for exposure to VOC-contaminated drinking water.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Former active duty marines and navy personnel—Camp Lejeune	136,500	1	45/60	102,375
Former civilian workers—Camp Lejeune	5,200	1	45/60	3,900
Former dependents (now all adults)—Camp Lejeune	14,300	1	45/60	10,725
Former active duty marines and navy personnel—Camp Pendleton (comparison group)	32,500	1	45/60	24,375
Former civilian workers—Camp Pendleton (comparison group)	6,500	1	45/60	4,875
Total				146,250

Dated: July 1, 2008.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16174 Filed 7–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel A–1), Program Announcement (PAR) 07–231

Correction: This notice was published in the **Federal Register** on June 12, 2008, Volume 73, Number 114, page 33434. The title should read as follows: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel A–2), Program Announcement (PAR) 07–231.

Contact Person for More Information: Sheree Marshall Williams, Ph.D., M.Sc., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404) 639–4896.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC

and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–16193 Filed 7–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel A–2), Program Announcement (PAR) 07–231

Correction: This notice was published in the **Federal Register** on June 12, 2008, Volume 73, Number 114, page 33435. The title should read as follows: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel A–3), Program Announcement (PAR) 07–231.

Contact Person for More Information: Sheree Marshall Williams, Ph.D., M.Sc., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404) 639–4896.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–16194 Filed 7–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4)) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Applications PAR06113.

Date: July 28–29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NAED Reviewer Conflicts.

Date: July 28, 2008.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Kidney Dialysis, Monitoring and Therapeutics Small Business Emphasis Panel.

Date: August 6, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Deferred UKGD Applications.

Date: August 8, 2008.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15819 Filed 7–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Vaccines, Immunology and Pathogenesis.

Date: July 14, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15820 Filed 7–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute; Special Emphasis Panel Conference Grants (R13's).

Date: July 31, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David A. Wilson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–16237 Filed 7–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–16; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Nulato, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 9 S., R. 3 E.,
Sec. 25;
Secs. 31, 32, 35 and 36.
Containing approximately 1,643 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 15, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–16214 Filed 7–15–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14933–A, F–14933–A2; AK–965 1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Swan Lake Corporation. The lands are in the vicinity of Sheldon Point, Alaska, and are located in:

Seward Meridian, Alaska

T. 26 N., R. 85 W.,
Sec. 1.
Containing approximately 310 acres.
T. 26 N., R. 86 W.,
Secs. 1 to 36, inclusive.
Containing approximately 20,507 acres.
Aggregating approximately 20,817 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Swan Lake Corporation.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 15, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a

week, to contact the Bureau of Land Management.

Linda L. Keskitalo,

Land Law Examiner, Branch of Land Transfer Adjudication II.

[FR Doc. E8–16215 Filed 7–15–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–08–1040–PH–24–1A]

Notice of Utah's Resource Advisory Council Conference Call

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah's Resource Advisory Council (RAC) Conference Call.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and The Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will conduct a conference call on August 21, 2008, from 10 a.m.–noon.

ADDRESSES: On August 21, the RAC will conduct a business meeting via conference call. There will be a limited number of telephone call-in lines available; however, the public may participate on the call at any of Utah's Bureau of Land Management field offices or at the Utah State Office, 440 West 200 South, Salt Lake City, Utah, in the Monument Conference Room (5th floor).

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Utah. On August 21 (10 a.m.–noon), the Resource Advisory Council will provide feedback on the draft plan amendment and NEPA documents for the Five-Mile Pass area. RAC member, Ashley Korenblat, will provide an update on the Search and Rescue support letter. A half-hour public comment period is scheduled to begin from 11:15 a.m.–11:45 a.m. Written comments may be sent to the Bureau of Land Management addressed as listed above. The Resource Advisory Council and members of the public may call the toll free conference call number at (888) 576–2912. To join the call, enter access code 395323 followed by the # sign. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: July 8, 2008.

Jeff Rawson,

Associate State Director.

[FR Doc. E8–16218 Filed 7–15–08; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Final Programmatic Environmental Impact Statement for Improvements to the USIBWC Tijuana River Flood Control Project in San Diego County, CA

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of Availability for the Record of Decision (ROD).

SUMMARY: This notice is provided in accordance with 40 Code of Federal Regulations (CFR) parts 1500–1508 of the National Environmental Policy Act (NEPA), and USIBWC procedures for implementing NEPA. The USIBWC anticipates the need to improve maintenance practices or functionality of the Tijuana River Flood Control Project (Tijuana River FCP) located in southern San Diego County, California. Measures under consideration include changes in vegetation management within the floodway, water quality improvements, and support to local or regional initiatives for multipurpose use of the project for wildlife habitat development and other environmental improvements. Identified measures were incorporated into a Multipurpose Project Management (MPM) Alternative for long-term improvement of the Tijuana River FCP.

A Programmatic Environmental Impact Statement (PEIS) was prepared to evaluate potential consequences of changes associated with the MPM Alternative relative to the continuation of current operation and maintenance (O&M) activities (No Action Alternative). The USIBWC will apply this programmatic evaluation as a guideline for the environmental impacts assessment of future individual projects considered possible at a conceptual level, but not currently anticipated for implementation. Following the programmatic evaluation of potential impacts, the MPM Alternative was adopted as the preferred option for long-term improvements to the Tijuana River FCP. In implementing this alternative, the USIBWC will continue to improve functionality of the Tijuana River FCP to meet its mandate for flood control while supporting regional initiatives for improvement of water quality and environmental conditions.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.gov*.

SUPPLEMENTARY INFORMATION: The USIBWC operates and maintains the Tijuana River FCP located in southern San Diego County, California. The flood control project, constructed in 1978, provides flood protection in urban, suburban, and agricultural areas in the United States. It consists of a two-levee system that runs along a modified stream channel 2.3 miles long, extending from the international border to the start of the natural Tijuana River channel. The floodway between the levees encompasses approximately 400 acres. The Tijuana River FCP is located upstream of natural resources conservation areas managed by the County of San Diego, State of California, and U.S. Fish and Wildlife Service. These conservation areas are of great regional value as they contain a diversified plant and animal species assemblage that includes many protected animal and plant species.

The USIBWC anticipates a need for improvements in O&M practices of the Tijuana River FCP. Potential changes would include measures to support local and/or regional initiatives to improve environmental conditions and/or water quality, incorporated into the MPM Alternative. Most improvements are conceptual-level measures considered feasible but not currently envisioned for implementation. Known or anticipated improvements are typically associated with utilization of the flood control project in support of local or regional initiatives for multipurpose use of the Tijuana River FCP for wildlife habitat development and other improvements in environmental conditions.

A PEIS was prepared to assess potential consequences of implementing new maintenance practices and

improvements that would allow USIBWC to meet its mandate for flood protection while minimizing potential impacts and taking advantage of environmental improvement opportunities. Potential consequences of the MPM Alternative were evaluated relative to the No Action Alternative, which is continuation of current O&M activities. A Draft PEIS was released for a 45-day public review period on August 10, 2007. Comments on the Draft PEIS were received from four federal agencies, four California State agencies, the County of San Diego, the City of Imperial Beach, and two individual reviewers. Oral comments were also received from three presenters during a public hearing held in the City of Imperial Beach, California on August 30, 2007. The Notice of Availability of the Final PEIS was published in the **Federal Register** on May 14, 2008.

Finding: Because of its potential to improve biological resources and environmental conditions, the MPM Alternative was identified as the preferred option for long-term improvement to the Tijuana River FCP. In implementing the MPM Alternative, the USIBWC will continue to improve functionality and maintenance of the Tijuana River FCP to meet its mandate for flood control while supporting regional initiatives for improvement of environmental conditions, including improved water quality and wildlife habitat development, both within the floodway and downstream from the Tijuana River FCP.

Availability: Copies of the Record of Decision may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at: *http://www.ibwc.gov*.

Dated: July 10, 2008.

Susan Daniel,

General Counsel.

[FR Doc. E8–16219 Filed 7–15–08; 8:45 am]

BILLING CODE 7010–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Order To Amend the Consent Decree Under the Clean Air Act

Notice is hereby given that on July 10, 2008, a proposed Order to amend the Consent Decree in *United States* v. *Premier Industries, Inc.,* Civil Action No. ED CV 07–01092 (SGL) (OPx), was lodged with the United States District Court for the Central District of California.

The proposed Order modifies the Consent Decree entered by the Court in this matter in January 2008. The Consent Decree resolved the United States' claims against Premier under Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b), for alleged violations of the CAA and the federally approved California State Implementation Plan, including South Coast Air Quality Management District Rule 1175, at an expandable polystyrene foam block manufacturing facility it owned in Chino, CA (''Facility''). The proposed Order allows the Defendant to utilize, under prescribed operating parameters, two Newly-Identified EPS Beads (''NIEPS Bead'') which EPA has approved for use at the Facility. The proposed Order also establishes a process whereby Defendant can request approval, from EPA and without further action by the Court, to use additional NIEPS Bead.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Order. 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. *Premier Industries, Inc.,* D.J. Ref. 90–5–2–1–08413.

The proposed Order may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, CA 90012, and at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the proposed Order may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Order 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 number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.25 for the proposed Order (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–16243 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on July 9, 2008, a proposed Settlement Agreement Regarding the Coeur d'Alene ''Box'' Site was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO LLC, et al.* , Case No. 05–21207 (Bankr. S.D. Tex.). The Coeur d'Alene ''Box'' Site consists of Operable Units 1 and 2 of the Bunker Hill Mining and Metallurgical Complex Superfund Site in Idaho. The proposed settlement provides the United States and the State of Idaho a joint allowed general unsecured claim of $10 million and provides the United States an additional separate allowed general unsecured claim of $6.8 million. In addition, the proposed settlement provides for the transfer to the United States of certain properties (the ''Page Properties,'' as defined in the settlement) and for their contemporaneous transfer to the State of Idaho pursuant to 42 U.S.C. 9604(j) for the purpose of performing remedial action within the Site.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, comments should refer to *In re Asarco LLC,* Case No. 05–21207 (Bankr. S.D. Tex.), D.J. Ref. No. 90–11–3-08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Settlement Agreement may be examined at: the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Chrsti, TX 78476–2001; and the Region 10 Office of the

United States Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decree.html* . A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice 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 $4.50 for the Settlement Agreement (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–16132 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Cooperative Research Group on Development and Evaluation of a Gas Chromatograph Testing Protocol

Notice is hereby given that, on June 4, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Development and Evaluation of a Gas Chromatograph Testing Protocol (''GCTP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PP Pipelines (North America) Inc., Houston, TX, and Elster GMEH, Dortmund, GERMANY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GCTP intends to file additional written notifications disclosing all changes in membership.

On March 6, 2008, GCTP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 7, 2008 (73 FR 18813).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15670 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on June 4, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open DeviceNet Vendor Association, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Welding Technology Corporation of Michigan, Farmington Hills, MI; Graco, Inc., Minneapolis, MN; Salem Automation Inc., Winston Salem, NC; Altera Corporation, San Jose, CA; S–Net Automation Co., Ltd., Kwangin-Gu, Seoul, REPUBLIC OF KOREA; Ethernet Direct Corporation, Taipei, TAIWAN; Chiyoda Co., Ltd., Warabi City, Saitama, JAPAN; and Hitachi Industrial Equipment Systems Co., Ltd., Tokyo, JAPAN have been added as parties to this venture.

Also, Escort Memory Systems, Scotts Valley, CA; The Stanley Works, Troy, MI; CDA Systems, London, Ontario, CANADA; Switchgear and Instrumentation, Bradford, West Yorkshire, UNITED KINGDOM; Control Logic, Inc., Mea, AZ; ICP DAS Co. Ltd., Kao Hsiung, TAIWAN; Marathon Ltd., Moscow, RUSSIA; Rockwell Automation/Entek IRD Int'l, Milford, OH; PPT Vision, Inc., Eden Prairie, MN; Toyogiken Co., Ltd., Nagano, JAPAN; ACCU-Sort Systems, Inc., Telford, PA; Wizardry Inc., Gardnerville, NV; Sharp Manufacturing Systems Corporation, Osaka, JAPAN; Mac Valves, Wixom, MI; ISAS (Integrated Switchgear & Sys. Pty Ltd.), Darwin, Northern Territories, AUSTRALIA; and ''APV Products,'' Unna, GERMANY have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on March 18, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 23, 2008 (73 FR 21984).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15671 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Out of Home Video Advertising Bureau, Inc.

Notice is hereby given that, on June 6, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Out of Home Video Advertising Bureau, Inc. (''OVAB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Out of Home Video Advertising Bureau, Inc., New York, NY. The nature and scope of OVAB's standards development activities are: to develop and promote the adoption of out of home video advertising networks

through education of marketing executives and their agency representatives and to raise awareness of these networks. The OVAB's mission is to develop pro-competitive industry guidelines to make it easier for media planning and buying agencies to plan, buy, and evaluate the effectiveness of advertising on out of home video networks. The OVAB is currently developing the Audience Metrics Guidelines, which seek to provide the basis for a comparable set of audience metrics produced by a variety of quality methods, each well suited to a specific venue and its network. The OVAB's voluntary consensus standards are developed by OVAB members and other interested parties who wish to participate in the OVAB's standards and development process.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15669 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on June 4, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wright Williams & Kelly, Inc., Pleasanton, CA; Michael Chiu (individual member), Somerville, MA; Ed Smith (individual member) , San Jose, CA; Wavecrest Corp., Eden Prairie, MN; Guidetech, Sunnyvale, CA; and Interface Technologies, Haslemere, Surrey, UNITED KINGDOM have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on April 14, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 16, 2008 (73 FR 28508).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15667 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Card Foundation

Notice is hereby given that, on June 2, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Card Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the *parties to the venture are:* Mary Ruddy (individual member), Arlington, MA; Pamela Dingle (individual member), Calgary, Alberta, CANADA; Axel Nennker (individual member), Berlin, GERMANY; Paul Trevithick (individual member), Brookline, MA; Patrick Harding (individual member), Concord, MA; Drummond Reed (individual member), Seattle, WA; Andrew Hodgkinson (individual member), Pleasant Grove, UT; Eguif ax, Atlanta, GA; and Paypal, San Jose, CA. The general areas of Information Card Foundation's planned activity are (a) To promote and support the development and global adoption of an open, trusted, accessible, interoperable identity layer within the internet that maximizes control over personal information by individuals (the ''Identity Layer''); (b) to promote and support the development and global adoption of open, accessible interoperability recommendations, solutions, standards and specifications relating to the Identity Layer and information cards (''i-cards'') used to gain and provide access to information within the Identity Layer (''Specifications'') , including without limitation, Specifications relating to user experience conventions and certification; (c) to promote the Specifications; (d) to provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications; (e) to operate a branding program based upon distinctive trademarks to create high user awareness of, demand for, and confidence in the Information Layer, i-cards and products designed in compliance with Specifications; and (f) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–15668 Filed 7–15–08; 8:45 am]

BILLING CODE 4410–11–M

NUCLEAR REGULATORY COMMISSION

Yucca Mountain; Notice of Receipt and Availability of Application; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on June 17, 2008 (73 FR 34348), that informs the public of the availability of a license application for a geologic repository to be located at Yucca Mountain in Nye County, Nevada with the U.S. Nuclear Regulatory Commission pursuant to section 114 of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10134, 10 CFR part 63 and 10 CFR 2.101. This action is necessary to correct an erroneous ADAMS accession number.

FOR FURTHER INFORMATION CONTACT: Brian Benney, Office of Nuclear Material Safety and Safeguards at 301–492–3193 or by e-mail at *brian.benney@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 34348, in the third column, in the fourth complete paragraph, in the 13th line, ''ML081560408'' is corrected to read ''ML081560400''.

Dated at Rockville, Maryland, this 7th day of July, 2008.

For the U.S. Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Director, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–16225 Filed 7–15–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58136; File No. SR–BSE–2008–41]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on Shares of the SPDR® Gold Trust

July 10, 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 9, 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 and II below, which Items have been prepared by the Exchange. BSE filed the proposal 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 proposes to amend Section 3 (Criteria for Underlying Securities) of Chapter IV of the Rules of the Boston Options Exchange Group LLC (''BOX'') to enable the listing and trading on BOX of options on the SPDR® Gold Trust (*Ticker:* GLD). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.bostonstock.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 purpose of the proposed rule change is to enable the listing and trading of options on the SPDR® Gold Trust (the ''Gold ETF'') on BOX.

Currently, Section 3(i) of Chapter IV of the BOX Rules provides that securities deemed appropriate for options trading shall include shares or other securities (''Exchange-Traded Fund Shares'') that are traded on a national securities exchange and are defined as an ''NMS'' stock under Rule 600 of Regulation NMS, and that (i) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments'') and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency. The proposed rule change would expand the types of ETFs that may be approved for options trading on BOX to include the SPDR® Gold Trust.

Apart from allowing the SPDR® Gold Trust to be an underlying for options traded on BOX as described above, the listing standards for ETFs would remain unchanged from those that apply under current BOX rules. In addition to satisfying the aforementioned listing standards in Section 3(i) of Chapter IV of the BOX Rules, the Gold ETF must be traded on a national securities exchange and must be defined as an ''NMS stock'' under Rule 600 of Regulation NMS. The Gold ETF must also either: (1) Meet the criteria and guidelines of paragraphs (a) and (b) under Section 3 of Chapter IV of the BOX Rules (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue the Gold ETF in a specified aggregate number even if some or all of the investments and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Gold ETF, all as described in the Gold ETF's prospectus.

The Exchange proposes that the current applicable continued listing standards for options on ETFs would apply to options on the SPDR® Gold Trust. Specifically, as set forth in Section 4(h) of Chapter IV of the BOX Rules, the Gold ETF approved for options trading will not be deemed to meet the requirements for continued approval, and the Exchange will not open for trading any additional series of options contracts if the Gold ETF ceases to be an ''NMS stock,'' or the Gold ETF is delisted, halted or suspended from trading on its primary market or if any of the following circumstances occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Gold ETF, there are fewer than 50 record and/or beneficial holders of the Gold ETF for 30 or more consecutive trading days; (2)

[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).

the value of the index or portfolio of securities or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities, on which the Gold ETF is based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

The Exchange represents that its surveillance procedures applicable to trading in options on the Gold ETF will be similar to those applicable to all other options on ETFs currently traded on BOX. Further, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including, but not limited to, the New York Mercantile Exchange, Inc., related to any financial instrument(s) traded on that exchange that is based, in whole or in part, upon an interest in, or performance of, gold.

Finally, the listing and trading of options on the Gold ETF under Section 3(i) will not have any effect on the rules pertaining to position and exercise limits [5] or margin.[6]

This proposed rule change is based on filings recently approved by the Commission.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that amending the BOX Rules to accommodate the listing and trading of options on the Gold ETF will benefit investors by providing them with greater risk management tools.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on the Gold ETF immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to permit the listing and trading of options on the SPDR Gold Trust without further delay.[12] The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise any new regulatory issues.[13] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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–BSE–2008–41 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–BSE–2008–41. 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

[5] *See* Sections 7 and 9 of Chapter III of the BOX Rules.

[6] *See* Section 3 of Chapter XIII of the BOX Rules.

[7] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (File Nos. SR–Amex–2008–15; SR–CBOE–2005–11; SR–ISE–2008–12; SR–NYSEArca–2008–52; and SR–Phlx–2008–17). *See also* Securities Exchange Act Release No. 57945 (June 10, 2008), 73 FR 34353 (June 17, 2008) (SR–NASDAQ–2008–051).

[8] 15 U.S.C. 78f(b).

[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). 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.

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] *See supra* note 7.

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–2008–41 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16234 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58138; File No. SR–CBOE–2007–30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Rule 9.21 (Communications to Customers)

July 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1], and Rule 19b–4 thereunder[2], notice is hereby given that on March 19, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by CBOE. CBOE filed Amendment No. 1 to the proposed rule change on June 9, 2008.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to remove or otherwise amend elements of CBOE Rule 9.21 (''Communications to Customers'') that incorporate provisions of the Securities Act of 1933 (''Securities Act'')[4] because options traded on CBOE consist solely of standardized options issued by the Options Clearing Corporation (''OCC''), a registered clearing agency, that are exempt under Rule 238 of the Securities Act from all provisions of the Securities Act except the antifraud provisions of Section 17. Additionally, the proposed amendments expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The proposed amendments also exempt certain options communications from the pre-approval requirement by a Registered Options Principal (''ROP''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.cboe.org/legal*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared 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, Proposed Rule Change

1. Purpose

On December 23, 2002, the Commission published final rules that exempt standardized options, as defined in Rule 9b–1[5] of the Exchange Act, that are issued by a registered clearing agency and traded on a registered national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.[6] Because the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, CBOE proposes to remove elements of the Securities Act that are embedded in CBOE Rule 9.21. In particular, CBOE proposes to remove all references to a ''prospectus'' from Rule 9.21. Prospectuses are no longer required for such standardized options, and the OCC has, in fact, ceased publication of a prospectus.[7] In addition, the proposed amendments will update and reorganize Rule 9.21. The proposed amendments are similar to amendments filed with the Commission by the Financial Industry Regulatory Authority, Inc. and the New York Stock Exchange, LLC and, if adopted, would provide a more uniform approach to communications to customers regarding standardized options.[8]

a. Deletion of Certain Provisions

As noted above, CBOE Rule 9.21 contains a number of references to a prospectus and other Securities Act requirements. *The Exchange proposes to delete the following from Rule 9.21:*

(1) Rule 9.21(a)(iv), which references the Securities Act definition of prospectus,

(2) Rule 9.21(d), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD,

(3) Rule 9.21(e)(ii), which defines the term ''Educational Material,''[9]

(4) Interpretation and Policy .02A of Rule 9.21, which outlines what is permitted in an ''Advertisement,''[10] and

(5) Interpretation and Policy .03 of Rule 9.21, which concerns educational material.[11]

b. *Redesignation of Rule 9.21(a) to Proposed Rule 9.21(d) and Related Amendments*

Rule 9.21(a) currently contains an outline of the ''General Rule'' for options communications. CBOE proposes to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Interpretations and Policies .01 of Rule 9.21 into proposed Rule 9.21(d). In addition, proposed Rule 9.21(d)(iii) would amend Rule 9.21(a)(iii) by

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 240.9b–1.

[6] *See* ''Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule,'' Securities Act Release No. 8171 and Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

[7] The options disclosure document (''ODD'') prepared in accordance with Rule 9b–1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. *See, e.g.*, Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

[8] *See* Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008) (SR–FINRA–2008–13) and SR–NYSE–2006–50.

[9] This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposes to revise the definition of Sales Literature to include educational material.

[10] This paragraph essentially incorporates language of Securities Act Rule 134.

[11] *See* note 9, *supra*.

clarifying the types of cautionary statements and caveats that are prohibited. Also, as previously noted, CBOE proposes to delete Rule 9.21(a)(iv).

c. *Proposed Amendments to Rule 9.21(b)*

CBOE proposes to amend Rule 9.21(b) to include the types of communications proposed to be added to the definition of ''Options Communications'' in proposed Rule 9.21(a). Proposed Rules 9.21(b)(ii) and (b)(iii) would also amend the current requirements to obtain advance approval by a ROP for most options communications by exempting certain options communications, defined as ''Correspondence'' and ''Institutional Sales Material.'' Specifically, proposed Rule 9.21(b)(ii) would exempt correspondence from the pre-approval requirement unless the correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence would be subject to general supervision and review requirements.[12] Proposed Rule 9.21(b)(iii) would exempt institutional sales material from the pre-approval requirement if the material is distributed to ''qualified investors'' (as defined in Section 3(a)(54) of the Exchange Act[13]).

Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, Proposed Rule 9.21(b)(iv) would require that firms retain options communications in accordance with the recordkeeping requirements of Rule 17a–4 under the Exchange Act.[14] Proposed Rule 9.21(b)(iv) would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a–4.

d. *Proposed Amendments to Rule 9.21(c)*

Rule 9.21(c) currently requires members to obtain approval for every advertisement and all educational material from the Exchange's Department of Compliance. This requirement applies regardless of whether the options communications are used before or after the delivery of a current ODD. CBOE proposes to amend this provision to require approval by the Exchange only with respect to options communications used prior to the delivery of a current ODD. The Exchange pre-approval requirement for options communications used subsequent to the delivery of the ODD is being eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 9.21(b) requires the Registered Options Principal of a member organization to pre-approve options communications (with certain exceptions for ''Correspondence'' and ''Institutional Sales Material''). Rule 9.21(c) would also be amended to include the types of communications added to the definition of ''Options Communications'' in proposed Rule 9.21(a).

e. *Redesignation of Rule 9.21(e) to Proposed Rule 9.21(a) and Related Amendments*

Rule 9.21(e) currently defines terms used in Rule 9.21. CBOE proposes to redesignate paragraph (e) as paragraph (a). CBOE also proposes to amend the definition of ''Options Communications'' in proposed Rule 9.21(a) to expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposes to amend the definitions of ''Advertisement'' and ''Sales Literature;'' and define ''Correspondence,'' ''Institutional Sales Material,'' ''Public Appearances,'' and ''Independently Prepared Reprints;'' to clarify the rule. In addition, as previously noted, CBOE proposes to delete the definition of ''Educational Material.''

f. *Proposed Rule 9.21(e)*

Proposed Rule 9.21(e) would set forth (i) standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally would clarify and restate the requirements contained in the current Interpretations and Policies .02 of Rule 9.21.

g. *Interpretations and Policies*

Proposed Rule 9.21(e)(i)(B) would require options communications to contain contact information for obtaining a copy of the ODD. Proposed Interpretation and Policy .01 would include the provisions found in current Section A of Interpretation and Policy .02 regarding how this requirement may be satisfied. In addition, as noted above, the provisions of Interpretation and Policy .01 regarding limitations on the use of options communications are proposed to be incorporated into proposed Rule 9.21(d).

As previously noted, the provisions of Interpretation and Policy .02 that outline what is permitted in an advertisement are proposed to be deleted and the provisions relating to standards for options communications used prior to delivery of the ODD are proposed to be incorporated into proposed Rule 9.21(e)(ii).

Interpretation and Policy .03, which concerns educational material, is proposed to be deleted as noted above.

Interpretation and Policy .04 sets forth the standards applicable to Sales Literature. Section A of Interpretation and Policy .04 sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data, will be supplied upon request. The Exchange proposes to redesignate Section A of Interpretation and Policy .04 as proposed Rule 9.21(d)(vii).

Section B of Interpretation and Policy .04 pertains to standards for Sales Literature that contains projected performance figures. Section C of Interpretation and Policy .04 pertains to standards for sales literature that contains historical performance figures. The Exchange proposes to redesignate Section B of Interpretation and Policy .04 as proposed Interpretation and Policy .02 and Section C of Interpretation and Policy .04 as proposed Interpretation and Policy .03.

Rule 9.21 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange is proposing to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.[15]

A notice providing the name and address of a person from whom the ODD

[12] *See* CBOE Rule 9.8. Telephone call between Larry Bresnehan of CBOE and Haimera Workie, Branch Chief, Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, on July 2, 2008.

[13] 15 U.S.C. 78c(a)(54).

[14] 17 CFR 240.17a–4. More specifically, Rule 17a–4(b)(4) requires that a broker-dealer retain ''originals of all communications received and copies of all communications sent * * * including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.''

[15] *See* proposed Rule 9.21(e)(i)(C) and proposed Interpretation and Policies .02 and .03.

may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because CBOE is proposing to merge educational material into the sales literature category,[16] this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposes to redesignate Section D of Interpretation and Policy .04 as proposed Interpretation and Policy .04. The Exchange proposes to delete Sections E and F of Interpretation and Policy .04. The Exchange believes Section E is unnecessary because worksheets are included in the definition of ''Sales Literature.'' The Exchange believes Section F is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 9.21(b)(iv).

2. Statutory Basis

The proposed amendments to Exchange Rule 9.21 would reflect the exemption from the provisions of the Securities Act (other than the anti-fraud provisions) for standardized options that are traded on a registered national securities exchange or on a registered national securities association and would update and reorganize the rule. The proposed amendments to Exchange Rule 9.21 are consistent with Section 6(b) of the Exchange Act [17] in general and would further the objectives of Section 6(b)(5) [18] in particular in that they are 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 by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between CBOE's and other SROs' options communications rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Exchange Act.

[16] *See* Proposed Rule 9.21(a)(ii).

[17] 15 U.S.C. 78f(b).

[18] 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 solicited or received with respect to the proposed rule change.

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–CBOE–2007–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–30 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16226 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58122; File No. SR–DTC–2007–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Applicant Disqualification Criteria Contained in Its Rules

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] notice is hereby given that on April 30, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), and on February 7, 2008, and March 18, 2008, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 proposed rule change seeks to amend the applicant disqualification criteria contained in DTC's rules in an effort to harmonize them with similar rules of DTC's affiliates, National Securities Clearing Corporation

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''NSCC'') and Fixed Income Clearing Corporation (''FICC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Statutory Disqualification

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants and defines certain criteria that may disqualify an applicant from participation. While the factors that may disqualify an applicant are generally consistent among DTC, FICC, and NSCC rules, DTC's rules do not specifically reference an order of statutory disqualification as defined in Section 3(a)(39) of the Act[4] among its disqualification criteria.[5] To promote uniformity among the rules of DTC and its affiliates, DTC is proposing to add such a provision to its rules.

(2) Associated Persons

DTC rules include applicant disqualification criteria for persons and/or entities ''associated'' with the applicant firm. Because it is not easily ascertainable as to what entities or individuals are ''associated'' with a particular entity, DTC is proposing to amend these provisions in its rules so that they are consistent with internal surveillance procedures. DTC proposes to change references to persons ''associated'' with the applicant to references to ''controlling management,'' which shall be defined to mean the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or their equivalents. These are the officers that are currently screened by DTC's risk management pursuant to internal procedures. Finally, DTC proposes to add language to its rules that would require applicants to inform DTC as to any member of its controlling management that is or becomes subject to statutory disqualification.

(3) Amendment to Willful Violation

DTC rules currently include as a disqualification criterion the applicant's or an associated person's ''willful'' violation of the Securities Act of 1933,[6] the Act, the Investment Company Act of 1940,[7] the Investment Advisors Act of 1940,[8] or any rule or regulation promulgated thereunder. DTC proposes to remove the word ''willful'' from this provision because DTC believes that any violation of these provisions should be a disqualification criterion.

Changes similar to those outlined in sections (1), (2), and (3) above will be made to DTC Rule 10, ''Discretionary Termination.''

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder because the proposed changes provide transparency with respect to the applicant and member disqualification criteria in DTC rules and uniformity with NSCC and FICC rules and thereby promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 or received. DTC will notify the Commission of any written comments received by DTC.

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 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–DTC–2007–07 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–DTC–2007–07. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007–07.pdf*, *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007–07-amendment.pdf*, and *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007–07-amendment2.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78c(a)(39).

[5] As a clearing agency registered under the Act, DTC must evaluate those members subject to an order of statutory disqualification as defined in the Act.

[6] 15 U.S.C. 77a *et seq.*

[7] 15 U.S.C. 80a–1 *et seq.*

[8] 15 U.S.C. 80b–1 *et seq.*

[9] 15 U.S.C. 78q–1.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2007–07 and should be submitted on or before August 6, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16227 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58124; File No. SR–FINRA–2008–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Arbitration Uniform Submission Agreement and Related Rules

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') on June 19, 2008, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA Dispute Resolution. 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 Dispute Resolution is proposing to amend the Uniform Submission Agreement (''USA''), which parties must sign prior to entering into arbitration, and certain rules of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') that contain references to the agreement. The proposed revisions to the USA would: (1) Clarify what the parties are attesting to when they execute the USA; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert the USA to a FINRA-specific agreement; and (4) use plain English to make the agreement easier to read.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038800.pdf*. The text of the proposed Submission Agreement is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038817.pdf*.

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

(a) Purpose

The USA is an agreement that claimants and respondents (hereinafter, collectively referred to as ''parties'') must sign prior to entering into arbitration. Rule 12302(a) of the Customer Code and Rule 13302(a) of the Industry Code require a claimant to file a signed and dated USA and a statement of claim to initiate an arbitration. Similarly, Rule 12303(a) of the Customer Code and Rule 13303(a) of the Industry Code require a respondent to directly serve each other party with a signed and dated USA and an answer within 45 days of receipt of the statement of claim. By signing the USA, the parties agree to submit to the arbitration process, and to be bound by the determination that may be rendered by the arbitrator(s).

FINRA proposes to amend the USA to: (1) Clarify what the parties are attesting to when they execute the agreement; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert it to a FINRA-specific agreement; and (4) use plain English to make the agreement easier to read. FINRA also proposes to amend the rules of the Customer Code and the Industry Code that refer to the USA.

First, FINRA proposes to amend paragraph 2 of the USA to clarify what the parties are attesting to when they execute the agreement. Currently, this section states that the parties have read the procedures and rules relating to arbitration. FINRA understands that few investors who are represented by counsel actually read the relevant self-regulatory organization (SRO) rules (such as the Customer Code). Rather, in most cases, these investors are relying on their attorneys or other representatives to know the rules. Thus, some investors have been reluctant to sign a statement that they have read all the relevant rules. In light of these concerns, FINRA is proposing to amend paragraph 2 to permit parties to certify that they or their representatives read the relevant procedures and rules and that the parties agree to be bound by them. FINRA believes that the provision as proposed to be amended would reflect more accurately what the parties are attesting to when they execute the USA. The new language would make clear that the parties themselves are bound by the procedures and rules, whether or not they read them personally.

Second, FINRA proposes to require that parties indicate in what capacity they are signing the agreement. Because the USA is a contract between the parties and FINRA's dispute resolution forum, FINRA must ensure that the parties entering the agreement have the authority or standing to sign the agreement. In those cases in which the signatory is not an individually named party, the signatory must state the capacity in which he or she is acting if other than an individual and sign in that capacity, so that FINRA can determine from the statement of claim and other supporting information whether he or she is authorized to enter the agreement. For example, a person signing as the trustee of a family trust would sign his or her name exactly as shown on the trust documents and then write ''Trustee'' on the line below the instruction ''State Capacity if other than individual (example: Executor, Trustee, Corporate Officer).'' This change would simply formalize an existing practice. Currently, if a party fails to sign the USA in the capacity in which he or she is submitting the claim, FINRA classifies the claim as deficient, which can delay the arbitration and increase the party's costs. FINRA believes that the proposed change would clarify how the agreement must be signed, and should help expedite the processing of claims, thereby minimizing unnecessary delays and expenses that parties could incur.

Third, FINRA proposes to convert the USA into a FINRA-specific agreement.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

The USA was designed by the Securities Industry Conference on Arbitration (SICA) [3] a number of years ago and was intended to be used by the ten SROs that offered an arbitration forum at that time. Thus, the language is generic and references to rules or procedures include broad terms to encompass the rules from the various SROs. Over the years, most SROs have closed their arbitration forums and contracted with FINRA to handle their arbitrations. In addition, on August 6, 2007, FINRA consolidated its dispute resolution program with that of the New York Stock Exchange, Inc.[4] As a result, FINRA now handles over 99 percent of all arbitrations filed with SROs. In light of these changes, FINRA proposes to convert the USA to a FINRA-specific agreement by removing references to ''sponsoring organization'' and replacing them with references to FINRA; expressly referencing the FINRA Code of Arbitration Procedure;[5] and removing the term ''Uniform'' from the title of the agreement. FINRA believes these changes would minimize confusion for parties concerning the applicability of the form and would clarify which FINRA rules apply in the arbitration context.

Fourth, FINRA proposes to make minor stylistic changes to the document, such as defining ''undersigned parties'' as ''parties'' after the first usage, moving the reference to cross-claims and dividing a long sentence in paragraph 4 into two sentences.[6] FINRA believes these changes will make the agreement easier to read.

Finally, FINRA proposes to amend Rules 12100(x), 12100(y), 12302(a)(1), (b), and (d), 12303(a) and (c), 12306(a) and (c), and 12307(a) of the Customer Code to conform the references to the USA to the proposed changes to the agreement. FINRA proposes to amend Rules 13100(z)—(bb), 13302(a)(1), (b), and (d), 13303(a) and (c), 13306(a) and (c), and 13307(a) of the Industry Code for the same reason.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's 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 would enhance the efficiency of the forum in processing claims, by clarifying the terms of the agreement and improving its readability. Moreover, the proposed rule change is consistent with FINRA's statutory obligations under the Act to prevent fraudulent and manipulative practices by requiring that signers of the agreement indicate in what capacity they are signing, so that FINRA can ensure that signers of the agreement are authorized to do so.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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 by FINRA.

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–2008–031 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–2008–031. 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. 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 the File Number SR–FINRA–2008–031 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence Harmon,

Acting Secretary.

[FR Doc. E8–16228 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

[3] SICA was formed in 1977 to develop and maintain a Uniform Code of Arbitration and to provide a forum for the discussion of new developments in securities arbitration among SRO arbitration forums and participants in those forums. The membership currently includes representatives of each securities SRO that currently runs an arbitration forum, three ''public'' members, and representatives from the Securities Industry and Financial Markets Association (SIFMA) and the North American Securities Administrators Association (NASAA).

[4] See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR–NASD–2007–023) (approval order).

[5] The Submission Agreement's use of the term ''FINRA Code of Arbitration Procedure'' means the Customer Code or the Industry Code, as applicable.

[6] In the proposed definition of ''Submission Agreement'' (proposed NASD Rules 12100 (x) and 13100 (z)), FINRA is not proposing to replace references to ''NASD Submission Agreement'' with ''FINRA Submission Agreement'' at this time, because those changes have been proposed as part of a separate rule filing (FINRA's Proposed Rule Change to Adopt NASD Rules 4000 Through 1000 Series and the 12000 Through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook (SR–FINRA–2008–021) (See Exhibit 5 at pp. 530 and 550–551).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58134; File No. SR–FINRA–2008–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of NASD Rule 2790 as FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) in the Consolidated FINRA Rulebook

July 10, 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 12, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''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 Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) (''Rule'') as FINRA Rule 5130 in the consolidated FINRA rulebook, with only minor changes.

The text of the proposed rule change is available at FINRA, on FINRA's Web site at *http://www.finra.org*, and in 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, 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.

[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

As part of the process of developing the new consolidated rulebook (the ''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 2790 as FINRA Rule 5130 in the Consolidated FINRA Rulebook, with only minor changes as described below.

NASD Rule 2790 protects the integrity of the initial public offering (''IPO'') process by ensuring that: (1) Firms make *bona fide* public offerings of securities at the offering price; (2) firms do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to firms; and (3) industry insiders, including firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. NASD Rule 2790 plays an important part in maintaining investor confidence in the capital raising and IPO process.

NASD Rule 2790 was adopted, effective March 23, 2004, replacing NASD IM–2110–1 (the Free-Riding and Withholding Interpretation) in its entirety.[4] The Rule was subject to extensive input from the industry and other interested persons during a four-year rulemaking process, and FINRA believes that there is broad support for it. NASD Rule 2790 provides necessary predictability and certainty in support of capital formation. Based on FINRA's experience, NASD Rule 2790 is achieving its purpose and is significantly easier than NASD IM–2110–1 for member firms and the investing public to understand and follow. Among other things, FINRA has seen a significant reduction in the number of interpretive and exemptive issues that have arisen with respect to the IPO allocation process since the Rule became effective. There is no Incorporated NYSE Rule equivalent to NASD Rule 2790.

For the reasons discussed above, FINRA is proposing to transfer NASD Rule 2790 to the Consolidated FINRA Rulebook in substantially the same form. As part of this transfer, FINRA is proposing minor changes to the Rule to reflect the registration of The NASDAQ Stock Market LLC (''NASDAQ'') as a national securities exchange. The Rule currently refers to the NASDAQ Global Market because at the time the Rule was adopted, references to the listing standards of a national securities exchange did not include NASDAQ's Global Market. Since NASDAQ completed its registration as a national securities exchange, the references to the NASDAQ Global Market in the Rule are no longer necessary. In addition, FINRA is proposing certain minor, technical changes to the Rule.

Within 60 days following Commission approval of the proposed rule change, FINRA will publish a *Regulatory Notice* setting forth the implementation date of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes the Rule has since proven effective in achieving the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[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 regarding the rulebook consolidation process, *see* FINRA *Information Notice* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (Order Approving File No. SR–NASD–99–60); *see also* NASD *Notice to Members* 03–79 (December 2003) (SEC Approves New Rule 2790 (Restrictions on the Purchase and Sale of IPOs of Equity Securities); Replaces Free-Riding and Withholding Interpretation).

[5] 15 U.S.C. 78o–3(b)(6).

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–2008–025 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–2008–025. 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–2008–025 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16232 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58128; File No. SR–FICC–2007–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Applicant and Member Disqualification Criteria

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and on February 7, 2008, and March 19, 2008, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend FICC's Government Securities Division's (''GSD'') and Mortgage Backed Securities Division's (''MBSD'') (collectively, ''Divisions'') rules concerning applicant and member disqualification criteria.

[1] U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

The purpose of this filing is for FICC to amend GSD's and MBSD's rules concerning applicant and member disqualification criteria in order to make the Divisions' rules consistent with the rules of FICC's affiliated clearing agencies, the National Securities Clearing Corporation (''NSCC'') and The Depository Trust Company (''DTC''). The proposed rule changes cover the following areas:

1. Management Consideration of Disqualification Criteria [2]

GSD's membership qualification rules currently require FICC's Board of Directors to determine whether the presence of certain negative factors affecting a membership application should constitute the basis for denying membership to such applicant. Information that might disqualify an applicant (referred to in GSD's rules as ''disqualification criteria'') include the applicant being subject to a statutory disqualification [3] or conviction of various crimes such as bribery. The disqualification criteria in GSD's rules similarly apply as standards for continued membership.

FICC proposes to change GSD's disqualification criteria to allow FICC's management, instead of FICC's Board, to determine whether the presence of a potential disqualifier should prevent an entity from obtaining or continuing membership in GSD. Such change would conform to the rules of MBSD, DTC, and NSCC, which allow such determinations to be made by management.

2. Associated and Affiliated Persons

GSD's and MBSD's respective rules also apply certain applicant and

[2] GSD Rule 2A, Section 3(d).

[3] *See* 15 U.S.C. 78c(a)(39) (definition of ''statutory disqualification'').

member disqualification criteria to persons ''associated'' (in GSD's rules) or ''affiliated'' (in MBSD's rules) with the applicant or member firm. FICC states that it is not always practical for it to ascertain which individuals are ''associated'' or ''affiliated'' with a particular entity and therefore proposes to amend these rules to conform them to its internal surveillance procedures and make them consistent across both Divisions. Accordingly, references to persons ''associated'' or ''affiliated'' with the member or applicant would be changed to references to ''controlling management,'' which will include those officers of the applicant or member that are currently screened by FICC's Risk Management department pursuant to internal procedures.[4] In addition, FICC proposes to add language to its rules that would require applicants to inform FICC as to any member of its controlling management that is or becomes subject to statutory disqualification.

3. Monitoring of Objective Disqualification Criteria

Under the proposal, GSD's disqualification criteria would be amended to reflect an approach that such criteria should be objectively and practically monitored. Specifically, FICC proposes to delete one disqualification criterion that refers to an applicant being subject to ''closer than normal'' surveillance by a regulatory body. FICC states that this event might not be reported in a regulatory background check.

In addition, MBSD's rules currently contain only two criteria that may be the basis for denial of a membership application, including: (i) An applicant's subjection to a statutory disqualification or similar order by another examining authority and (ii) an applicant or an associated person of the applicant making a misstatement of a material fact in connection with its membership application or thereafter. MBSD proposes to add GSD's remaining disqualification criteria, which would result in the Divisions' having identical disqualification criteria.

Finally, FICC proposes adding a provision to both Divisions' rules that would clarify FICC's right to deny membership to an applicant or member if FICC learns of any factor or circumstance that might impact the suitability of that particular applicant or member as a participant.

4. Additional Changes

FICC proposes to make the following changes to provide additional uniformity among the Divisions' rules, NSCC, and DTC:

- Adding to both Divisions' disqualification criteria violations of the Investment Company Act and Investment Advisers Act,[5] since those statutes apply to their current membership base.
- Amending GSD's definition of ''self-regulatory organization'' to include those entities that are foreign equivalents. The same definition for ''self-regulatory organization'' would be added to MBSD's rules.
- Removing the word ''willful'' from both Divisions' disqualification criteria concerning an applicant's or an applicant's controlling management's violation of the specified federal statutes or any rule or regulation promulgated thereunder. FICC believes that a violation of these provisions, whether or not willful, should be considered as a potential disqualification criterion.
- Deleting references in GSD's rules to Section 153 of Chapters 25 and 47 of Title 18 of the United States Code (''Code'') because the crimes covered by these statutes (*i.e.*, embezzlement, forgery, false statements, etc.) are captured by the current disqualification criteria. References to those portions of the Code that deal with mail and wire fraud (Sections 1341, 1342 and 1343) would remain. This provision, as proposed, would also be added to MBSD's rules.

Conforming changes would be made to the cease to act provisions of GSD's rules (Rule 21, ''Restrictions on Access to Services'') in order to ensure consistency within the rules and across the Divisions.

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because they provide consistency and transparency with respect to the applicant and member disqualification criteria in the GSD and MBSD rules, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC believes that the proposed rule change does not 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

FICC has not solicited or received written comments relating to the proposed rule change. FICC 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 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-FICC–2007–04 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 No. SR–FICC–2007–04. 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

[4] Proposed GSD Rule 1 and MBSD Article I (''The term 'controlling management' shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant of Participant.'').

[5] 15 U.S.C. 80a–1 *et seq.* and 15 U.S.C. 80b–1 *et seq.*, respectively.

[6] 15 U.S.C. 78q–1.

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 FICC's principal office and on FICC's Web site at <*http://ficc.com/gov/gov.docs.jsp?NS-query=#rf*>. 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–FICC–2007–04 and should be submitted on or before August 6, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16230 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58129; File No. SR–ISE–2008–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to an Exchange Member's Conduct of Doing Business With the Public

July 9, 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 March 27, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend certain Exchange rules that govern an Exchange member's conduct of doing business with the public. Specifically, the proposed rule change would require members to integrate the responsibility for supervision of their public customer options business into their overall supervisory and compliance programs. In addition, the proposal would require members to strengthen their supervisory procedures and internal controls as related to their public customer options business. The text of the proposed rule change is available at ISE's Web site at *http://www.ise.com*, the Office of the Secretary, ISE, 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.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

I. Integration of Options Supervision

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange, Inc. (''NYSE'') Rule 342 and National Association of Securities Dealers, Inc. (''NASD'') Rule 3010. The proposed rule change would also conform ISE rules to those of the Chicago Board Options Exchange (''CBOE'') which has recently eliminated the requirement that members qualified to do a public customer business in options must designate a single person to act as a Senior Registered Options Principal (''SROP'') for the member and that each such member designate a specific individual as a Compliance Registered Options Principal (''CROP'').[3] Instead, the rule requires members to integrate the SROP and CROP functions into their overall supervisory and compliance programs.

The SROP concept was first introduced during the early years of development of the listed options market. Previously, members were required to designate one or more persons qualified as Registered Options Principals (''ROPs'') to have supervisory responsibilities with respect to the firms' options business. As the number of ROPs at larger firms began to increase, an additional requirement was imposed that firms designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a firm's options activities.[4] Subsequently, following the recommendation of the Commission, the options exchanges required firms to designate a CROP to be responsible for each firm's overall compliance program with respect to its options activities.[5] The CROP could be the same person designated as a SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function with respect to options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect of the firms' other securities activities. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. By permitting supervision of a firm's options activities to be handled in the same manner as the supervision of its securities and futures activities, the proposed rule change would ensure that supervisory responsibility over each segment of a firm's business is assigned to the best qualified persons in the firm, thereby enhancing the overall quality of supervision and compliance.

The proposed rule change would allow firms the flexibility to assign such supervisory and compliance responsibilities, which formerly resided with the SROP and/or CROP, to more than one individual. For example, the proposed rule change would permit a

[3] *See* Securities and Exchange Act Release No. 56492 (September 21, 2007), 72 FR 54952 (September 27, 2007) (SR–CBOE–2007–106).

[4] Securities and Exchange Commission, 96th Cong., 1st Sess., Report of the Special Study of the Options Markets (Comm. Print 1978) 316 fn. 11.

[5] *Id.* at p. 335.

member firm to designate certain ROPs to be responsible for a variety of supervisory compliance functions such as approving acceptance of discretionary accounts[6] approval of communications to customers,[7] and exceptions to a member firm's suitability standards for trading uncovered short options.[8] A firm would be likely to do this in instances where the firm believes it advantageous to do so to enhance its supervisory or compliance structure. Typically, a firm may also wish to divide these functions on the basis of geographic region or functional considerations. Rule 601 would be amended to clarify the qualification requirements of individuals designated as ROPs.[9] Rule 602 would be amended to specify the registration requirements of individuals who accept orders from non-broker-dealer customers.[10]

The proposed rule change would call for options discretionary accounts, the acceptance of which must be approved by a ROP qualified individual (other than the ROP who accepted the account), to be supervised in the same manner as the supervision of other securities accounts that are handled on a discretionary basis. The proposed rule change would eliminate the requirement that discretionary options orders be approved on the day of entry by a ROP (with one exception as discussed below). This requirement predates the Special Study and is not consistent with the use of supervisory tools in computerized format or exception reports generated after the close of a trading day. No similar requirement exists for supervision of other securities accounts that are handled on a discretionary basis.[11] Discretionary orders would be reviewed in accordance with a firm's written supervisory procedures. The Exchange believes the proposed rule change would ensure that supervisory responsibilities are assigned to specific ROP-qualified individuals, thereby enhancing the quality of supervision.

Exchange Rule 611 would be revised by adding the requirement that any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require ROP-qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any firm that does not utilize computerized surveillance tools to monitor discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Under the proposed rule change, firms would continue to be required to designate ROP-qualified individuals to provide frequent appropriate supervisory review of options discretionary accounts. This review includes the requirement that these ROP-qualified individuals review the accounts in order to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions. This requirement provides an additional level of supervisory audit over options discretionary accounts that does not exist for other securities discretionary accounts.

In addition, Proposed Rule 609(g) would require that each member submit to the Exchange a written report by April 1 of each year that details the member's supervision and compliance effort, including its options compliance program, during the preceding year and reports on the adequacy of the member's ongoing compliance processes and procedures.[12]

Proposed Rule 609(h) would require that each member submit, by April 1 of each year, a copy of the Rule 609(g) annual report to one or more of its control persons or, if the member has no control person, to the audit committee of its board of directors or its equivalent committee or group.[13] Further, the proposed rule would provide that a member that specifically includes its options compliance program in a report that complies with substantially similar NYSE and NASD rules would be deemed to have satisfied the requirements of Rules 609(g) and 609(h).

Members would be required to designate a single general partner or executive officer to assume overall authority and responsibility for internal supervision, control of the organization and compliance with securities laws and regulations.[14] Members would also be required to designate specific qualified individuals as having supervisory or compliance responsibilities over each aspect of the firm's options activities and to set forth the names and titles of these individuals in their written supervisory procedures.[15]

b. Supervisory Procedures and Internal Controls

The Exchange is also proposing to amend certain rules to strengthen members' supervisory procedures and internal controls relating to a member's public customer options business. The proposed rule changes discussed below are modeled after NYSE and NASD rules approved by the Commission in 2004.[16] The Exchange believes its proposal to strengthen member supervisory procedures and internal controls is appropriate and consistent with the proposal discussed above to integrate the responsibility for supervision of a member firm's public customer options business into its overall supervisory and compliance program.

The Exchange is proposing to revise Rule 609(a) to require members to develop and implement written policies and procedures reasonably designed to supervise sales managers and other supervisory personnel who service customer options accounts.[17] This requirement would apply to branch office managers, sales managers, regional/district sales managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all options sales-related activities. Proposed Rule 609(a)(3)(i) would require that supervisory reviews of producing sales managers be conducted by a qualified ROP who is either senior to, or otherwise ''independent of,'' the producing manager under review. This provision is intended to ensure that all options sales activity of a producing manager is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity.

Proposed Rule 609(a)(3)(ii) would provide an exception for firms so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the review. In this case, the review would be conducted by a qualified ROP to the extent practicable. Under proposed Rule

[6] *See* Proposed Rule 611.

[7] *See* Proposed Rule 601(e).

[8] *See* Proposed Rule 608(f)(3).

[9] *See* Proposed Rules 601(d) and 601(e).

[10] *See* Proposed Rule 602(d).

[11] *See, e.g.*, NYSE Rule 408.

[12] *See* Proposed Rule 609(g), which is modeled after NYSE Rule 342.20.

[13] *See* Proposed Rule 609(h), which is modeled after NYSE Rule 354.

[14] *See* Proposed Rule 609(a).

[15] *See* Proposed Rule 609(i).

[16] *See* Securities Exchange Act Release Nos. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36) (approval order), 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR–NASD–2002–162).

[17] Proposed Rule 609(a) is modeled after NYSE Rule 342.19.

609(a)(3)(iii), a member relying on the limited size and resources exception must document the factors used to determine that compliance with each of the ''senior'' or ''otherwise independent'' standards of proposed Rule 609(a)(3)(i) is not possible, and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of proposed Rule 609(a)(3)(i) to the extent practicable.[18]

Proposed Rule 609(c)(1) would require members to develop and maintain adequate controls over each of their business activities. The proposed rule would further require that such controls include the establishment of procedures to independently verify and test the supervisory systems and procedures for those business activities. A member would be required to include in the annual report, prepared pursuant to proposed Rule 609(g), a review of the member's efforts in this regard, including a summary of the tests conducted and significant exceptions identified. The Exchange believes proposed Rule 609(c)(1) would enhance the overall quality of each member organization's supervision and compliance function.[19]

Proposed Rule 609(d) would establish requirements for branch office inspections similar to the requirements of NYSE Rule 342.24. Specifically Rule 609(d) would require a member to inspect, at least annually, each supervisory branch office and inspect each non-supervisory branch office at least once every three years.[20] The proposed rule would further require persons who conduct a firm's annual branch office inspection to be independent of the direct supervision or control of the branch office (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). The Exchange believes that requiring branch office inspections to be conducted by someone who has no significant financial interest in the success of a branch office should lead to more objective and vigorous inspections.

Under proposed Rule 609(e), any firm seeking an exemption, pursuant to Rule 609(d)(1)(ii), from the annual branch office inspection requirement would be required to submit to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, as defined in Rule 609(e). Proposed Rule 609(f) would require the annual branch office inspection programs to include, at a minimum, testing and verification of specified internal controls.[21] Proposed Rule 609(d)(3) would provide that a member that complies with the requirements of NASD or the NYSE that are substantially similar to the requirements of Rules 609(d), (e) and (f) would be deemed to have met such requirements. The Exchange is also proposing to amend Rule 609 to define ''branch office'' in a way that is substantially similar to the definition of branch office in NYSE Rule 342.10.

Proposed Rule 609(g)(4) would require a firm to designate a Chief Compliance Officer (CCO). Proposed Rule 609(g)(5) would require each firm's Chief Executive Officer (CEO), or equivalent, to certify annually that the member organization has in place processes to: (1) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations, (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate, and (3) test the effectiveness of such policies and procedures on a regular basis, the timing of which is reasonably designed to ensure continuing compliance with Exchange rules and federal securities laws and regulations.

Proposed Rule 609(g)(5) would also require the CEO to attest (1) That the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss the compliance processes in proposed Rule 609(g)(5)(i), (2) that the CEO has consulted with the CCO and other officers to the extent necessary to attest to the statements in the certification, and (3) that the compliance processes are evidenced in a report, reviewed by the CEO, CCO and such other officers as the member firm deems necessary to make the certification, that is provided to the member firm's board of directors and audit committee (if such committee exists).[22]

Under proposed Rule 609(b)(2), a member, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for no longer than two months if the customer is on vacation or traveling, or three months if the customer is going abroad. This provision would help ensure that members that hold mail for customers who are away from their usual addresses do so only pursuant to the customer's written instructions and for a specified, relatively short period of time.[23]

Proposed Rule 609(b)(3) would require that, before a customer options order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a qualified ROP would be permitted to approve any changes in account names or designations. The ROP would be required to document the essential facts relied upon in approving the changes and maintain the record in an easily accessible place. A member would be required to preserve any documentation that provides for an account designation change for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in Rule 17a–4 of the Act. The Exchange believes the proposed rule would help to protect account name and designation information from possible fraudulent activity.[24]

Proposed Rule 611(d) would allow a member to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. In addition, the proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders affected with or for an institutional account (as defined in the Rule) pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. The Exchange believes that investors would receive greater

[18] Proposed Rule 609(a)(3)(iv) would provide that a member organization that complies with the NYSE or NASD rules that are substantially similar to the requirements in Rules 609(a)(3)(i), (a)(3)(ii) and (a)(3)(iii) will be deemed to have met such requirements.

[19] Proposed Rule 609(c)(i) is modeled after NYSE Rule 342.23. Paragraph (c)(ii) of proposed Rule 609 would provide that a member organization that complies with NYSE or NASD rules that are substantially similar to the requirements in paragraph (c)(i) of proposed Rule 609 will be deemed to have met such requirements.

[20] Proposed Rules 609(d)(1)(i) and (ii) would provide members with two exceptions from the annual supervisory branch office inspection requirement.

[21] Proposed Rules 609(e) and (f) are modeled after NYSE Rules 342.25 and 342.26.

[22] Proposed Rule 609(g)(5) is modeled after NASD Rule 3013 and NYSE Rule 342.30(e).

[23] Proposed Rule 609(b)(2) is modeled after NASD Rule 3110(i).

[24] Proposed Rule 609(b)(3) is modeled after NASD Rule 3110(j).

protection by clarifying the time such discretionary orders remain pending.[25]

The Exchange believes the proposed rule changes recognize that options have become more integrated with other securities in the implementation of particular strategies, and thus should not continue to be regulated as though they are a new and experimental product. The Exchange further asserts that the supervisory and compliance structure in place for non-options products at most firms is not materially different from the structure in place for options. The proposed rule change would also conform ISE rules to those of the CBOE. Accordingly, the Exchange submits that the proposed rule changes are appropriate and would not materially alter the supervisory operations of member firms.

2. Statutory Basis

The basis for this proposed rule change is found in Section 6(b)(5) of the Exchange Act, in that the proposed rule change is designed to promote just and equitable principles of trade, 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.

Specifically, the Exchange believes this proposed rule change would achieve these ends by integrating the supervision and compliance functions relating to member organizations' public customer options activities over where supervisory responsibility lies, and by fostering the strengthening of member organizations' internal controls and supervisory systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange 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 No. SR–ISE–2008–21 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–ISE–2008–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–2008–21 and should be submitted by August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16231 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

[25] Proposed Rule 611(d) is modeled after NASD Rule 2510(d)(1).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58135; File No. SR–NASDAQ–2008–061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Routing to Affiliated Exchanges

July 10, 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 9, 2008, The NASDAQ Stock Market LLC (''NASDAQ''), 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 NASDAQ. NASDAQ has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify NASDAQ Rule 4751 and Chapter VI, Section 11 of the Rules of the NASDAQ Options Market (''NOM'') to limit the routing of certain orders to exchanges affiliated with NASDAQ. NASDAQ proposes to implement the rule change at the time of the closings of proposed acquisitions of the Philadelphia Stock Exchange, Inc. (''PHLX'') and Boston Stock Exchange, Incorporated (''BSE'').

The text of the proposed rule change is below. Proposed new language is italicized.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com.*

NASDAQ Rules

Equity Rules

* * * * *

4751. Definitions

* * * * *

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(8) No change.

(9) ''Directed Orders'' are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This option may only be used for orders with time-in-force parameters of IOC.

Directed Orders may be designated as intermarket sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq.

(g)–(i) No change.

* * * * *

Options Rules

* * * * *

Chapter VI Trading System

* * * * *

Sec. 11 Order Routing

(a) For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close, and shall route orders as follows. Participants can designate orders as either available for routing or not available for routing. Orders designated as not available for routing shall follow the book processing rules set forth in Section 10 above. Orders designated as available for routing will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(b) For Non-System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders based on the participant's instructions. *Notwithstanding the foregoing, the order routing process will not be available to route Non-System Securities to a facility of an exchange that is an affiliate of Nasdaq.*

(c)–(d) No change.

(e) NOM shall route orders in options via Nasdaq Options Services LLC, a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. Nasdaq Options Services LLC serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules solely on behalf of NOM. The Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act.

Nasdaq Options Services LLC also routes orders in options that are not listed and actually trading on NOM. When routing orders in options that are not listed and open for trading on NOM, Nasdaq Options Services is not a facility of NOM and is not regulated as a facility of Nasdaq but as a broker-dealer regulated by its designated examining authority.

Use of Nasdaq Options Services LLC to route orders to other market centers is optional. Parties that do not desire to use Nasdaq Options Services LLC must designate orders as not available for routing.

NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity.

The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

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

On October 2, 2007, The Nasdaq Stock Market, Inc. (which was recently renamed The NASDAQ OMX Group, Inc. (''NASDAQ OMX'')) announced that it had entered into an agreement with BSE pursuant to which NASDAQ OMX will acquire all of the outstanding membership interests in BSE, and BSE will be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger (the ''BSE Merger''). As a result of the BSE Merger, BSE will become a Delaware stock corporation, with 100% of its outstanding stock owned by NASDAQ OMX.

On November 7, 2007, The Nasdaq Stock Market, Inc. announced that it had entered into an agreement with PHLX pursuant to which NASDAQ OMX will acquire all of the outstanding capital stock of PHLX, and PHLX will be merged with and into Pinnacle Merger Corp., a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with PHLX surviving the merger (the ''PHLX Merger,'' and together with the BSE Merger, the ''Mergers''). NASDAQ OMX will operate BSE and PHLX as wholly owned subsidiaries, with rules, membership rosters, and listings that are separate and distinct from the rules, membership rosters, and listings of NASDAQ.

Nasdaq Execution Services, LLC (''NES'') and NASDAQ Options Services, LLC (''NOS''), which are both subsidiaries of NASDAQ, are registered broker-dealers and members of BSE and PHLX. In their filings related to the

Mergers, both BSE and PHLX proposed to adopt rules requiring Commission approval of any affiliations between themselves and their members.[5] As a result of the Mergers, NES and NOS will become affiliates of BSE and PHLX. Accordingly, in their filings, both BSE and PHLX requested Commission approval of such affiliations, subject to the following conditions:

- With respect to NES: NES remains a facility of NASDAQ; use of NES's routing function by NASDAQ members continues to be optional; and NES does not provide routing of directed orders to BSE, PHLX or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NASDAQ book.
- With respect to NOS: NOS remains a facility of NASDAQ; use of NOS's Routing Facility function by NASDAQ members continues to be optional; and NOS does not provide routing of orders in options that are not listed and open for trading on the NASDAQ Option Market (''NOM'') to BSE, PHLX, or any trading facilities thereof.

In this filing, NASDAQ is proposing modifications to its rules to fully implement these conditions.

The acquisition of the entities that are now NES and NOS by The Nasdaq Stock Market, Inc. (now NASDAQ OMX) was approved by the Commission in 2004 and 2005.[6] The rules under which NES currently routes orders to other market centers were approved by the Commission in 2006 and were subsequently amended on several occasions.[7]

Notably, NASDAQ Rule 4758(a) describes various order routing strategies that a NASDAQ market participant may employ. All of the routing strategies that allow routing to BSE or PHLX stipulate that routing occurs ''after checking the System [*i.e.*, the NASDAQ book] for available shares.''[8] NASDAQ Rule 4758(b) further describes the parameters for operation of NES as follows: (1) All routing of equities by NASDAQ is performed by NES, which, in turn, routes orders to other market centers as directed by the NASDAQ; (2) NES will not engage in any business other than: (a) As a outbound router for NASDAQ and (b) any other activities it may engage in as approved by the Commission; (3) NES will operate as a facility, as defined in Section 3(a)(2) of the Act, of NASDAQ; (4) for purposes of Rule 17d–1 under the Act, the designated examining authority of NES will be a self-regulatory organization unaffiliated with NASDAQ or any of its affiliates; (5) NASDAQ shall be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, NES, and NES shall be subject to exchange non-discrimination requirements; (6) the books, records, premises, officers, agents, directors and employees of NES, as a facility of NASDAQ, shall be deemed to be the books, records, premises, officers, agents, directors and employees of NASDAQ for purposes of, and subject to oversight pursuant to, the Act, and the books and records of NES, as a facility of the NASDAQ, shall be subject at all times to inspection and copying by the Commission; and (7) use of NES is optional.

In addition to the order routing strategies described in Rule 4758, Rules 4751 and 4755 provide for routing of ''directed orders'' to automated market centers other than NASDAQ on an ''immediate-or-cancel'' basis.[9] Such directed orders may be designated as intermarket sweep orders (''ISOs''),[10] which may be executed by the receiving venue based on the representation of the market participant that it has routed to all superior protected quotations, or not so designated, in which case the orders will execute only if their execution would not result in a trade-through. Under existing rules, directed orders are the only types of orders that could be routed by NES to BSE or PHLX without checking the NASDAQ book prior to routing. As described above, Rule 4758 already establishes all the restrictions stipulated in the BSE Filing and the PHLX Filing with respect to NASDAQ's order routing strategies. In order to implement the restrictions with respect to ''Directed Orders,'' as defined in NASDAQ Rule 4751, NASDAQ is amending that rule to provide that Directed Orders may not be directed to a facility of an exchange that is an affiliate of NASDAQ.

NOS serves as the outbound router for the NOM, which commenced operations on March 31, 2008. Under NOM Rule Chapter VI, Section 11: (1) NOM routes orders in options via NOS, which serves as the sole ''Routing Facility'' of NOM; (2) the sole function of the Routing Facility is to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer; (4) the Routing Facility is subject to regulation as a facility of NASDAQ, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between NASDAQ and its facilities (including the Routing Facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of NASDAQ, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of NASDAQ for purposes of and subject to oversight pursuant to the Act, and the books and records of the Routing Facility, as a facility of NASDAQ, shall be subject at all times to inspection and copying by NASDAQ and the Commission.

Unlike NES, NOS does not have a ''directed order'' for options that are trading on NOM; rather, all routable orders for options that are trading on

[5] Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008) (SR–BSE–2008–23) (''BSE Governance Proposal Notice''); Securities Exchange Act Release No. 57703 (April 23, 2008), 73 FR 23293 (April 29, 2008) (SR–PHLX–2008–31) (''PHLX Acquisition Proposal Notice'').

[6] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

[7] *See* Securities Exchange Act Release Nos. 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[8] The ''DOT'' routing strategy allows market participants to instruct whether or not a particular order should check the book prior to routing, but is available for routing solely to the New York Stock Exchange and the American Stock Exchange.

[9] Separately, Rule 4758 provides for routing of orders with a time-in-force other than immediate-or-cancel, but only to the New York Stock Exchange or the American Stock Exchange.

[10] Rule 600(b)(30) under Regulation NMS recognizes the regulatory purpose of an ISO and defines it as follows: ''Intermarket sweep order'' means a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.''

NOM check the NOM book prior to routing. However, NOS also routes orders in options that are not trading on NOM (referred to in the NOM Rules as ''Non-System Securities''). When routing orders in options that are not listed and open for trading on NOM, NOS is not regulated as a facility of NASDAQ but rather as a broker-dealer regulated by its designated examining authority. However, as provided by Chapter IV, Section 5 of the NOM Rules, all orders routed by NOS under these circumstances are routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

NASDAQ is amending Chapter VI, Section 11 of the NOM Rules to provide that NOM's order routing process will not be available to route Non-System Securities to a facility of an exchange that is an affiliate of NASDAQ. In addition, although Chapter VI, Section 11 currently states that NOM participants can designate orders as either available for routing or not available for routing, NASDAQ is further amending this rule to explicitly state that use of NOS to route orders to other market centers is optional, and that parties that do not desire to use NOS must designate orders as not available for routing.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will provide that routing from NASDAQ to BSE or PHLX through NES and NOS will occur solely in circumstances where routed orders access liquidity available on the NASDAQ book prior to routing.

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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] As required under Rule 19b–4(f)(6)(iii),[15] NASDAQ provided 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, prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASDAQ has requested that the Commission waive the 30-day operative delay because the proposed rule change will implement changes designed to provide that routing from NASDAQ to BSE or PHLX through NES and NOS will occur solely in circumstances where routed orders access liquidity available on the NASDAQ book prior to routing, which limits are designed to lessen potential conflicts of interest that may be associated with routing to affiliated exchanges. The acquisitions of PHLX and BSE are expected to close imminently, and therefore waiving the 30-day preoperative period would allow NASDAQ to implement these changes at the time of such closings.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change will limit the routing of orders from NASDAQ to PHLX and BSE,[16] which will be affiliates of NASDAQ following the Mergers, by NES and NOS, which are members of NES and NOS and affiliates of NASDAQ and will be affiliates of PHLX and BSE following the Mergers, to the routing of orders that first attempt to access liquidity on the NASDAQ book. The Commission has in the past expressed its concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[17] As noted above, NASDAQ represents that the proposed restrictions are designed to lessen potential conflicts of interest that may be associated with routing to affiliated exchanges. The Commission also notes that public comment was previously solicited with respect to the proposed restrictions in the context of rule proposals filed by PHLX and BSE relating to the Mergers.[18] No comments were received on those filings. Further, the Commission notes that NASDAQ represents that it will only implement the proposed rule change at the time of the closings of the proposed acquisitions of PHLX and BSE, respectively. For these reasons, the Commission designates that the proposed rule change become operative immediately.[19]

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,

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] The Commission notes that BSE's equities market is not currently operational. *See* BSE Governance Proposal Notice, *supra* note 5, 73 FR at 26166.

[17] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the New York Stock Exchange, Inc.'s merger with Archipelago Holdings, Inc.). *See also* Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members).

[18] *See* BSE Governance Proposal Notice and PHLX Acquisition Proposal Notice, *supra* note 5.

[19] 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).

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–2008–061 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–2008–061. 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 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 available publicly. All submissions should refer to File Number SR–NASDAQ–2008–061 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16233 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58126; File No. SR–NSCC–2008–04]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of NSCC's Mutual Fund Service by Investment Managers in Managed Account Programs

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 24, 2008, the 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

NSCC proposes to amend its rule in order to allow an investment manager in a managed account program to access NSCC's mutual fund services without money settlement obligations.[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

1. Purpose

Currently, there is no centralized and automated communication process that supports mutual fund transactions in managed account programs. Generally, the investment manager must input the transaction into one or more sponsor or service provider managed account systems. The transaction must then be moved to the sponsor's broker/dealer system for communication to the mutual fund via NSCC's Fund/SERV or directly to the fund outside of Fund/SERV. After the transaction is processed through Fund/SERV or processed directly with the fund, the sponsor(s) or service provider's managed account system must then be updated to reflect the mutual fund transaction and to communicate that information to the investment manager. Consequently, the inclusion of mutual funds in managed accounts imposes operational and technological restraints, requires additional processing, incurs added costs, and is more susceptible to error.

The purpose of the proposed rule change will amend the rules of NSCC regarding membership and use of NSCC's mutual fund services to allow an investment manager in a managed account program to access NSCC's mutual fund services without money settlement. The proposed rule change will allow an investment manager for a managed account program or a service provider to the investment manager to access NSCC's mutual fund services in respect of mutual fund transactions for which the managed account program sponsor will settle. The investment manager or the service provider that maintains the investment manager's platform will become a non-settling member, called an Investment Manager/Agent Member (''IMA Member''), and will have access to Fund/SERV and NSCC's other mutual fund services for transactions in managed account programs.

An NSCC settling member (generally the sponsor for the managed account program) will contractually agree with NSCC to settle the IMA Member's transactions at NSCC. The settling member will receive a report showing all the transactions of the IMA Member and can cancel any transaction intraday. The settling member must be an NSCC Member or Mutual Fund/IPS Member, and therefore subject to NSCC's standards of membership as apply were it to be settling its own transactions in mutual fund services at NSCC.

---

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Changes are to the rule text that appears in the electronic manual of NSCC found at *http://www.nscc.com/legal/.*

[3] The Commission has modified the text of the summaries prepared by the NSCC.

NSCC expects that the proposed rule change will remove the operational obstacles to adding mutual funds to managed account offerings, allow investment managers one entry point for mutual fund transactions, and automate the reconciliation of managed account platforms direct to Fund/SERV. The type of arrangement proposed by this rule change is analogous to that of a Third Party Administration (''TPA'') Member under NSCC's Defined Contribution Clearance & Settlement (DCC&S) mutual fund services.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder applicable to NSCC because the proposed rule change should promote processing efficiencies between investment managers in a managed account program, the sponsors of the program, and the fund companies in which the program assets are invested, thereby facilitating the prompt and accurate processing of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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 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)(iii) of the Act [5] and Rule 19b–4(f)(6) [6] thereunder in that it (1) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) by its terms, does not become operative for 30 days after the date from which it was filed (June 24, 2008), or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within sixty days of the filing of such 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–2008–04 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–2008–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.nscc.com/legal/.* 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–2008–04 and should be submitted on or before August 6, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16229 Filed 7–15–08; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 39 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2009, subject to the availability of funds. Nineteen states do not participate in the EO 12372 process therefore, their addresses are not included. A short description of the SBDC program follows in the **SUPPLEMENTARY INFORMATION** below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the **ADDRESSES** section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Greg Panichello, State Director, Salt Lake Community College, 9750 South 300 West, Sandy, UT 84070, (801) 957–3493;

Mr. Herbert Thweatt, Director, American Samoa Community College,

P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–4830;
Mr. John Lenti, State Director, University of South Carolina, 1710 College Street, Columbia, SC 29208, (803) 777–4907;
Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3864;
Mr. Jerry Cartwright, State Director, University of West Florida, 401 East Chase Street, Suite 100, Pensacola, FL 32502, (850) 473–7800;
Mr. Kurt Clark, Interim Regional Director, University of California, Merced, 550 East Shaw, Suite 105A, Fresno, CA 93710, (209) 288–4368;
Mr. Allan Adams, State Director, University of Georgia, 1180 East Broad Street, Athens, GA 30602, (706) 542–6762;
Mr. Bill Carter, State Director, University of Hawaii/Hilo, 308 Kamehameha Avenue, Suite 201, Hilo, HI 96720, (808) 974–7515;
Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717;
Mr. Jeffrey Heinzmann, State Director, Economic Development Council, One North Capitol, Suite 900, Indianapolis, IN 46204, (317) 234–2086;
Mr. Mark DeLisle, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420;
Mr. Brett Rogers, State Director, Washington State University, 534 East Trent Avenue, Spokane, WA 99210–1495, (509) 358–7765;
Mr. Casey Jeszenka, SBDC Director, University of Guam, P.O. Box 5061—U.O.G. Station, Mangilao, GU 96923, (671) 735–2590;
Ms. Sheneui Sloan, Acting Regional Director, Long Beach Community College, 3950 Paramount Blvd., Suite 101, Lakewood, CA 90712, (562) 938–5004;
Mr. John Hemmingstad, State Director, University of South Dakota, 414 East Clark Street, Patterson Hall, Vermillion, SD 57069, (605) 677–6256;
Ms. Gayle Kugler, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–8860;
Mr. Dan Ripke, Regional Director, California State University, Chico, Chico, CA 95929, (530) 898–4598;
Ms. Kristin Johnson, Regional Director, Humboldt State University, Office of Economic & Community Dev., 1 Harpst Street, 2006A, Siemens Hall, Arcata, CA 95521, (707) 445–9720 x317;
Ms. Vi Pham, Regional Director, California State University, Fullerton, 800 North State College Blvd., Fullerton, CA 92834, (714) 278–2719;
Ms. Debbie Trujillo, Regional Director, Southwestern Community College District, 900 Otey Lakes Road, Chula Vista, CA 91910, (619) 482–6388.

FOR FURTHER INFORMATION CONTACT: Antonio Doss, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with the SBA. SBDCs operate on the basis of a state plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: July 10, 2008.

Antonio Doss,

Associate Administrator for Small Business Development Centers.

[FR Doc. E8–16188 Filed 7–15–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 15, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency*

Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: New Markets Venture Capitol (NMVC) Program Application Funding and Reporting.

No's: SF–269, 270, 272, 424 SBA–2184, 2216, 34, 2211, 2210.

Frequency: On Occasion.

Description of Respondents: Programs Applications and participants SSBIC receiving grants under the NMVC program.

Responses: 1,131.

Annual Burden: 1,151.

Title: 25–Model Corp. Resol. or GP Certif., 33–Model Letter to Selling Agent, 34–Bank ID, 1065–Appl. Lic. Assure of Compliance.

No's: SF–269, 270, 272, 424 SBA–2184, 2216, 34, 2211, 2210.

Frequency: On Occasion.

Description of Respondents: Applicants for SBA Guarantee Leverage.

Responses: 50.

Annual Burden: 45.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–16115 Filed 7–15–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6297]

30-Day Notice of Proposed Information Collection: DS–7646, U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship, OMB 1405–0180

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* The U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship.
- *OMB Control Number:* 1405–0180.
- *Type of Request:* Renewal.
- *Originating Office:* Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO).
- *Form Number:* DS–7646.
- *Respondents:* U.S. college and university students applying for fellowship.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Hours Per Response:* 10.
- *Total Estimated Burden:* 1000 hours.
- *Frequency:* On occasion.
- *Obligation to respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from the date that this notice is published in the **Federal Register** .

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection, details regarding applying for this privately funded fellowship, and supporting documents from Alexander Zemek, Deputy Executive Director, U.S. National Commission for UNESCO, who may be reached at (202) 663–0026 or at *zemekaf@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Fellowship applicants, U.S. citizen students at U.S. colleges and universities, will submit descriptions of self-designed proposals for brief travel abroad to conduct work that is consistent with UNESCO's substantive mandate to contribute to peace and security by promoting collaboration among nations through education, the sciences, culture, and communications in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. The fellowship is funded through private donations. The information will be reviewed for the purpose of identifying the most meritorious proposals, as measured against the published evaluation criteria.

Methodology:

The U.S. Department of State, Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO) will collect this information via electronic submission.

Dated: July 2, 2008.

Alexander F. Zemek,

Deputy Executive Director, U.S. National Commission for UNESCO, Bureau of International Organization Affairs, Department of State.

[FR Doc. E8–16246 Filed 7–15–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6296]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art in the Age of Steam: Europe, America and the Railway, 1830–1960''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Art in the

Age of Steam: Europe, America and the Railway, 1830–1960'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Nelson-Atkins Museum of Art, Kansas City, MO, from on or about September 13, 2008, until on or about January 18, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: July 8, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–16245 Filed 7–15–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6258]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street, NW., Washington, DC, September 8–9, 2008, in Conference Room 1498. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nathaniel Smith, Office of the Historian (202–663–3268) no later than September 4, 2008, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Nathaniel Smith for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, September 8, 2008, in the Department of State, 2201 ''C'' Street, NW., Washington, DC, in Conference Room 1498, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, September 8, 2008, and 8 a.m. until 12 p.m. on Tuesday, September 9, 2008, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: July 7, 2008.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E8–16251 Filed 7–15–08; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Policy; Amendments of the IACC Technical Specifications for the World Aeronautical Chart Series

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice announces amendments to the technical specification in the Interagency Air Cartographic Committee Specifications that address the depiction of man-made obstructions 500 feet or more above ground level (AGL) on the World Aeronautical Chart series.

DATES: This policy is effective on December 18, 2008.

FOR FURTHER INFORMATION CONTACT: George P. Sempeles, System Operations Airspace and Aeronautical Information Management, AJR–32, FAA, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–9290.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this document using the Internet by—

1. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
2. Accessing the Government Printing Offices' Web page at *http://www.gpoaccess.gov/fr/indes.html.*

Background

The Interagency Air Cartographic Committee (IACC) is comprised of representatives of the Department of Defense and the FAA, who develop technical specifications for use in the preparation of the United States Government World Aeronautical Charts (WAC) and the Operational Navigation Charts.

The WAC provides a standard series of aeronautical charts covering land areas at a size and scale convenient for navigation by moderate-speed aircraft at high altitudes within the low altitude airspace structure. These charts are used for flight planning and in-flight navigation by VFR pilots on extended cross country flight. Because of their smaller scale, these charts do not depict as much detailed information as appears on the Sectional and Terminal Area Charts. WACs are not recommended for exclusive use by pilots of low speed, low altitude aircraft because certain information is not depicted.

Currently and in accordance with the IACC 3 specifications, obstructions exceeding 200 feet AGL in height (300 feet AGL in densely populated areas) are charted on the WAC, if the obstruction's location is critical and space permits. Charting these low level obstructions provides limited value to pilots during cross country flight and adds to chart clutter reducing legibility. With the advancements in onboard navigational databases, the aviation community has requested that additional information be added to the WAC to support using these database systems

Policy Change

The FAA recognizes the need to incorporate new information on public aeronautical charts in support of technological advancements in air navigation techniques. The FAA also recognizes the need to reduce clutter on public aeronautical charts in order to maintain legibility while supporting the intended use of these products.

In reviewing industry's request, the IACC concluded that the addition of this new information would increase congestion on the charts and that it is necessary to modify the technical specifications that require the charting

of low-level obstructions to reduce chart clutter. On April 14, 2008, the IACC amended the technical specifications in IACC 3 that govern the construction and maintenance of WACs to depict only those man-made obstructions equal to or greater than 500 feet AGL. The larger scale Sectional and Terminal Area charts, which contain greater detail, will continue to depict man-made obstructions to the maximum extent allowed by IACC 2. The first WAC published under the new specifications will be on December 18, 2008.

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA reviewed the corresponding ICAO Standards and Recommended Practices set forth in ICAO Annex 4. Because the FAA shall continue to use the 300 foot obstruction height in charts with a scale of 1:500,000, it is permissible to use the new WAC obstacle height of 500 feet while still meeting the intent of paragraph 16.9.3.1 of ICAO Annex 4. Nevertheless, the FAA will identify the following difference: On the WAC series, only obstacles 500 feet or greater AOL will be depicted versus the ICAO SARP of depicting obstacles 300 feet or greater AGL.

Issued in Washington, DC, on July 3, 2008.

Richard V. Powell,

Manager, Aeronautical Information Services.

[FR Doc. E8–15956 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First RTCA Special Committee 220/ Automatic Flight Guidance and Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 220/Automatic Flight Guidance and Control meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 220/ Automatic Flight Guidance and Control.

DATES: The meeting will be held August 26–28, 2008, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 220/Automatic Flight Guidance and Control meeting.

- August 26–28:
- Welcome/Introductions/ Administrative Remarks, Agenda Overview
- RTCA Functional Overview
- Industry Activities Related to AFC&G—Review
- Committee Scope—Terms of Reference—Presentation, Discussion, Recommendations
- Review of Existing Regulations & Guidance
  - Documents
  - FARs
  - Technical Standard Orders
  - Advisory Circulars
- Organization of Work, Assign Tasks and Workgroups
  - Presentations, Discussions, Recommendations, Assignment of Responsibilities
- Consider/Review Liaison with Other Active Committees
- Establish Dates, Location, Agenda for Next Meeting, Other Business

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 8, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–15955 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-Fifth Meeting, RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 Automatic Dependent Surveillance Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186 Automatic Dependent Surveillance Broadcast (ADS–B).

DATES: The meeting will be held August 12–14, 2008, at 9 a.m. (Unless otherwise noted).

ADDRESSES: The meeting will be held at Crowne Plaza Hotel, 1–5 Spencer Street, Melbourne, VIC 3005 Australia, +61 3 9648 2777; fax +61 3 9629 5631; Web: *http://www.crowneplaza.com.au.*

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC, 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. The agenda will include:

- August 12:
- Chairman's Introductory Remarks, Review of Meeting Agenda
- Review/Approval of the Forty-fourth Meeting Summary, RTCA Paper No. 127–08/SC186–263, Date Place and Time of Next Meeting
- Review proposed TOR's for Working Groups
- Working Group Reports
- WG–1—Operations and Implementation
- WG–2—TIS–B MASPS
- WG–3—1090 MHz MOPS
- WG–4—Application Technical Requirements
- WG–5—UAT MOPS
- RFG—Requirements Focus Group
- ICAO Asia Pacific Focus Group
- Program Status
- ASA
- FAA
- August 13:
- RFG—Requirements Focus Group
- ITP–Status
- VSA/RAD—document review
- Document ''Library'' Review & Joint Planning Session
- Closing Plenary Session (New/ Other Business, Review Actions Items/ Work Program, Adjourn)
- August 13:

Melbourne Center & Ground Station Visit

This ATC Centre is one of two centres that provide ATC services for a total of 11% of the earth's surface. It includes an ATC automation system the integrates radar, flight plan processing, ADS–C, ADS–B, CPDLC, Maestro flow management and will soon support WAM. It supports enroute, terminal areas and towers. There are no paper strips except in the control towers. This visit will include a briefing and a visit

to the centre. You can expect to see ADS–B tracks on screen. More info at *http://www.airservicesaustralia.com.*

The ADS–B ground station at Melbourne is not a fielded unit, but rather an ADS–B ground station that forms part of the Test & Evaluation system.

• Note:

Registration

Airservices Australia will be providing lunch as well as morning and afternoon teas on Day 1 & 2. A dinner is planned on the evening of Day 2. Airservices will also provide a bus on Day 3 for the centre visit. For catering purposes could you please register for the meeting by e-mailing the following information to *ellia.marando@AirservicesAustralia.com.*

Name.
Organization.
E-mail.
Phone.
Address.

An indication if you are able to attend a dinner on the evening of Day 2 and if you have any special dietary needs. In addition, please provide the following information to enable us to make the security arrangements for your visit to the ATC centre if you intend to attend on August 13th.

Name.
Date and country of birth.
Nationality and Passport Number.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–15957 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement in Seattle, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public, tribes, and agencies that an environmental impact statement will be prepared for a proposed transportation systems improvement project in Seattle, King County, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Boch, Major Project Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, Washington, 98174; telephone: (206) 220–7356; and e-mail: *Steve.Boch@fhwa.dot.gov.* The FHWA Washington Division's Oversight Manager's regular office hours are between 8 a.m. and 4:30 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: FHWA, Washington State Department of Transportation (WSDOT), the City of Seattle (City), and the King County Department of Transportation (KCDOT) will prepare an environmental impact statement to document the environmental consequences for proposed replacement of the Alaskan Way Viaduct and Alaskan Way Seawall located in downtown Seattle, King County, Washington. The intent of the project is to improve public safety by replacing the existing Alaskan Way Viaduct and Seawall with efficient transportation systems and facilities with improved earthquake resistance that provide for the efficient movement of people and goods in and through downtown Seattle.

The Alaskan Way Viaduct and Alaskan Way Seawall are both at the end of their useful life. Improvements or alternatives to both are required to protect public safety. Because these facilities are at risk of sudden and catastrophic failure in an earthquake, the replacement systems and facilities should be implemented as quickly as possible. Mobility and accessibility to and through downtown Seattle are vital to maintaining local, regional, and state-wide economic health. FHWA, WSDOT, the City, and KCDOT have identified the following underlying needs the project should address: improve public safety; provide efficient movement of people and goods; maintain or improve downtown Seattle, regional, the port and state economies; enhance Seattle's waterfront, downtown and adjacent neighborhoods as a place for people; and improve the health of the environment.

The project is evaluating all transportation modes and systems between the south Seattle city limits and N. 85th Street and Elliott Bay and Lake Washington. The nature and extent of transportation system improvements, and hence project termini, have not been determined at this time. The Alaskan Way Viaduct portion of SR 99 being focused on for replacement is approximately 2 miles long and is located between Royal Brougham Way and the Battery Street Tunnel. The project also includes the Alaskan Way Seawall, which supports the viaduct and surface streets, that extends from South Washington Street to Broad Street on Elliott Bay. Alternatives for environmental analysis have not been identified yet.

Letters soliciting comments on the purpose and need, potential alternatives, and scope of the EIS are being sent to the appropriate federal, state, and local agencies, and tribes. The project will also provide an opportunity for involvement to organizations, businesses, and citizens who have previously expressed or are known to have interest in this proposal. Agency and public scoping meetings will be held in September 2008 in Seattle, Washington. When determined, meeting details—including date, time, and location—will be posted on the project Web site: *http://www.alaskanwayviaduct.org.*

Comments and questions concerning this action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 8, 2008.

Stephen P. Boch,

Major Project Oversight Manager, Seattle, Washington.

[FR Doc. E8–16187 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0066]

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 15, 2008.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5737; or e-mail: *jean.mckeever@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

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: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. 53501, *et seq.*, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Need and Use of the Information: The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Annual Responses: 180 responses.

Annual Burden: 2865 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 9, 2008.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–16258 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2006–26009]

Calypso LNG L.L.C., Liquefied Natural Gas Deepwater Port License Application; Final Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Maritime Administration and the U.S. Coast Guard (USCG) announce the availability of the Final Environmental Impact Statement (FEIS) for the Calypso LNG L.L.C., Liquefied Natural Gas Deepwater Port license application. The application describes a project that would be located in the Federal waters of the Outer Continental Shelf in the OCS NG 17–06 (Bahamas) lease area, approximately 8 to 10 miles off the east coast of Florida to the northeast of Port Everglades, in a water depth of 800 to 950 feet. The Coast Guard and the Maritime Administration request public comments on the FEIS. Publication of this notice begins a 45 day comment period and provides information on how to participate in the process.

An announcement of the public hearing for matters relevant to the approval, denial, or approval with conditions of the license application will be published in the future and will include another opportunity to provide comments.

DATES: Material submitted in response to the request for comments on the FEIS must reach the Docket Management Facility by September 2, 2008, ending the 45 day public comment period.

As stated above, this notice is for the availability of the Final Environmental Impact Statement for the project. We will announce the date and location for the final public hearing and once again provide the opportunity to comment. The 45 day period for Federal and State agencies' comments, recommended conditions for licensing, or letters of no objection; and the 45 day period for the Governor of Florida's (the adjacent coastal state) communication to approve, disapprove, or notify the Maritime Administration of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which the Maritime Administration may condition the license to make consistent will not be affected by the publication of the FEIS and will occur after the final public hearing.

In addition, the 90 day period by which the Maritime Administration must issue a record of decision (ROD) to approve, approve with conditions, or deny the DWP license application will not be affected by the publication of the FEIS and will occur 90 days after the public hearing on the application as described above.

ADDRESSES: The FEIS, the application, comments and associated documentation is available for viewing at the Federal Docket Management System Web site: *http://www.regulations.gov* under docket number USCG–2006–26009. The FEIS is also available at public libraries in Fort Lauderdale area (Broward County Library which is a federal depository library and Riverland Library in Fort Lauderdale; Dania Beach Library—Paul DeMaio Branch in Dania Beach; Davie/Cooper City Library in Davie; Helen B. Hoffman Plantation Library and West Regional Library in Plantation; Hollywood Library in Hollywood, and Pembroke Pines Library in Pembroke Pines) and Florida State University Marine Laboratory in Sopchoppy, Florida.

Docket submissions for USCG–2006–26009 should be addressed to: Department of Transportation, Docket Management Facility, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LT Hannah Kim, U.S. Coast Guard, telephone: 202–372–1438, e-mail: *Hannah.Kim@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments or other information on the FEIS and application. You can submit comments to the Docket Management Facility during the public comment period (see **DATES**). The Coast Guard and the Maritime Administration will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2006–26009.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://www.regulations.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 81/2 by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS website (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the FDMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Federal Docket Management Facility (see **ADDRESSES**), electronically on the FDMS Web site, or later in this notice (see Privacy Act).

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for a liquefied natural gas (LNG) deepwater port appears in Volume 71 FR 65031, Monday, November 6, 2006. The Notice of Intent to Prepare an EIS for the proposed action was published in Volume 71 FR 67422, Tuesday, November 21, 2006 and the Notice of Availability of the Draft EIS was published in Volume 72 FR 62303, Friday, November 2, 2007. The FEIS, application materials and associated comments are available on the docket. Information from the ''Summary of the Application'' from previous **Federal Register** notices is included below for your convenience.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative. These alternatives are more fully discussed in the FEIS. The Coast Guard and the Maritime Administration are the lead Federal agencies for the preparation of the EIS. You can address any questions about the proposed action or the FEIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Summary of the Application

Calypso LNG L.L.C., proposes to own, construct, and operate a deepwater port, named Calypso, in the Federal waters of the Outer Continental Shelf in the OCS NG 17–06 (Bahamas) lease area, approximately 8 to 10 miles off the east coast of Florida, to the northeast of Port Everglades, in a water depth of approximately 800 to 950 feet. Calypso would consist of a permanently moored unloading buoy system with two (2) submersible buoys separated by a distance of approximately three (3) miles. Each unloading buoy would be permanently secured to eight (8) or nine (9) mooring lines, consisting of wire rope, chain, and buoyancy elements, each attached to anchor points on the sea bed. Anchor points would consist of a combination of suction piles and gravity anchors.

The buoys would be designed to moor and unload (i) transport and regasification vessels (TRVs) and (ii) a storage and regasification ship (SRS). TRVs would be drawn from the existing and future global fleet as compatible with the unloading buoy system. A TRV would moor at the east buoy for four (4) to seven (7) days. When empty it would disconnect from the buoy and leave the port, followed by another full TRV that would arrive and connect to the buoy. The SRS would be a specialized, purpose built LNG carrier designed to accept LNG from conventional LNG carriers from the existing and future global fleet. The SRS would normally remain attached to its mooring buoy. To sustain continuous vaporization, the SRS' cargo tanks would be refilled approximately every two (2) to four (4) days by LNG carriers. The SRS would detach from the buoy if threatened by a severe storm, such as a hurricane, and move under its own power to safety; then return and reconnect to the buoy and continue operations once the storm danger passed.

Both vessels would be equipped to vaporize LNG cargo to natural gas through an onboard closed loop shell-and-tube vaporization system, and to odorize and meter gas for send-out by means of the unloading buoy to conventional subsea pipelines. The mooring buoys would be connected through the hull of the vessels to specially designed turrets that would enable the vessel to weathervane or rotate in response to prevailing winds, waves, and the current directions. When the vessels are not present the buoys would be submerged approximately 100 feet below the surface.

The unloading buoys would connect through flexible risers and two (2) approximately 2.5 mile long 30-inch flow lines located on the seabed that would connect directly to the Calypso pipeline, a Federal Energy Regulatory Commission (FERC) permitted pipeline, yet to be constructed which would then connect to existing onshore pipeline system.

Calypso would be capable of delivering natural gas in a continuous flow by having at least one TRV or the SRS regasifying at all times. The system would be designed so that a TRV and the SRS can regasify simultaneously for concurrent unloading of natural gas. Calypso would have an average throughput capacity of approximately 1.1 billion standard cubic feet per day

(bcsfd) and a peak delivery capacity of 1.9 bcsfd.

Existing onshore delivery systems would be utilized and no new construction of onshore pipelines or LNG storage facilities are included as part of the proposed deepwater port. Existing shore based infrastructure will be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the deepwater port and shore.

Construction of the deepwater port would be expected to take three (3) years should a license be issued. The deepwater port, if licensed, would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: July 9, 2008.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–16259 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0018; Notice 2]

Nissan North America, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

Nissan North America, Inc. (Nissan), has determined that certain vehicles that it manufactured during the period of April 5, 2007 to July 25, 2007, did not fully comply with paragraph S4.3(b) 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).* On November 6, 2007, Nissan filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* identifying approximately 321 model year 2008 Nissan Titan E-grade trucks manufactured from April 5 to July 25, 2007, that do not comply with the paragraphs of FMVSS No. 110 cited above.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Nissan 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 February 6, 2008 in the **Federal Register** (73 FR 7031). 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–2008–0018.''

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.

Paragraph S4.3(b) of 49 CFR 571.110 requires in pertinent part that:

> S4.3 Placard. Each vehicle * * * shall show the information specified in S4.3 (a) through (g) * * * on a placard permanently affixed to the driver's side B-pillar * * *
>
> (b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location)

Nissan described the noncompliance as an incorrect total vehicle seating capacity being shown on the tire information placards affixed to the subject vehicles.

Specifically, the subject placards incorrectly show the total vehicle seating capacity as six, with three seating positions in the front row, and three seating positions in the second row.

Nissan explained that the subject E-grade Titan trucks are equipped with optional two front bucket seats. This configuration makes available two seats in the front row and three in the back row for a total of five seating positions.

Nissan stated its belief that the space between the two front bucket seats is occupied by a hard plastic console with cup holders that cannot be used or mistaken for a seating position.

Nissan further supported its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The front center console area of this vehicle cannot be mistaken for a seating position because the center console is low to the floor, has molded-in cup holders, has no padded/cushioned area, and has no provisions for seatbelts. It is apparent to any observer that there are only two front seating positions. Even if an occupant referenced the tire information placard to determine the vehicle's front seating capacity, it is readily apparent that the total capacity is five and not six and front row capacity is two and not three.

2. Because the subject vehicle cannot be occupied by more than five people, there is no risk of vehicle overloading.

3. The vehicle capacity weight (expressed as a total weight for passengers and cargo) on the placard is correct. The seating capacity error has no impact on the vehicle capacity weight.

4. All other applicable requirements of FMVSS No. 110 have been met.

Nissan also states that there have been no customer complaints, injuries, or accidents related to the incorrect seating capacity of the subject tire information placard.

Additionally, Nissan stated that it believes that because the noncompliance is inconsequential to motor vehicle safety that no corrective action is warranted.

After receipt of the petition, Nissan also informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA Decision

NHTSA agrees with Nissan that the noncompliance is inconsequential to motor vehicle safety. As Nissan states, because the vehicles have a center console mounted between the front two seating positions and no provisions to accommodate restraint for a center occupant, it is obvious that the front row seating capacity is two and not three. Therefore, overloading the vehicles is unlikely because the space between the front row bucket seats is clearly not intended to be a seating position. As Nissan additionally points out, the other information on the tire information placard is correct.

In consideration of the foregoing, NHTSA has decided that Nissan has met its burden of persuasion that the labeling noncompliances described are inconsequential to motor vehicle safety. Accordingly, Nissan'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 10, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–16179 Filed 7–15–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplemental Identification Information of Two Entities Designated Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing supplemental identification information for the names of two entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The publishing of updated information by the Director of OFAC of the two entities identified in this notice, pursuant to Executive Order 13224, is effective on July 2, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On July 2, 2008, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, supplemented the identification information for two entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The supplemental identification information for the two entities is as follows:

1. AL RASHID TRUST (a.k.a. AL AMEEN TRUST; a.k.a. AL AMIN TRUST; a.k.a. AL AMIN WELFARE TRUST; a.k.a. AL MADINA TRUST; a.k.a. AL-AMEEN TRUST; a.k.a. AL-MADINA TRUST).

2. AL-AKHTAR TRUST INTERNATIONAL (a.k.a AZMAT PAKISTAN TRUST; a.k.a. AZMAT-E-PAKISTAN TRUST; a.k.a. PAKISTAN RELIEF FOUNDATION; a.k.a. PAKISTANI RELIEF FOUNDATION).

Dated: July 8, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–16338 Filed 7–15–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Proposed Information Collection (Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) 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 for information needed to determine a claimant's eligibility for reimbursement or payment for emergency medical treatment at a non-VA facility.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *September 15, 2008.*

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail:

mary.stout@va.gov. Please refer to ''OMB Control No. 2900–0620'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities, 38 U.S.C. 1725.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans enrolled in VA's health-care system are personally liable for emergency treatment rendered at non-VA health facilities. Veterans or their representative, and the health care provider of the emergency treatment to the veteran must submit a claim in writing or complete a Health Insurance Claim Form CMS 1500 or Medical Uniform Institutional Provider Bill Form UB–04 to request payment or reimbursement for such treatment. VA uses the data collected to determine the claimant's eligibility for payment or reimbursement.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Total Annual Burden: 82,690 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 330,759.

Dated: July 10, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–16239 Filed 7–15–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Proposed Information Collection (Monthly Statement of Wages Paid to Trainee) Activity; 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 comment on information needed to determine the correct rate of subsistence allowance and wages payable to a trainee in an approved on-the-job training or apprenticeship program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 15, 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: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0368'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *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: Monthly Statement of Wages Paid to Trainee (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans complete VA Form 28–1917 to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and correct rate of subsistence allowance. Employers also use the form to document any training difficulties the veteran may be experiencing making it possible for VA's case manager to intervene to assist the veteran in a timely manner.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: July 10, 2008.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–16240 Filed 7–15–08; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 73, No. 137

Wednesday, July 16, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–05–21812 (HM–218D)]

RIN 2137–AE10

Hazardous Materials; Miscellaneous Amendments

Correction

In rule document E8–1211 beginning on page 4699 in the issue of Monday, January 28, 2008 make the following correction:

§172.101 [Corrected]

On page 4715, in §172.101.—Hazardous Materials Table, in column (8A), in the third entry, ''50'' should read ''150''.

[FR Doc. Z8–1211 Filed 5–15–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301

[REG–129243–07]

RIN 1545–BG83

Tax Return Preparer Penalties Under Sections 6694 and 6695

Correction

In proposed rule document E8–12898 beginning on page 34560 in the issue of Tuesday, June 17, 2008, make the following correction:

On page 34563, in the third column, in the third full paragraph, in the first line, ''§ 6694–1(b)(1)'' should read ''§ 1.6694–1(b)(1)''.

[FR Doc. Z8–12898 Filed 5–15–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 16, 2008

Part II

Department of the Interior

Bureau of Reclamation

43 CFR Part 415

Regulating the Use of Lower Colorado River Water Without an Entitlement; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 415

RIN 1006–AA50

Regulating the Use of Lower Colorado River Water Without an Entitlement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes to address and eliminate the use of Colorado River water from the mainstream in the lower Colorado River basin (Lower Basin) without an entitlement. For the last eight years, the upper and lower Colorado River basins have experienced the worst drought conditions in approximately one hundred years of recorded history. This drought is the first sustained drought to be experienced on the Colorado River when all major storage facilities are in place and when Arizona, California, and Nevada (Lower Division States) are fully utilizing their basic Colorado River water apportionment of 7.5 million acre-feet per year. Reclamation believes that development of such a rule will help ensure the long-term sustainability of the lower Colorado River and in doing so will protect the water rights of lower Colorado River water entitlement holders. The rule establishes procedures that Reclamation will follow in making determinations of unlawful use of lower Colorado River water. The rule includes notice and appeal procedures for those persons or entities whose use of lower Colorado River water is identified as unlawful.

Reclamation is seeking comments on the proposed rule including comments that identify any specific economic impacts to members of the public and to small businesses located within the boundary of the river aquifer. The comments should include any identified or potential economic impacts and the estimated costs of the impacts.

DATES: Submit comments on the rule by September 15, 2008.

ADDRESSES: You may submit comments on the rule, identified by number 1006–AA50, by one of the following methods:

—Use of the Federal e-rulemaking Web site: *http://www.regulations.gov*. The notice has been assigned Docket ID: BOR–2008–0001. Follow the instructions for submitting comments using this Docket ID number.

—By mail to: Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000. Please include the number 1006–AA50 and the Docket ID (BOR–2008–0001) in your correspondence.

FOR FURTHER INFORMATION CONTACT: Margot Selig, 702–293–8192.

SUPPLEMENTARY INFORMATION:

I. Background

Legal System for Use of Colorado River Water in the Lower Basin. The Colorado River is the primary source of water for irrigation, municipal, and industrial uses in the Lower Basin within the Lower Division States. Colorado River water is stored behind Hoover Dam, authorized by the Boulder Canyon Project Act of 1928 (BCPA), for delivery and beneficial use in the United States. In addition, water stored by Hoover Dam is released pursuant to the United States 1944 Treaty with Mexico which addresses the use of the Colorado, Rio Grande, and Tijuana Rivers.

To lawfully use water from the mainstream of the lower Colorado River, a person or entity must have an entitlement. An entitlement authorizes a person or entity to use water from the lower Colorado River for beneficial use and exists in one of three forms: (a) A decreed right as described in the Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California*, 547 U.S. 150 (2006) (Supreme Court Decree), (b) a contract with the Secretary of the Interior (Secretary), or (c) a Secretarial Reservation of Colorado River water. An entitlement to use lower Colorado River water specifies the quantity of water which may be used, the purpose for which the water may be used, and the location where the use may occur. Any diversion or consumptive use of lower Colorado River water without an entitlement is unlawful.

The BCPA and the Supreme Court Decree require a Colorado River water user in the Lower Basin to have a contract with the Secretary for the storage, delivery, and use of such water. The Regional Director of Reclamation's Lower Colorado Region enters into water delivery contracts with water users in Arizona, California, and Nevada on behalf of the Secretary. The BCPA and the Reclamation Act of 1902 authorize the Secretary to prescribe such rules and regulations necessary to carry out provisions of law.

The Supreme Court Decree requires the United States to account for all mainstream Colorado River water use in the Lower Basin. Pursuant to this requirement, Reclamation prepares and maintains complete, detailed, and accurate records of all known diversions, return flow, and consumptive use of Colorado River water in the Lower Basin on an annual basis. These accounting records include all diversions and use of Colorado River water in Arizona, California, and Nevada, whether or not currently authorized by an entitlement. All reported Colorado River water use in a state is required by the Supreme Court Decree to be accounted for against the amount of Colorado River water available in that state during that year. The Supreme Court Decree specifies that consumptive use of Colorado River water in the Lower Basin includes water drawn from the mainstream by underground pumping.

Technical Issues To Be Addressed. Current data show that Colorado River water used in the Lower Basin without an entitlement outside of existing lower Colorado River water delivery service areas ranges between 9,000 and 15,000 acre-feet per year. The amount of lower Colorado River water pumped by wells and river pumps within service areas that is not accounted for under existing entitlements is unknown. The largest amount of water being unlawfully used from the Colorado River in the Lower Basin occurs via underground pumping for irrigation use from wells located on the floodplain. The majority of water users who are using lower Colorado River water without an entitlement consist of households which pump small amounts of water for domestic use from wells located on the floodplain.

At Reclamation's request, the United States Geological Survey (USGS) has developed a method to identify wells that pump water that is replaced by water drawn from the lower Colorado River. The USGS method identifies a River Aquifer and a theoretical accounting surface within the River Aquifer. The River Aquifer extends outward from the Colorado River until encountering a geologic barrier to groundwater flow and encompasses the water bearing materials from which water can move to and from the lower Colorado River. The accounting surface was developed with a groundwater model and represents the elevation and extent of the river aquifer that is in hydraulic connection with the lower Colorado River. The accounting surface extends outward from the exterior boundary of the Colorado River floodplain to the exterior limit of the River Aquifer. Several thousand wells are located within the boundary of the River Aquifer. The USGS is performing a well inventory within the boundary of

the River Aquifer to identify river pumps and wells that can draw water directly from the lower Colorado River or pump water that would be replaced by water drawn from the lower Colorado River. Wells in the floodplain pump water directly from the lower Colorado River. The accounting surface is the area within which Reclamation will apply the USGS method to determine whether water pumped from a well is replaced with water drawn from the lower Colorado River. Reclamation will also evaluate whether unique hydrologic circumstances in some areas along the lower Colorado River merit an exception to the USGS methodology.

Need to Curtail Unlawful Use of Colorado River Water in the Lower Basin. One of Reclamation's legal obligations and administrative priorities is to ensure that all Colorado River water use in the Lower Basin is covered by an entitlement and correctly accounted for within each Lower Division State's apportionment. Each Lower Division State's apportionment of Colorado River water is limited; thus, unlawful use harms that state's entitlement holders by using water that those entitlement holders could legally use otherwise. This fact leads Reclamation to conclude that this rulemaking is necessary and appropriate. Additionally, each Lower Division State is fully utilizing its respective apportionment and the prolonged period of drought in the Colorado River Basin has reduced the amount of water stored in Colorado River reservoirs.

Content of Rule. The rule provides a framework for identifying and curtailing the use of mainstream Colorado River water in the Lower Basin without an entitlement. The rule will: (a) Establish the methodology that Reclamation will use to determine if a well pumps water that is replaced with water drawn from the lower Colorado River; (b) establish the criteria a water user must satisfy to demonstrate that his or her well does not pump water that is replaced with water drawn from the lower Colorado River; and (c) establish a process for a water user to appeal a determination that a specific well pumps water that would be replaced by water drawn from the lower Colorado River.

In the rule, Reclamation will inform unlawful users about the existence of various options to bring their use of Colorado River water in the Lower Basin into compliance with Federal law. Below are several options that Reclamation will consider:

(a) Some water may be available under the three Lower Division States' apportionments.

(1) Arizona: Some lower Colorado River water may be available for allocation in Arizona. Reclamation intends to consult with Arizona Department of Water Resources (ADWR) to determine if some of Arizona's Colorado River water could be committed for use by persons or entities in Arizona whose Colorado River water use is found to be unlawful. For the purposes of this rule, a water delivery contract between ADWR and Reclamation may satisfy the contract requirement for multiple individual water users and eliminate the need for contracts between the United States and the individual water users.

(2) California: All Colorado River water apportioned for use in California is already under permanent contract. However, a small amount of water is available for domestic use in California through the Lower Colorado Water Supply Project (LCWSP). Unlawful users in California who are eligible for domestic use in California and who wish to participate under the LCWSP must enter into a water delivery subcontract with the City of Needles. The City of Needles is the only entity authorized to enter into a standard form subcontract for delivery of this water supply to LCWSP beneficiaries.

(3) Nevada: All Colorado River water apportioned for use in Nevada is already under permanent contract. Any commitment to recognize new uses of Colorado River water in Nevada would be subject to terms established by the Southern Nevada Water Authority (SNWA). SNWA has an existing entitlement to the delivery and use of any Colorado River water not previously committed for use by other Nevada water users.

(b) A water user may be able to obtain an entitlement through an assignment, transfer, or lease from an existing entitlement holder within that state. An assignment, transfer, or lease must be approved by Reclamation.

(c) A water user may be able to obtain a right to use water as a customer of an existing entitlement holder. The place of water use must be included within the entitlement holder's service area and the inclusion must be approved by Reclamation.

(d) A water user may be able to acquire a different source of water that is not hydraulically connected to the lower Colorado River.

The rule emphasizes the options for bringing one's use of lower Colorado River water into compliance with Federal law. However, under the rule, individuals or entities who continue to use lower Colorado River water without an entitlement will be reported to the United States Supreme Court by the Regional Director. The Regional Director will work with the United States Department of Justice to seek Federal court orders requiring these users to cease using water from the lower Colorado River without an entitlement.

The proposed rule was preceded by an Advance Notice of Proposed Rulemaking (ANPR), published in the **Federal Register** on August 18, 2006 (71 FR 47763), under the title, ''Regulating Non-Contract Use of Colorado River Water in the Lower Basin.'' The ANPR provided for a public comment period that ran from August 18, 2006, through October 17, 2006. Reclamation received 21 letters during the comment period. Nine letters were requests to be placed on a mailing list. Twelve letters contained comments on the ANPR. The commentators included one Indian tribe, three state agencies, one interstate agency, one farmers' organization, one commercial business, two private individuals, one irrigation and electrical district organization, one water authority, and one municipality. Reclamation reviewed and analyzed all comments. The commentators generally support the development of a rule to address the use of Colorado River water in the Lower Basin without an entitlement. However, one commenter questioned the need for a rule since existing law is sufficient to bring unlawful users into compliance; this commenter requests further evaluation of the accounting surface around Lake Mead. One commenter desires a monitoring process, determination of required frequency for field data collection, updates to the USGS accounting surface model, and peer review of the USGS accounting surface methodology; this commenter is also concerned about the timing related to the replacement of water by Colorado River water when pumped by a well. For example, in certain areas of the River Aquifer in Arizona, the accounting surface boundary is 30 miles from the mainstream. One commenter said that unlawful users must have a means to bring their use into compliance with Federal law. One commenter said the rule should identify the point at which tributary water becomes part of the mainstream and address water from lakes and ponds fed from the mainstream through the subsurface. This commenter further added that the rule must provide for due process, and establish some type of enforcement ability to cause unlawful users to cease and desist from using mainstream water. Several commentators stated the necessity for

Reclamation to recognize the existence of unique hydrological circumstances in some areas of the lower Colorado River which could merit exemption to the River Aquifer/accounting surface methodology. All of the comments received on the ANPR are addressed in the proposed rule.

The rulemaking process provides an opportunity to (a) provide for public review and comment on the River Aquifer/accounting surface methodology; (b) adopt the River Aquifer/accounting surface methodology; (c) establish procedures for determining unlawful use; (d) develop notice and administrative appeal procedures; and (e) provide options for unlawful users to legalize their lower Colorado River water use. Reclamation is seeking comments on the proposed rule including comments that identify any specific economic impacts to members of the public and to small businesses located within the boundary of the river aquifer. The comments should include any identified or potential economic impacts and the estimated costs of the impacts.

USGS reports WRIR 94–4005 and WRIR 00–4085 were extensively reviewed through the USGS peer review and report publishing process. The frequency of field data collection for the well inventory is not predetermined. Field data collection is expected to be a continuous process to ensure that all wells are identified and inventoried, including those that have been drilled after the initial field data collection was completed for a given area. Also, the frequency for field data collection for any given area will be determined by Reclamation dynamically, based upon such parameters as significant changes in river conditions, development, population, political considerations, and availability of funding and staff. The timing of depletions from wells distant from the lower Colorado River has been addressed cooperatively by Reclamation and the USGS using numerical modeling techniques. The USGS is expected to produce a peer-reviewed ''Scientific Investigations Report'' concerning this matter in July 2008.

The only area Reclamation currently considers unique enough to warrant exemption from the River Aquifer/accounting surface method is the Yuma, Arizona area near the City of Yuma and south to the Southerly International Boundary (SIB) between the United States and Mexico. The Yuma area is hydrologically unique because it is a river delta environment, not a river environment. In the deltaic environment of the Yuma area, much of the water diverted from the Colorado River and applied to the ground for irrigation does not naturally return to either the Colorado River above the Northerly International Boundary (NIB) between the United States and Mexico or the Limotrophe section (the section of the lower Colorado River which forms the international boundary between the United States and Mexico from the NIB to the SIB) as surface water. Water which does not return to either the Colorado River above the NIB or the Limotrophe section as surface water is not available for diversion in the United States or for satisfaction of the Mexican water treaty. In the Yuma area, much of the water diverted from the Colorado River and applied to the ground for irrigation flows underground across the SIB and Limitrophe section boundaries into Mexico. A unique set of criteria governing this area is included in this rule at section 415.12. Should unique hydrological circumstances be identified elsewhere within the River Aquifer, Reclamation will likewise consider whether or not these circumstances would merit an exception to the USGS methodology. Information regarding the geographical applicability of the rule can be found in Subpart B of the rule and Figures 1 through 7.

II. Procedural Requirements

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of E.O. 12866. We have evaluated the impacts of this rule as required by E.O. 12866 and have determined that it is not a significant regulatory action. The results of our evaluation follow:

(a) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in any material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, and tribal governments or communities. This rule will protect lawful entitlements to use water from the lower Colorado River by providing a method for identifying and reporting persons and entities unlawfully using such water.

Reclamation will incur ongoing administrative costs to monitor and address unlawful use of lower Colorado River water. Activities related to monitoring and addressing unlawful use of lower Colorado River water must be performed with or without promulgation of the rule for Reclamation to remain in compliance with Colorado River law. The Federal cost incurred to monitor and address unlawful use of lower Colorado River water is not incremental to the rule.

Water users who are using lower Colorado River water without an entitlement may incur costs to bring their lower Colorado River water use into compliance with Federal law. The type and amount of costs will vary among water users depending upon the state in which their well or river pump is located, the manner in which a water user chooses to acquire an entitlement if appropriate, whether or not their well or river pump is located within the boundaries of an entitlement holder's service area, and the fees assessed by the entitlement holder.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Under the BCPA, the United States Congress allocated among the Lower Division States the mainstream water in the lower Colorado River to which they were entitled under the Colorado River Compact of 1922. Through the BCPA, the Congress uniquely authorized the Secretary to accomplish the allocation of Colorado River water among the Lower Division States by empowering the Secretary to enter into contracts for the delivery of water and by providing that no person shall have or be entitled to have the use of Colorado River water without a contract. The United States Supreme Court validated these and other provisions of the BCPA in the June 3, 1963 United States Supreme Court Opinion in *Arizona* v. *California* (376 U.S. 546) and the Supreme Court Decree. In the Supreme Court Decree the Secretary is charged with, among other things, accounting for and reporting the consumptive use of Colorado River water diverted directly from the mainstream and/or through underground pumping. Reclamation performs water contracting and water accounting responsibilities on behalf of the Secretary. No other agency in the United States performs these functions on the lower Colorado River.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; all of these will continue unaffected by the issuance of this rule.

(d) This rule does not raise any novel legal or policy issues. This rule will not implement requirements upon users of lower Colorado River water that do not already exist.

2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule imposes no requirements upon small governments (including Native American communities), small entities such as water purveyors or associations, individual lower Colorado River water entitlement holders or lawful water users that are not already imposed by the BCPA and the Supreme Court Decree concerning the use of lower Colorado River water. This rule does not impose a requirement for small entities to report or keep records on any of the requirements contained in this rule other than the type of recordkeeping regarding lower Colorado River water use that is already required by water delivery contracts with the Secretary. You may obtain a copy of the Initial Regulatory Flexibility Analysis by contacting us at the address in the Addresses section. Development of a Small Entity Compliance Guide is not required.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. Under the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis performed to evaluate the potential economic impacts of this rule the estimated net present value of the impact to the economy from 2008 through 2027 ranges between $256,313 to $3,742,363 under a real discount rate of 7.0 percent and $340,804 to $5,375,118 under a real discount rate of 3.0 percent. The estimated economic impacts over the 20-year period of the study are associated with costs that may be incurred when unlawful users of lower Colorado River water incur costs to either obtain a lower Colorado River water entitlement or become a customer of a lower Colorado River water entitlement holder. Federal costs related to oversight of unlawful use of lower Colorado River water will be incurred with or without the rule in fiscal years 2008 through 2010.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The estimated economic impacts are not significant. This rule does not impose new requirements regarding the lawful use of lower Colorado River water.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The potential economic impacts incurred by lower Colorado River water users who are unlawfully using lower Colorado River water are not significant. This rule establishes procedures that Reclamation will use to determine if a well pumps water that is replaced by water drawn from the lower Colorado River.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more annually. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule imposes no requirements regarding the lawful use of lower Colorado River water that are not already imposed by the BCPA and the Supreme Court Decree. You may obtain a copy of the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis for Proposed Rulemaking by contacting us at the address in the **ADDRESSES** section. Therefore, a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O. 13406, this rule does not have any significant takings implications. A Takings Implication Assessment is not required. This rule will protect valid water rights and help to ensure the long-term sustainability of the resource. For water users far from the river channel or reservoirs and who are pumping groundwater outside of the lower Colorado River floodplain, this rule provides for a test which can determine if water pumped by a well is replaced by water drawn from the mainstream of the lower Colorado River. The test is based upon the lower Colorado River accounting surface developed by the USGS. If, according to the test, the well is drawing water from the mainstream of the lower Colorado River, the well user must have an entitlement to use the water. This rule provides information explaining how to acquire an entitlement to use lower Colorado River water. This rule also explains the steps that Reclamation will take against a person or entity for failure to stop using lower Colorado River water unlawfully.

6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the proposed rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian tribes. Reclamation consulted with the Indian tribes that are located on the mainstream of the lower Colorado River on November 1, 2006, to discuss the objectives of this rule and to hear questions and concerns on the part of Indian tribes.

9. Paperwork Reduction Act

This rule does not require collection of new or additional information from the public other than what is already required from Colorado River water entitlement holders regarding their water use. A submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment consistent with NEPA requirements has been prepared and is summarized below. This rule does not require construction of water diversion, delivery, treatment, or storage facilities. This rule does not impact cultural resources or threatened or endangered species. This rule may improve the long-term sustainability of the lower Colorado River by establishing

procedures which enable Reclamation to identify unlawful users of lower Colorado River water. You may obtain a copy of the environmental assessment by contacting us at the address in the **ADDRESSES** section or you may find the environmental assessment on Reclamation's Web page at *http://www.usbr.gov/lc/.*

11. Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by E.O. 12866 and E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe these requirements have not been met, please send comments to Reclamation as instructed in the **ADDRESSES** section. Please make your comments as specific as possible, referring to specific sections and how they could be improved. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

14. Public Availability of Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 415

Water resources, Water supply.

Dated: July 9, 2008.

Timothy R. Petty,

Acting Assistant Secretary for Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 415 to Title 43 of the Code of Federal Regulations to read as follows:

PART 415—REGULATING THE USE OF LOWER COLORADO RIVER WATER WITHOUT AN ENTITLEMENT

Subpart A—Purpose, Definitions, and Applicability

Sec.
415.1 What is the purpose of this part?
415.2 What terms are used in this part?
415.3 What is the difference between lawful and unlawful use of lower Colorado River water?
415.4 How do I know if the water I use is subject to this part?
415.5 How will the river aquifer/accounting surface methodology be applied?

Subpart B—Determining the Status of a Well

415.10 How do I determine if my well is in the floodplain?
415.11 How do I determine if my well is outside the floodplain but drawing water out of the lower Colorado River?
415.12 How do I determine the status of my well if it is located in the Yuma accounting area?

Subpart C—Adjustments to the River Aquifer, Floodplain, or the Accounting Surface

415.20 What conditions may cause adjustments to the river aquifer boundaries and the elevation values which define the accounting surface?
415.21 How will Reclamation make adjustments to the Yuma accounting area?

Subpart D—Notification of Well Status

415.30 What is the procedure for determining the status of my well and how will I be notified?
415.31 How may I challenge the determination of my well status?

Subpart E—Bringing Your Use of Lower Colorado River Water Into Compliance With Federal Law

415.40 How may I lawfully use water from the lower Colorado River?
415.41 Will compliance with Federal law incur any cost for which I will be responsible?
415.42 What is the role of an existing entitlement holder under this part?
415.43 Is this part applicable to existing lower Colorado River water delivery contracts?

Subpart F—Penalty for Noncompliance

415.50 What if I continue to use water from the lower Colorado River without an entitlement?

Illustrations to Part 415

Authority: 5 U.S.C. 552; 43 U.S.C. 373, 485, 617.

Subpart A—Purpose, Definitions, and Applicability

§ 415.1 What is the purpose of this part?

This part protects lawful entitlements to use water from the lower Colorado River by providing a method for identifying persons and entities unlawfully using such water.

§ 415.2 What terms are used in this part?

Accounting surface means the elevation and slope of the unconfined static water table in the river aquifer outside the floodplain and the reservoirs of the lower Colorado River that would exist if the lower Colorado River were the only source of water to the river aquifer. The accounting surface extends outward from the edges of the floodplain or a reservoir to the subsurface boundary of the river aquifer from the mouth of the Grand Canyon to just north of the Southerly International Boundary (SIB). In the Yuma accounting area, the use of the accounting surface is superseded as determined by Reclamation.

Accounting year means January 1 through December 31.

Boulder Canyon Project Act of 1928 (BCPA) means the act which established the responsibilities of the Secretary of the Interior to direct, manage, and coordinate the operation of Colorado River dams and related works in the Lower Basin.

Colorado River water means water in or withdrawn from the mainstream of the Colorado River, including the following:

(1) Water in the surface channels and reservoirs of the Colorado River;

(2) Water in the floodplain drains;

(3) Water beneath the Colorado River floodplain; and

(4) Water withdrawn from beneath the accounting surface.

Domestic use means the use of Colorado River water for household, stock, municipal, mining, milling, industrial and other like purposes, excluding the generation of electrical power.

Floodplain means that part of the lower Colorado River valley that has been covered by floods of the modern lower Colorado River as it meandered prior to construction of Hoover Dam. The floodplain commonly is bounded by terraces and alluvial slopes that rise to the foot of the mountains that rim the valley. In the Yuma area, the floodplain includes the floodplain of the Gila River from the Laguna and Gila Mountains to

the confluence with the lower Colorado River.

Lower basin means the lower Colorado River basin, which includes those parts of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry. The lower basin also includes parts of those same states that are located outside the drainage area of the Colorado River that are or can be beneficially served by waters diverted from the Colorado River below Lee Ferry.

Lower Colorado River water means mainstream water.

Lower Division States means Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States. The mainstream includes the reservoirs behind dams on the main channel and Senator Wash Reservoir off the main channel.

Mainstream water means

(1) Water drawn or diverted from the main channel of the lower Colorado River, exclusive of tributaries, within the United States downstream from Lee Ferry (including the areas covered by reservoirs, wetlands, lakes, ponds, and backwaters);

(2) Water withdrawn by a well within the boundary of the floodplain portion of the lower Colorado River aquifer; and

(3) Within the boundary of the accounting surface portion of the lower Colorado River aquifer, water withdrawn from a well with a static water level indistinguishable from or less than the elevation of the accounting surface at the well site.

NIB means the Northerly International Boundary with Mexico.

Normal flow conditions mean that releases from Hoover Dam are made in accordance with downstream requirements to satisfy 7.5 million acre-feet of consumptive use in the United States and a delivery of 1.5 million acre-feet to Mexico.

Regional Director means the Regional Director, Lower Colorado Region, Bureau of Reclamation, Boulder City, Nevada.

River aquifer means the unconfined aquifer that consists of the saturated, permeable sediments and sedimentary rocks that are hydraulically connected to the lower Colorado River so that water can move between the lower Colorado River and the aquifer in response to withdrawal of water from the aquifer or differences in water level elevations between the lower Colorado River and the aquifer. The river aquifer consists of the aquifer underlying the lower Colorado River's floodplain and the accounting surface. The river aquifer has been delineated from the mouth of the Grand Canyon to SIB.

SIB means the Southerly International Boundary with Mexico.

Static water elevation means the non-pumping elevation of the water in a well, measured as the elevation of the ground, or other appropriate elevation reference, less the depth to water in the well with the pump turned off and the water elevation in the well recovered to the non-pumping elevation.

Tributary water is water that enters the mainstream or the river aquifer from a source other than the Colorado River.

USGS means the United States Geological Survey of the Department of the Interior.

Wells with a static water elevation that cannot be distinguished from the accounting surface means wells that have a static water elevation which is within ± 0.84 feet from the accounting surface elevation in the area of the well.

Yuma accounting area means the area in Arizona generally downstream from the confluence of the Gila River, on the Yuma Mesa, and the Yuma Valley. This area is delineated in Figure 7 of this part.

§ 415.3 What is the difference between lawful and unlawful use of lower Colorado River water?

(a) A person or entity may lawfully use water from the lower Colorado River only under an entitlement. An entitlement means an authorization to use water from the lower Colorado River water as described in:

(1) The Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California* in March of 2006, as supplemented or amended;

(2) A water delivery contract with the Secretary of the Interior; or

(3) A reservation of water by the Secretary of the Interior.

(b) If you are using water from the lower Colorado River without an entitlement, you are using water unlawfully. You must obtain an entitlement or you must stop using water from the lower Colorado River.

§ 415.4 How do I know if the water I use is subject to this part?

(a) This rule applies to you if you use water from the mainstream of the lower Colorado River within the States of Arizona, California, or Nevada. The lower Colorado River begins at Lee Ferry, Arizona, which is located 17.3 miles downstream from Glen Canyon Dam. The mainstream of the lower Colorado River includes all water in the river channel and all water in any reservoir on the lower Colorado River. Water in the mainstream of the lower Colorado River originates from many sources both above and below the ground. When surface water from tributary valleys reaches the mainstream of the lower Colorado River, it becomes Colorado River water. When tributary water commingles with Colorado River water beneath the floodplain, it becomes mainstream water. Tributary water that commingles with groundwater beneath the accounting surface, where the elevation of the water table is below or cannot be distinguished from the elevation of the accounting surface, is considered mainstream water.

(b) You are using mainstream water from the lower Colorado River if you divert any water out of the river channel; for example, by a diversion dam, a river pump, or a hose. You are using mainstream water from the lower Colorado River if you are diverting water out of a reservoir, such as Lake Mead, Lake Mohave, or Lake Havasu. You are using mainstream water from the lower Colorado River if you operate a well located in the river's floodplain, because that well draws water directly from the mainstream. You are using mainstream water from the lower Colorado River if you operate a well located outside the floodplain and your well pumps water that is replaced by water drawn from the lower Colorado River, as determined by the river aquifer/accounting surface methodology.

§ 415.5 How will the river aquifer/accounting surface methodology be applied?

(a) Your well must be located within the exterior boundary of the river aquifer to potentially pump water from the lower Colorado River. The river aquifer extends from Lake Mead downstream to SIB and laterally into adjacent areas generally until encountering a barrier to subsurface flow. The river aquifer contains two smaller areas called the floodplain and the accounting surface. The accounting surface exists within the river aquifer and extends laterally from edges of the floodplain (or edges of a reservoir) to the extent of the river aquifer from Lake Mead downstream to just north of SIB.

(b) Surface water from tributary valleys is considered Colorado River water when it reaches the mainstream of the lower Colorado River. When tributary water commingles with groundwater beneath the floodplain, it becomes mainstream water. Tributary water beneath the accounting surface, where the elevation of the water table is below or cannot be distinguished from

the elevation of the accounting surface, is considered mainstream water.

(c) If your well is located in the floodplain portion of the river aquifer, you are pumping lower Colorado River water. If your well is located in the accounting surface portion of the river aquifer, you are pumping water that is replaced by water drawn from the lower Colorado River unless the static water elevation in your well is above the elevation of the accounting surface in the area of your well.

(1) *Lee Ferry to the mouth of the Grand Canyon*. The river aquifer, floodplain, and accounting surface have not been delineated from Lee Ferry to the mouth of the Grand Canyon as of the writing of this part. The determination of whether a well is pumping water from the lower Colorado River or water that is replaced by water drawn from the lower Colorado River will be made on a case-by-case basis for wells in this area using criteria determined by the Regional Director.

(2) *Lake Mead area*. In the area surrounding Lake Mead, the river aquifer/accounting surface methodology will be used to determine if a well will be considered to pump lower Colorado River water or water replaced by water drawn from the mainstream of the lower Colorado River. The accounting surface in the area surrounding Lake Mead requires unique treatment in this part. The water surface elevation of Lake Mead fluctuates significantly on an annual basis in response to variations in the natural water supply. This fluctuation is unlike the other reservoirs of the lower Colorado River which correspond to monthly operational targets. The accounting surface in the area surrounding Lake Mead will vary annually and will be set at the high end-of-month elevation of Lake Mead for the accounting year. Information regarding the elevation and lateral extent of the accounting surface surrounding Lake Mead will be provided every 5 years via publication of a notice in the **Federal Register**. Figures 2 and 3 of this part show the outer-most boundary of the accounting surface surrounding Lake Mead.

(3) *Downstream from Lake Mead to the Yuma accounting area*. Accounting surface elevations in the areas surrounding Lake Mohave and Lake Havasu are set at the annual high end-of-month water surface elevation targets used to operate these reservoirs under normal flow conditions. The accounting surface elevations elsewhere are determined by water surface profiles of the lower Colorado River and by water surface elevations in drainage ditches where they exist in irrigated floodplain areas under normal flow conditions.

(d) Though the accounting surface has been defined to just north of SIB, the river aquifer/accounting surface methodology will be utilized to identify wells which pump water that is replaced by water drawn from the lower Colorado River only in the portion of the river aquifer upstream of the Yuma accounting area as shown in Figure 6. The method described in § 415.12 will be used in the Yuma accounting area to determine whether or not a well pumps lower Colorado River water or groundwater which otherwise would have returned to the lower Colorado River upstream of NIB.

Subpart B—Determining the Status of a Well

§ 415.10 How do I determine if my well is in the floodplain?

Use the following guidelines to determine if your well is in the floodplain.

(a) Generalized maps (not drawn to scale) of the floodplain of the lower Colorado River from Davis Dam to the northern boundary of the Yuma accounting area are provided at the end of this part in Figures 4 through 6. If your well is located in the floodplain shown in Figures 4 through 6, you are pumping water from the lower Colorado River and you must have an entitlement to lawfully use that water.

(b) The floodplain of the area in northern Arizona between Lee Ferry, Arizona, and the mouth of the Grand Canyon has not yet been determined. If your well is between Lee Ferry and the mouth of the Grand Canyon, Reclamation will consider the facts on a case-by-case basis to determine if your well withdraws water from the lower Colorado River.

(c) If you need help to determine whether your well is located within the floodplain, you may contact the Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, *Attention:* Area Manager, Boulder Canyon Operations Office (BCOO–1000).

§ 415.11 How do I determine if my well is outside the floodplain but drawing water out of the lower Colorado River?

(a) A well located within the accounting surface portion of the river aquifer will be considered to pump water that is replaced by water drawn from the lower Colorado River if the static water elevation in the well is less than or cannot be distinguished from the elevation of the accounting surface at the well site.

(1) The accounting surface is the elevation at which underground water would be expected to occur in a particular area of the river aquifer if the lower Colorado River was the only source of groundwater in the area. Therefore, water pumped below or from an elevation indistinguishable from the elevation of the accounting surface in the location of your well will be replaced by water drawn from the lower Colorado River. Generalized maps (not drawn to scale) of the accounting surface from the mouth of the Grand Canyon to the northern boundary of the Yuma accounting area outside the floodplain are provided at the end of this part as Figures 2 through 6. If your well is located outside the floodplain but within the boundary of the river aquifer, the USGS will be required to measure the static water elevation in your well to determine if it is pumping water replaced by water drawn from the lower Colorado River.

(2) The static water elevation in your well is compared by Reclamation to the elevation of the accounting surface at your well site. If the static water elevation in your well is indistinguishable from or lower than the elevation of the accounting surface where your well is located, you are pumping water that is replaced by water drawn from the mainstream of the lower Colorado River. You must have an entitlement to lawfully use water from the lower Colorado River. The USGS will provide advance notice to you before measurements are made by the USGS. If the static water level has never been measured in your well, you may contact the Bureau of Reclamation, P.O. Box 61470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000, Boulder City, NV 89006–1470 to schedule the measurement of the static water level in your well. No other data or method are available to determine if your well is pumping water that is replaced by lower Colorado River water. Thus, if a well user denies an employee, agent, or contractor of Reclamation or the USGS access to a well to make the required measurements, Reclamation will presume that the well pumps water that is replaced by water drawn from the lower Colorado River. If the USGS is physically unable to make the required measurements due to well construction, Reclamation will presume that the well pumps water that is replaced by water drawn from the lower Colorado River. Such a presumption about your well is made, absent the measurement of the static water elevation in your well, to maintain compliance with the BCPA.

The BCPA requires all persons using lower Colorado River water to have a contract for the storage and delivery of Colorado River water with the Secretary of the Interior or a perfected water right under state law which existed prior to June 25, 1929, the effective date of the BCPA.

§ 415.12 How do I determine the status of my well if it is located in the Yuma accounting area?

(a) This section defines the boundaries of the Yuma accounting area and describes criteria for determining when water withdrawn by a well is lower Colorado River water or groundwater that is flowing to the lower Colorado River upstream of NIB. The Yuma accounting area is delineated in Figure 7 of this part.

(b) The Yuma accounting area is hydrologically unique because much of the water diverted from the lower Colorado River and applied for irrigation generally flows underground across the SIB or under the Colorado River south of the NIB and does not return to the lower Colorado River in the United States through natural hydrologic processes. Water which does not return to the Colorado River above the NIB, or which does not return to the Limotrophe section (the section of the lower Colorado River which forms the international boundary between the United States and Mexico from the NIB to the SIB) as surface water is not available to satisfy consumptive use in the United States or delivery obligations to Mexico by the United States under the Mexican Treaty. Reclamation determined that wells within the Yuma accounting area deserve separate consideration due to the direction of groundwater flow and the deltaic nature of the Yuma area. Reclamation developed an accounting method to determine whether or not wells in this area pump lower Colorado River water, or water previously diverted from the lower Colorado River which would otherwise return to the lower Colorado River. In the Yuma accounting area, unmeasured return flow credit is calculated and credited to Arizona assuming there are no intervening wells or depletions from the time the flows leave an irrigation district to the time the flows return to the lower Colorado River. Therefore, in the Yuma accounting area, wells which pump groundwater which otherwise would have returned to the lower Colorado River upstream of the NIB are considered to be using lower Colorado River water.

(c) Figure 7 of this part depicts a groundwater divide at the northern end of the Yuma accounting area. In the Yuma accounting area, north of the groundwater divide, groundwater flows north to the lower Colorado River above the NIB as of the adoption of this part. Reclamation will determine that your well pumps lower Colorado River water if your well is located in an area where groundwater flows toward the lower Colorado River upstream of the NIB, as depicted in Figure 7 of this part.

(d) Your well is exempt from this rule if your well is located south of the groundwater divide depicted in Figure 7 of this part where groundwater does not flow toward the lower Colorado River upstream of the NIB.

Subpart C—Adjustments to the River Aquifer, Floodplain, or the Accounting Surface

§ 415.20 What conditions may cause adjustments to the river aquifer boundaries and the elevation values which define the accounting surface?

(a) Physical evidence to support adjustment to the geographic boundary of the river aquifer would include, but are not limited to, information derived from geologic studies, geophysical studies, well drilling, or the result of an extreme hydrologic event.

(b) Changes in conditions that define the lower Colorado River profile may cause Reclamation to adjust the accounting surface elevation contours. Such changes in conditions may include, but are not limited to, changes in development or growth which may increase or decrease groundwater pumping in the Yuma accounting area, changes in water deliveries and/or uses, changes in reservoir operations, or changes in hydraulic conditions or other conditions that may result in significant water surface elevation changes in the lower Colorado River channel, reservoirs, and drainage ditches of the lower Colorado River.

(c) The USGS and Reclamation will document the basis for any adjustments to the accounting surface elevations or the geographic boundary of the river aquifer and/or the accounting surface in a report which will be made available to the public. This part would be amended to reflect changes in the accounting surface elevations and/or the geographic boundary of the river aquifer.

§ 415.21 How will Reclamation make adjustments to the Yuma accounting area?

(a) The method described in § 415.12 will be used in the Yuma accounting area unless or until groundwater gradients in the Yuma accounting area change so as to require a re-evaluation of the areas from which groundwater flows toward the Colorado River upstream of NIB. Such a change could occur due to increased groundwater pumping and/or a redistribution of groundwater pumping in the Yuma accounting area.

(b) In the event of a re-evaluation, Reclamation will review the method for the Yuma accounting area and modify it, as needed, following consultations with the Lower Division States. Reclamation's review will be conducted in coordination with the Lower Division States. Changes in the Yuma accounting area will be formalized by revising this part.

Subpart D—Notification of Well Status

§ 415.30 What is the procedure for determining the status of my well and how will I be notified?

(a) The Regional Director will consider information relating to §§ 415.10 through 415.12 to determine whether or not you are using water from the lower Colorado River without an entitlement. If your well is located within the accounting surface, the USGS will ask permission to measure the static water elevation in your well and the elevation of the land surface (or other appropriate elevation datum) at your well site to determine if the water pumped from your well is lower Colorado River water or water replaced by water drawn from the lower Colorado River. After the USGS measures the static water elevation in your well, the Regional Director will inform you about the status of your well in writing. If you do not give the USGS permission to measure the static water elevation in your well, the Regional Director will assume that water pumped from your well is lower Colorado River water or water replaced by water drawn from the lower Colorado River.

(b) The Regional Director will establish a file for each determination that you dispute. This file is an administrative record and will contain all relevant information regarding the status of your well or other means of using water from the lower Colorado River. You are entitled to review the administrative record. All of the information considered by the Regional Director will be included in the administrative record.

(c) If the Regional Director determines you are using water from the lower Colorado River without an entitlement, the Regional Director will notify you of the determination in writing by certified mail, return receipt requested, and provide the basis for the determination. The Regional Director's determination is final unless, within 60 days of the receipt of the notice, you file an

objection with the Regional Director. The Regional Director will make reasonable attempts to locate you to send the notice of determination and will document these attempts. If the Regional Director is unable to locate you, the determination will be final 60 days after the first attempt to deliver the notice.

§ 415.31 How may I challenge the determination of my well status?

(a) If you file a challenge to the Regional Director's determination, you must include information to support your challenge. The Regional Director will review your challenge and any supporting information and will notify you in writing by certified mail, return receipt requested, whether the determination has been changed.

(b) If the Regional Director does not change the determination, you may file an appeal with the Commissioner of Reclamation in writing within 30 days after receiving the notice that the determination was not changed. If you do not file an appeal with the Commissioner, the decision of the Regional Director is final 30 days after you received notice that the determination was not changed.

(c) It is not necessary to include your supporting information in the appeal to the Commissioner. The Regional Director will send the administrative record to the Commissioner and will include the challenge you filed with the Regional Director and any supporting information you filed with the challenge. The Commissioner's determination will be made solely on the administrative record. The Commissioner's determination is the final determination of the Department of the Interior.

(d) Determinations by the Regional Director that may or may not be challenged:

You may challenge	You may not challenge
(1) That your well is, or is not, located within the river aquifer	That your well in the floodplain is diverting lower Colorado River water.
(2) That your well is, or is not, located within the floodplain portion of the river aquifer.	That the entire amount of water pumped from a well should be accounted for as a diversion of lower Colorado River water regardless of the hypothesized ratio of non-Colorado River water to lower Colorado River water.
(3) That your well is, or is not, located within the accounting surface portion of the river aquifer.	Whether or not Reclamation will use the method described in this part to determine if a well pumps lower Colorado River water or water replaced by water drawn from the lower Colorado River.
(4) That the static water elevation in your well in the accounting surface portion of the river aquifer is, or is not, below or cannot be distinguished from the accounting surface (new measurements will be made by the USGS; measurements made by any other person or entity will not be accepted).	

Subpart E—Bringing Your Use of Lower Colorado River Water Into Compliance With Federal Law

§ 415.40 How may I lawfully use water from the lower Colorado River?

You may be able to bring your use of water from the lower Colorado River into compliance with Federal law through one of the options provided below:

(a) *Arizona.* If you are using water from the lower Colorado River in Arizona, you may be able to acquire an entitlement through a contract with the Secretary of the Interior. You may contact the Arizona Department of Water Resources, Attention: Arizona Department of Water Resources, Colorado River Management, 3550 North Central Avenue, Phoenix, Arizona 85012 for information about acquiring an entitlement under Arizona's lower Colorado River apportionment through a contract with the Secretary of the Interior.

(b) *California.* All Colorado River water apportioned for use in California is already under permanent contract. However, if you are using water from the lower Colorado River in California, some water is available for domestic use in California through the Lower Colorado Water Supply Project (LCWSP). Unlawful users in California who are eligible as domestic users in California and who wish to participate under the LCWSP must enter into a water delivery subcontract with the City of Needles. The City of Needles is the only entity authorized to enter into a standard form subcontract for delivery of this water supply to project beneficiaries.

(c) *Nevada.* All Colorado River water apportioned for use in Nevada is already under permanent contract. Any commitment to recognize new uses of Colorado River water in Nevada would be subject to terms established by the Southern Nevada Water Authority (SNWA). SNWA has an existing entitlement to the delivery and use of any Colorado River water not previously committed for use by other Nevada water users.

(d) *Any Lower Division State.* If you are using water from the lower Colorado River in Arizona, California, or Nevada, you may be able to acquire an entitlement through an assignment, transfer, or lease from an existing entitlement holder within your state. The assignment, transfer, or lease must be approved by Reclamation.

(1) You may also be able to obtain a right to use water as a customer of an existing entitlement holder even if your well or river pump is not located within the entitlement holder's service area. At the consent of the entitlement holder, your well or river pump and place of water use must be included within the entitlement holder's service area through a change in the service area boundary and the inclusion must be approved by Reclamation. If your well or river pump is already located within the entitlement holder's service area, you must contact the entitlement holder to inquire about reporting your use of lower Colorado River water under the entitlement holder's entitlement. If you do not know if your well or river pump is near or within an entitlement holder's service area, you may refer to a map of service area boundaries within the river aquifer on Reclamation's Web page at *http://www.usbr.gov/lc/.*

(2) You may contact Reclamation at the Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000, for information relating to the possibility of acquiring an entitlement to use water from the lower Colorado River or becoming a customer of an existing water entitlement holder.

§ 415.41 Will compliance with Federal law incur any costs for which I will be responsible?

(a) You may be required to pay for certain costs when you bring your lower

Colorado River water use into compliance with Federal law. The type and amount of costs will vary among water users. The type and amount of costs you may be required to pay will depend upon:

(1) *The state in which your well or river pump is located.* If you are using water from the lower Colorado River in Arizona, and you are not within an entitlement holder's service area, you may be able to acquire an entitlement through a contract with the Secretary for a nominal charge. In California, if you are not within an entitlement holder's service area, and you wish to enter a LCWSP water delivery subcontract with the City of Needles, you will be required to pay the initial and annual fees charged by the City of Needles to its LCWSP subcontractors. If your well is in Nevada, you would be required to comply with SNWA policies.

(2) *Whether or not your well or river pump is located within the boundaries of a contract holder's service area.* In Arizona and California, if your well or river pump is not located within the boundaries of an entitlement holder's service area, your well or river pump may be close enough to an entitlement holder's service area so that inclusion of your well or river pump by modification of the service area boundary is possible. If the entitlement holder agrees to modify its service area boundaries to include your well or river pump, you will be required to pay for the costs incurred by Reclamation to review and approve the inclusion. The entitlement holder may or may not pass on its costs, if any, to you. Once you are a customer of the entitlement holder, you may be required to pay regular fees assessed by the entitlement holder.

(b) In Arizona and California, if your well or river pump is already within an entitlement holder's service area, your use of lower Colorado River water should be reported to the entitlement holder as determined by the entitlement holder. Your lower Colorado River water use will be accounted for by the entitlement holder with all such uses within its service area. The entitlement holder will report the total use of lower Colorado River water occurring within its service area under its entitlement to Reclamation. Reclamation will account for lower Colorado River water use reported by the entitlement holder against the entitlement holder's entitlement on an annual basis. Depending upon the policies and pricing structure of the entitlement holder who is accounting for your use of lower Colorado River water, you may be subject to fees assessed by the entitlement holder.

§ 415.42 What is the role of an existing entitlement holder under this part?

Any lower Colorado River water use occurring within your service area must be accounted for within your entitlement in accordance with the Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California* (547 U.S. 150 (2006)). Reclamation will assist you by providing you with information identifying the location and type of use for all of the wells inventoried in your service area which pump lower Colorado River water or water replaced by water drawn from the lower Colorado River.

§ 415.43 Is this part applicable to existing lower Colorado River water delivery contracts?

Yes, the delivery of lower Colorado River water under existing lower Colorado River water delivery contracts is subject to Federal rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

Subpart F—Penalty for Noncompliance

§ 415.50 What if I continue to use water from the lower Colorado River without an entitlement?

If you do not stop using water from the lower Colorado River without an entitlement after the notice, determination, and appeal procedures (if pursued) have been completed, then the Regional Director will report you as unlawfully using Colorado River water in an annual report filed with the United States Supreme Court. The Regional Director will then work with the United States Department of Justice to seek Federal court orders requiring you to stop using water from the lower Colorado River without an entitlement.

BILLING CODE 4310–MN–P

Illustrations to Part 415

Figure 1 -- Index Map

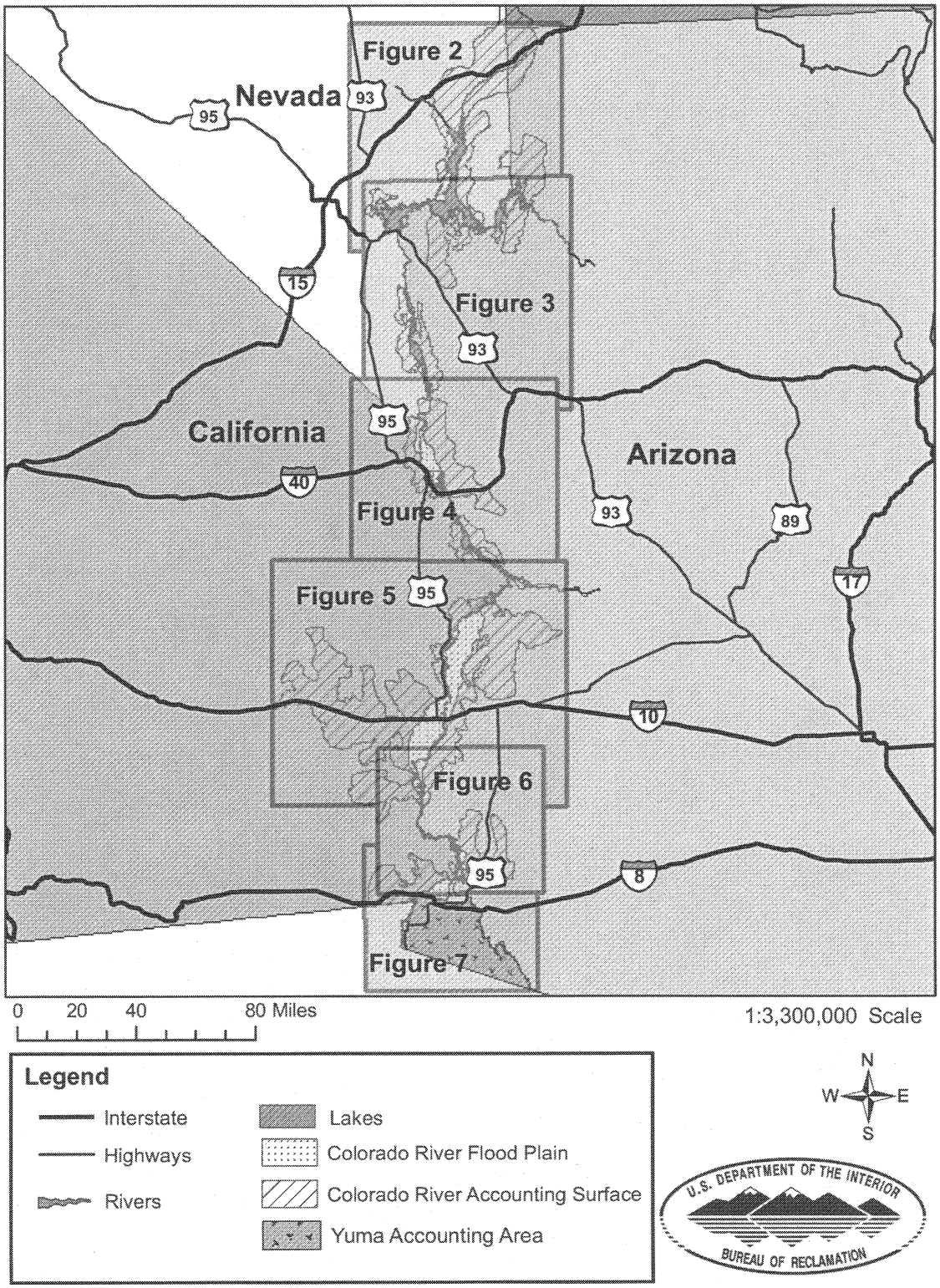


Figure 2 -- Lower Colorado River Accounting Surface: Mouth of the Grand Canyon to Hoover Dam

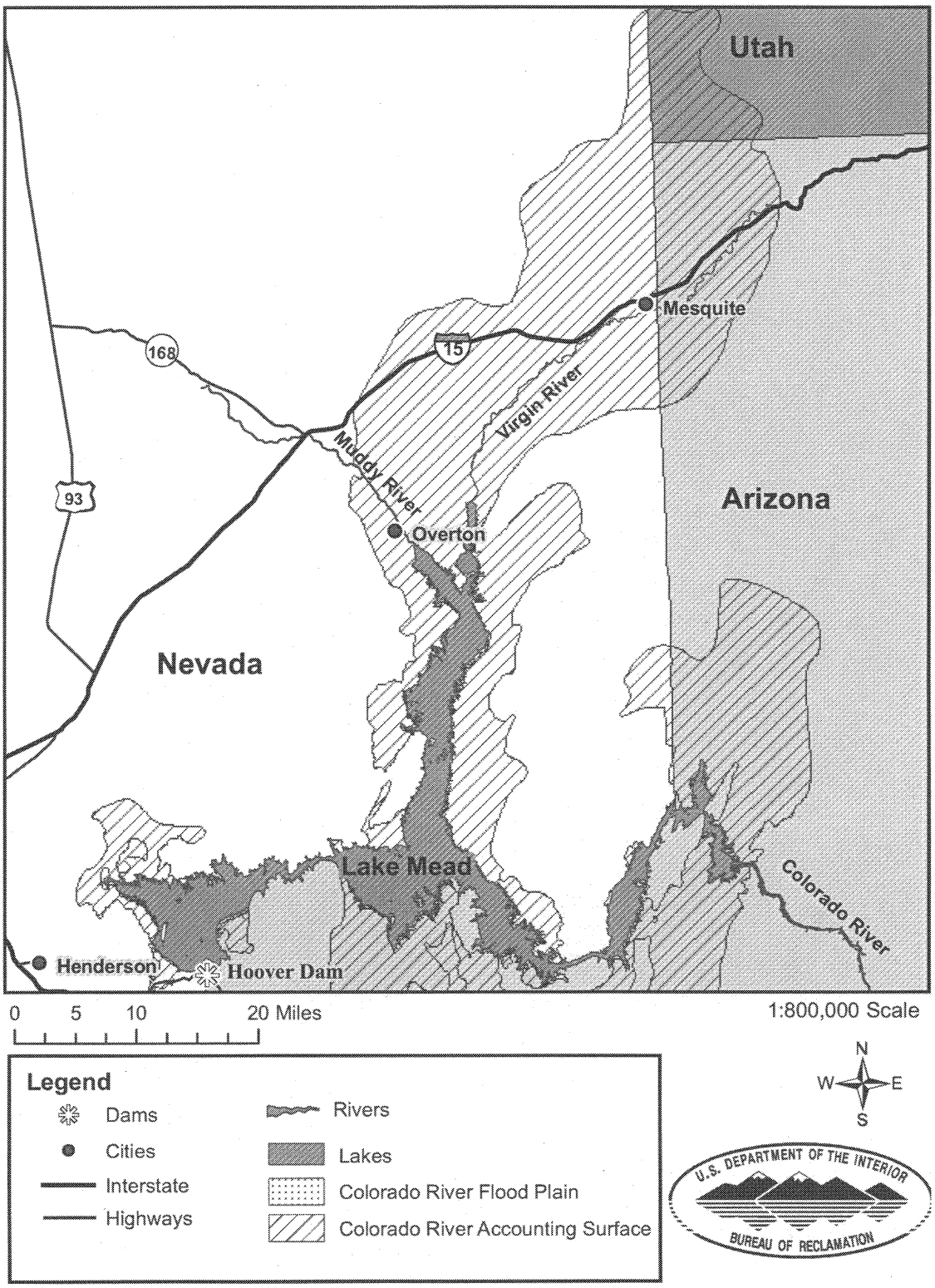


Figure 3 – Lower Colorado River Accounting Surface: Lake Mead to Davis Dam

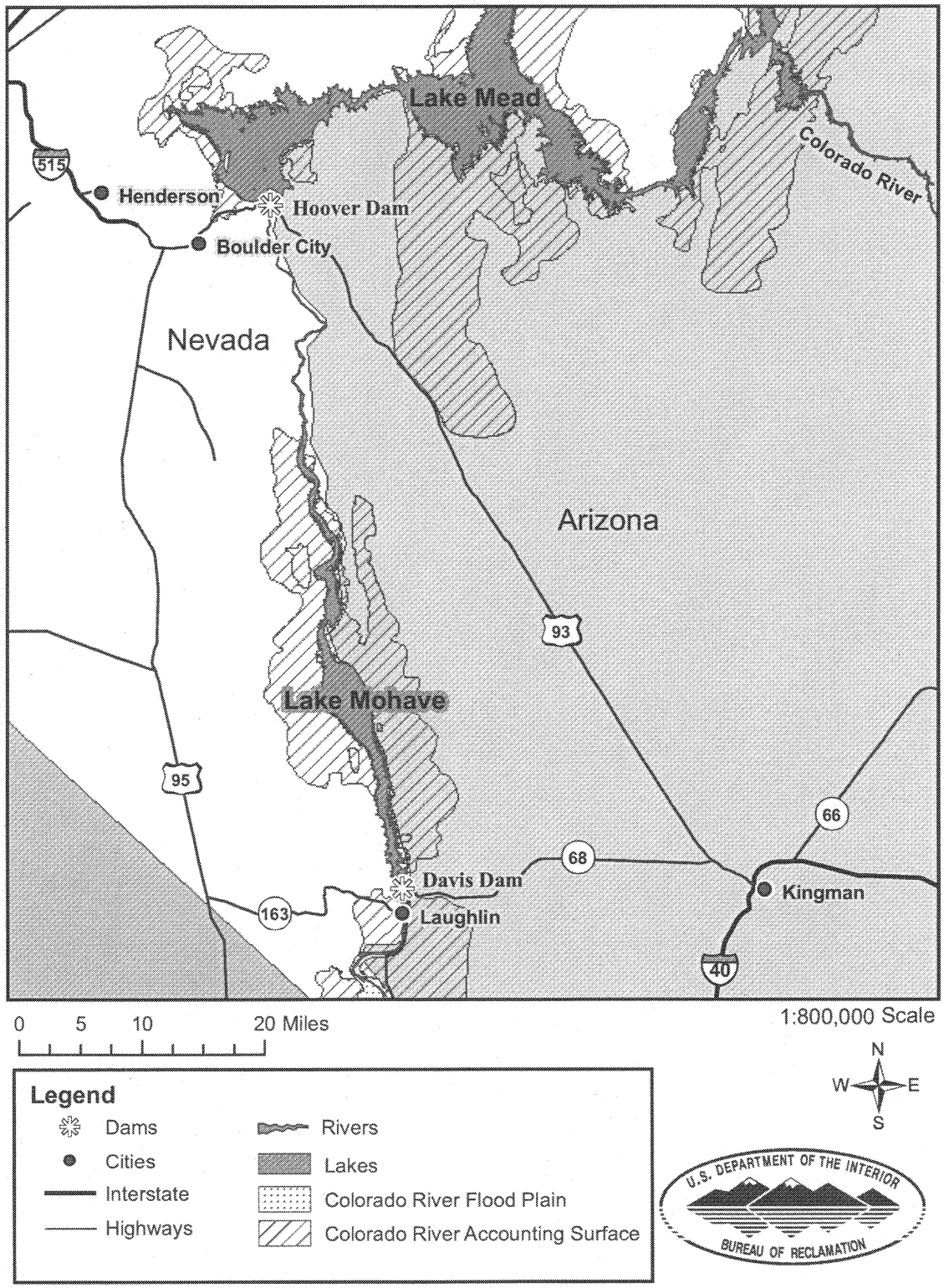


Figure 4 – Lower Colorado River Floodplain and Accounting Surface: Davis Dam to Parker Dam

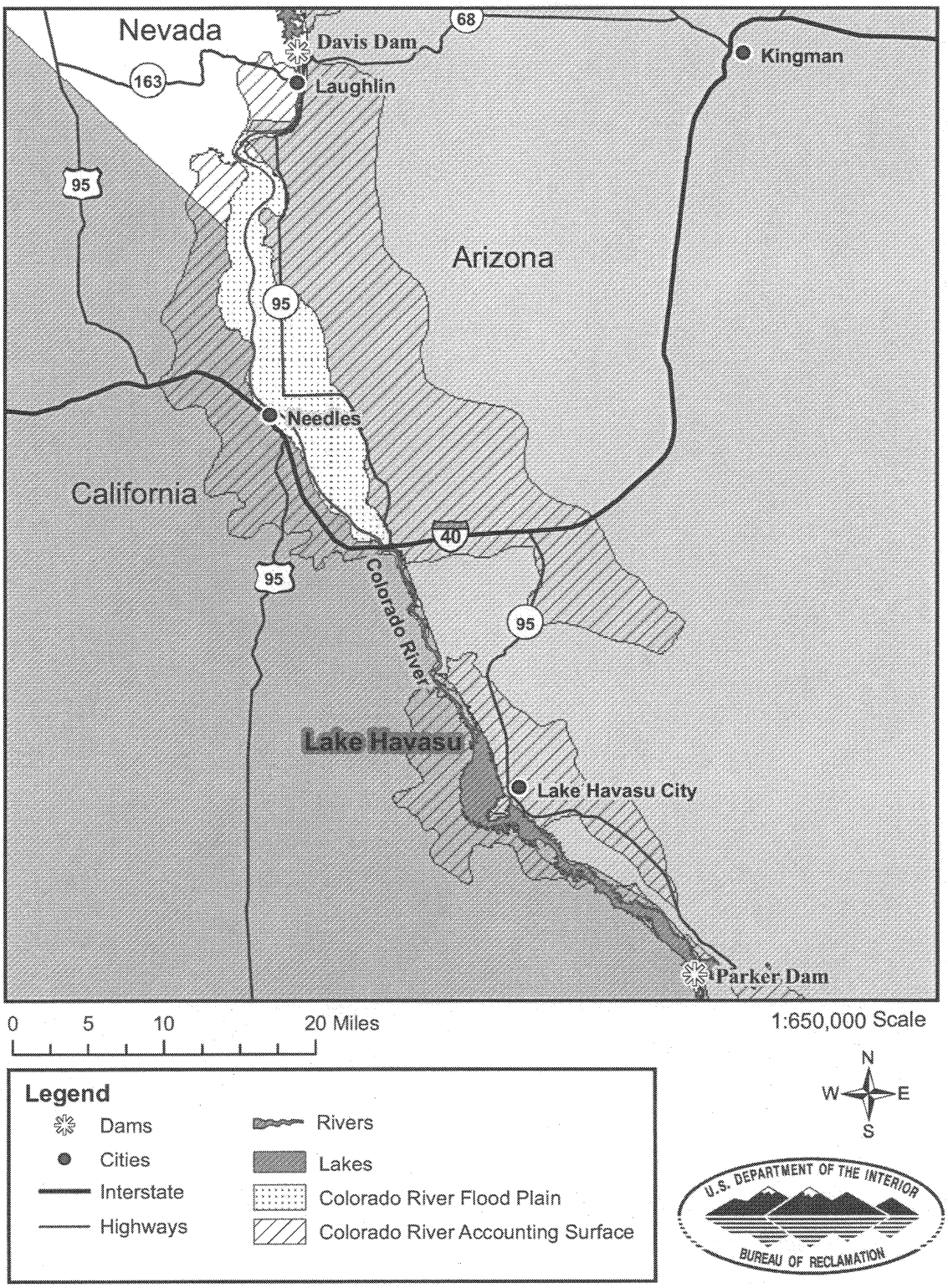


Figure 5 -- Lower Colorado River Floodplain and Accounting Surface: Parker Dam to Southern Boundary of Palo Verde Irrigation District

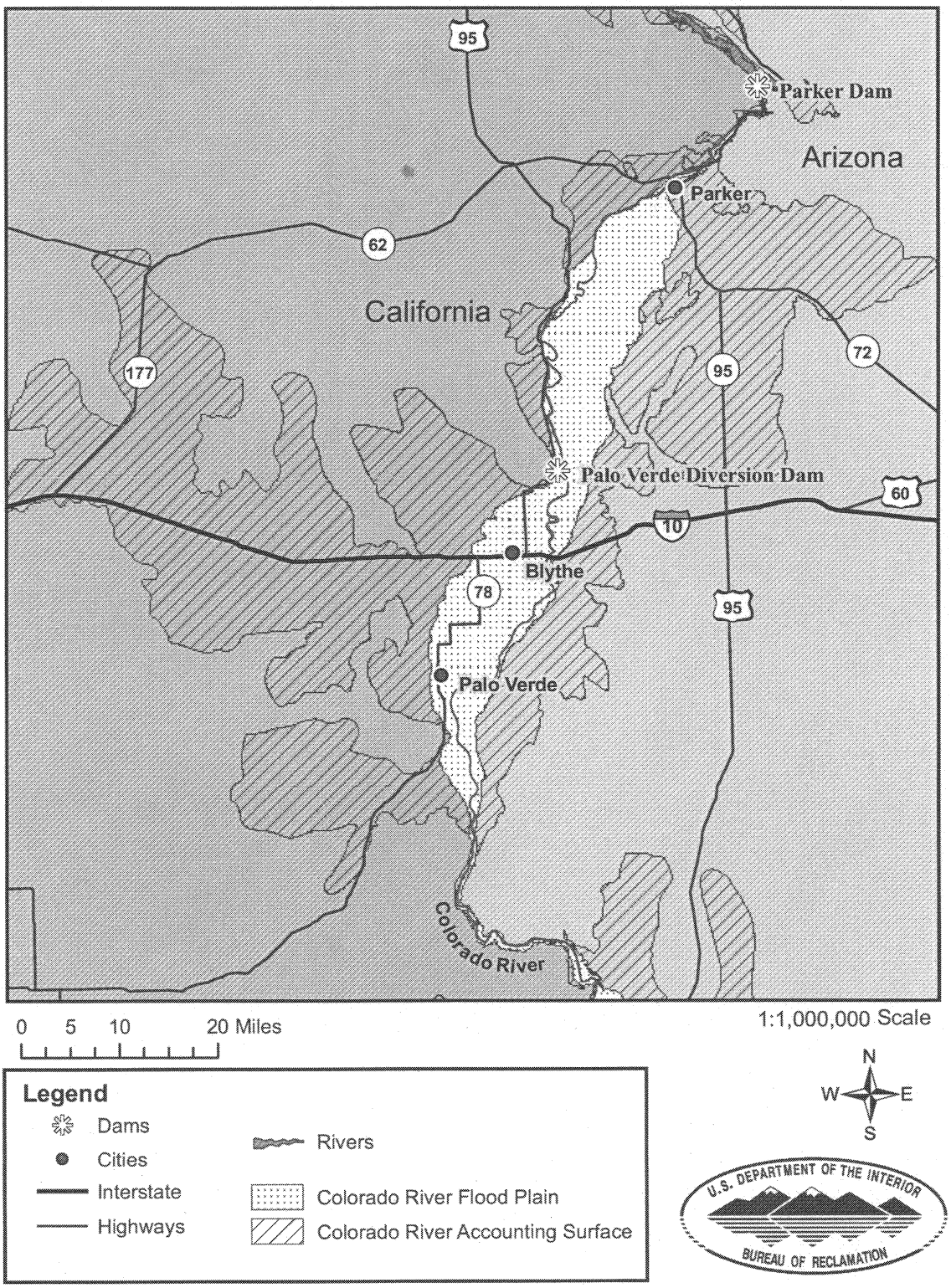


Figure 6 -- Lower Colorado River Floodplain and Accounting Surface: Southern Boundary of Palo Verde Irrigation District to Northern Boundary of Yuma Accounting Area

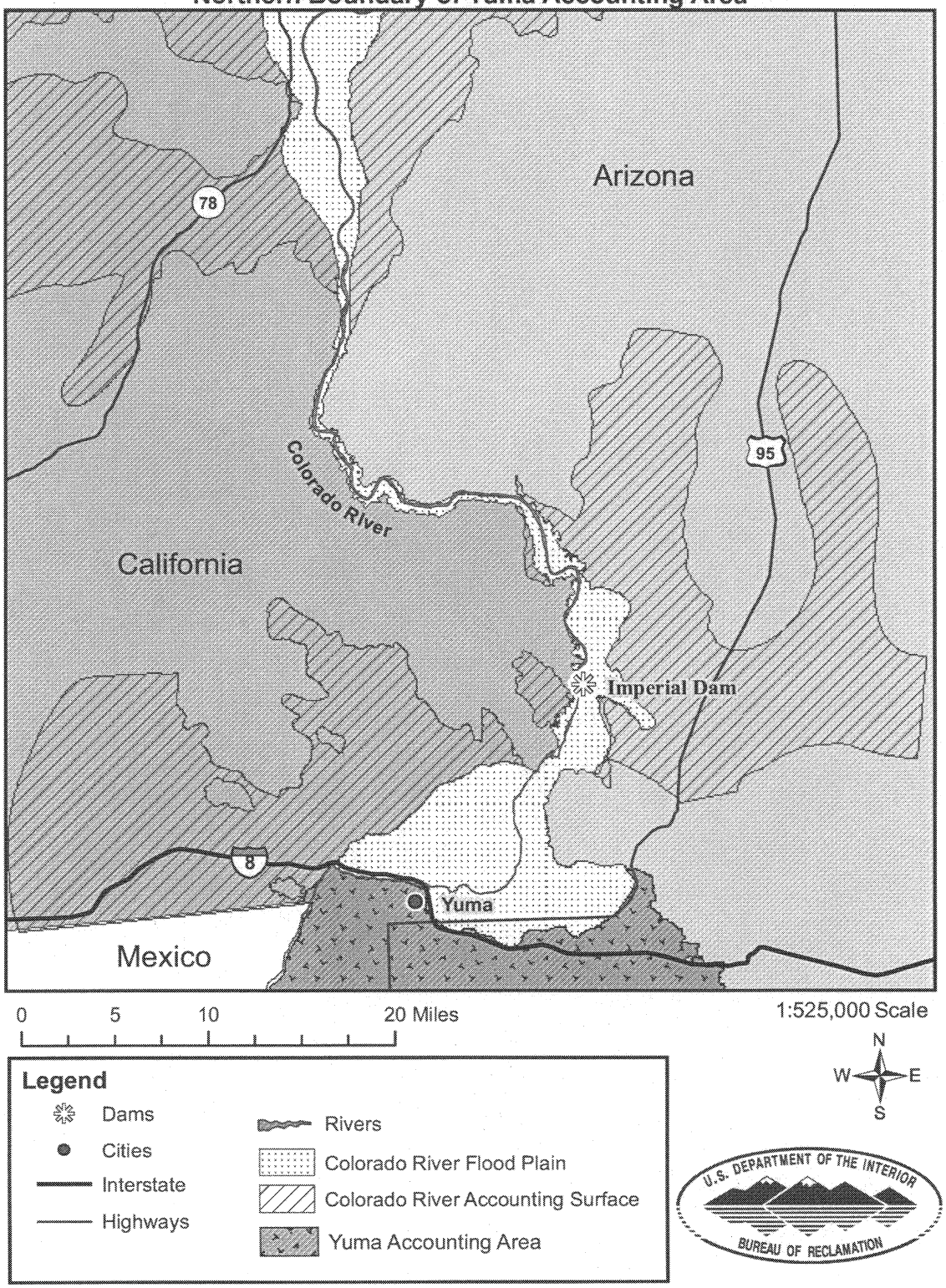
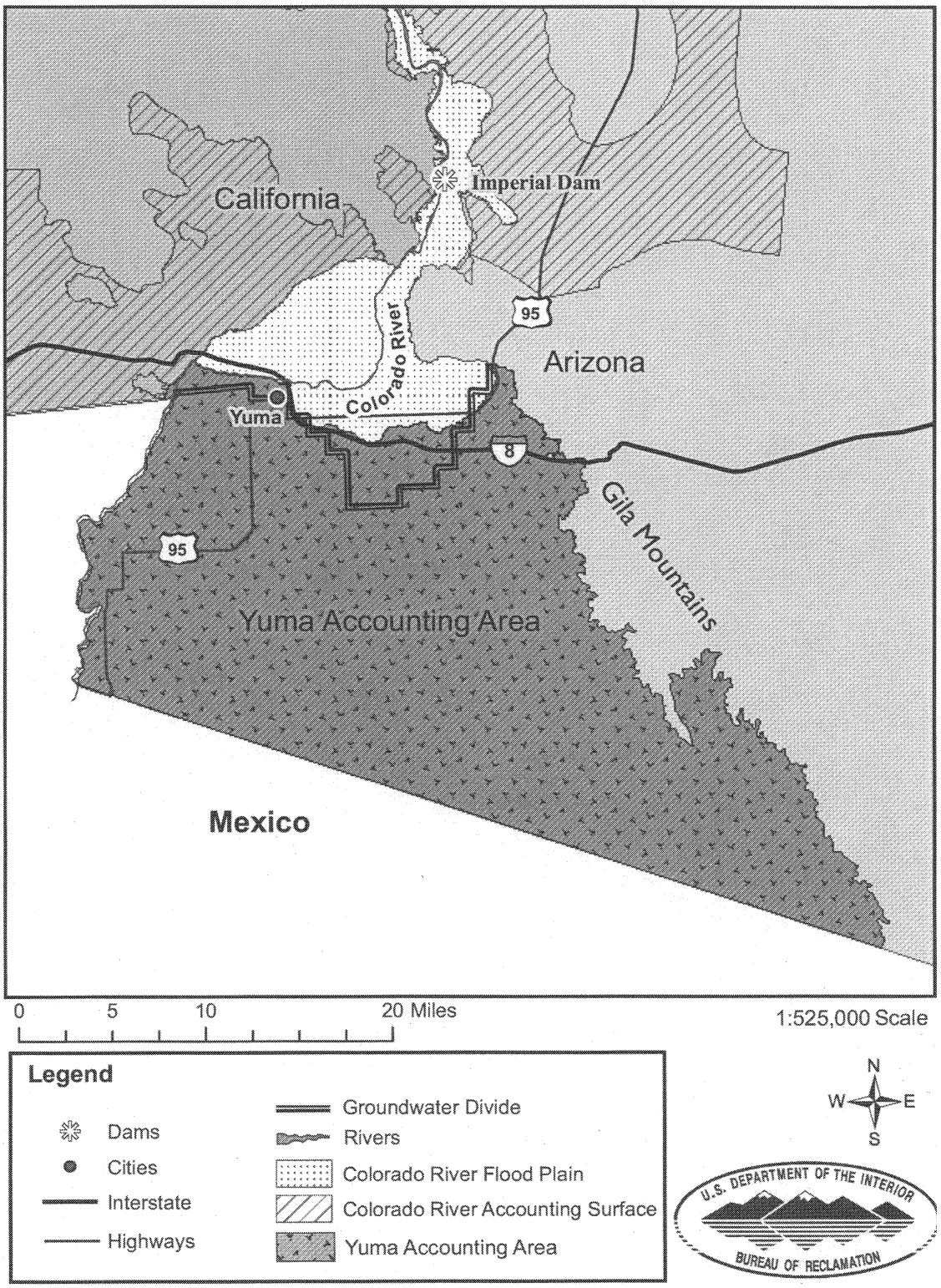


Figure 7 -- Yuma Accounting Area



[FR Doc. E8–16001 Filed 7–15–08; 8:45 am]
BILLING CODE 4310–MN–C

Federal Register

Wednesday,
July 16, 2008

Part III

Department of Labor

Office of the Secretary; Secretary's Order 3–2008; Delegation of Authorities and Assignment of Responsibilities to the Chief Human Capital Officer and Others; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 3–2008; Delegation of Authorities and Assignment of Responsibilities to the Chief Human Capital Officer and Others

1. *Purpose.* To delegate authority and assign responsibilities for implementation of the Chief Human Capital Officers Act and to consolidate the delegations of authority and assignments that incorporate all human resources management functions that address selecting, developing, training, and managing a high-quality, productive workforce.

2. *Directives Affected.*

A. This Order repeals and supersedes the following Secretary's Orders: 16–1976 (personnel), 11–1978 (internal labor-management), 2–1994 (retirement coverage for law enforcement officers), the exception clause to Section 5(B)(4) of 01–2004 (internal EEO program) and 15–2006 (individuals and veterans with disabilities) which assign human resources management functions to the Assistant Secretary for Administration and Management (ASAM).

B. All Secretary's Orders and other DOL documents (including policies and directives) that reference Secretary's Orders 16–1976, 11–1978, 2–1994, and 15–2006 shall be construed as amended to refer to this Order instead.

C. Delegations or transfers of authority made by the ASAM pursuant to Secretary's Orders 16–1976, 11–1978, 2–1994, and 15–2006, including without limitation all delegations and transfers of authority made through Manual 4 (''Personnel Management'') of the Department of Labor Manual Series (DLMS) and the Department of Labor Personnel Regulations (DPR) will continue in effect unless and until modified or terminated by the CHCO pursuant to the proper exercise of authorities and responsibilities duly assigned by law or delegated by the Secretary to the CHCO.

D. Except as otherwise provided in this Order, all other Orders, instructions, directives, and memoranda of the Secretary of Labor and other departmental officials, or portions thereof, are superseded to the extent they are inconsistent with this Order.

3. *Authority.* This Order is issued pursuant to the following authorities: Act of March 4, 1913 (37 Stat. 736, 29 U.S.C. 551); 5 U.S.C. 301; Section 12, Act of August 2, 1946 (60 Stat. 809, 5 U.S.C. 302(b)); Section 01.3 of Executive Order 9830 (3 CFR, 1943–48 Comp. p.606); Reorganization Plan No. 6 of 1950 (64 Stat. 1263); 5 U.S.C. 3111; Public Law 105–270, the Federal Activities Inventory Reform Act of 1998; the Chief Human Capital Officers Act of 2002, 5 U.S.C. 1401–1402; the Rehabilitation Act of 1973 (Pub. L. 93–112, Title V, Sections 501 and 504), as amended (Pub. L. 93–516); the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (Pub. L. 93–508); 5 U.S.C. 720; 5 U.S.C. 7201; 38 U.S.C. 4214; 29 U.S.C. 791; Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4212, as amended; the Equal Employment Opportunity Commission's Management Directive 715; the Civil Service Reform Act, Pub. L. 95–454, including the Federal Service Labor-Management Relations Act; 5 U.S.C. 8331(2); such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed above, as directed by the Secretary.

4. *Background.* The Chief Human Capital Officers Act of 2002 (the CHCO Act) was enacted as part of the Homeland Security Act of 2002 (Pub. L. 107–296, section 1301 *et seq.*) on November 25, 2002. The CHCO Act requires the Department to establish the position of Chief Human Capital Officer to advise and assist the Secretary and other Departmental officials in carrying out the Department's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles; to implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the Department; and to carry out such functions as the primary duty of the Chief Human Capital Officer. This Order consolidates, delegates, and assigns authority and responsibilities for human capital functions within the Department of Labor to the Chief Human Capital Officer and other Department officials consistent with the CHCO Act.

5. *Establishment of the Chief Human Capital Officer (CHCO).* The CHCO Act established the position of Chief Human Capital Officer. The CHCO reports directly to the Secretary and Deputy Secretary of Labor and shall have human capital management as his or her primary duty.

6. *Establishment and Designation of the Deputy Chief Human Capital Officer (Deputy CHCO).* There is established within the Department of Labor the position of Deputy Chief Human Capital Officer, who shall be designated by the CHCO. The Deputy CHCO shall report to the CHCO and shall be delegated such authority and assigned such responsibility as may be assigned by the CHCO from time to time.

7. *Delegation of Authorities and Assignment of Responsibilities to the CHCO.*

A. Human Capital Management.

(1) The CHCO will have the following authorities and responsibilities that are assigned to the CHCO by the CHCO Act:

(a) Advising and assisting the Secretary and other agency officials in carrying out the Department's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

(b) Implementing the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the Department;

(c) Setting the workforce development strategy of the Department;

(d) Assessing workforce characteristics and future needs based on the Department's mission and strategic plan;

(e) Aligning the Department's human resources policies and programs with the Department's mission, strategic goals, and performance outcomes;

(f) Developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(g) Identifying best practices and benchmarking studies;

(h) Applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth;

(i) Attending and participating in the Chief Human Capital Officers' Council; and

(j) In furtherance of the human capital management authorities assigned to the CHCO herein, the CHCO may access all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or are available to the Department and relate to programs and operations with respect to which the CHCO has responsibilities, and request from any Federal, state, or local governmental entity such information or assistance as may be necessary for carrying out the CHCO's duties and responsibilities pursuant to the CHCO Act.

(2) Subject to the Reservations of Authority in paragraph 10 of this Order, and to the extent that they are not otherwise assigned to the CHCO by the CHCO Act or by law to another official, the CHCO is hereby delegated all authority and assigned all responsibility

vested in the Secretary for human capital management within the Department of Labor, including, without limitation, the following:

(a) Executing personnel, classification, and position management actions;

(b) Recruiting, examining, and selecting candidates for positions within the Department, in full conformity with applicable laws and regulations;

(c) Establishing and administering the Department's performance management and awards systems;

(d) Establishing and administering programs for pay, benefits, and programs for improving the quality of work life for DOL employees;

(e) Coordinating with the Chief Acquisition Officer with respect to the Department's responsibilities under Public Law 105–270, the Federal Activities Inventory Reform Act of 1998 (FAIR Act), so as to ensure all necessary and appropriate planning and implementation of human capital management activities;

(f) Reviewing periodically the adequacy of DOL and agency succession directives; and

(g) Establishing and implementing a system of metrics for assessing the management of human capital within the Department.

B. *Internal Labor-Management Relations Program*. It is the policy of the Department of Labor to administer its internal program of labor-management relations in accordance with applicable statutes, regulations, executive orders, and departmental policy. Accordingly, and subject to the Reservations of Authority in paragraph 10 of this Order, the CHCO is hereby delegated authority and assigned responsibility for the development, administration, coordination, and management of the Department's internal labor-management relations program, including, without limitation, the following:

(1) Acting as the Department's representative in dealing with all exclusive unions representing Department of Labor employees, except in dealings between the Office of Labor Management Standards (OLMS) and National Union of Labor Investigators (NULI), which shall be the responsibility of the Assistant Secretary for Employment Standards (ASES), in coordination with the CHCO;

(2) Establishing, in consultation with DOL Agencies, a Chief Negotiator and management negotiating team reflecting Agency representation of the bargaining unit for which term collective bargaining agreements are to be negotiated. The Chief Negotiator and team shall actively participate in the preparation for and conduct of the bargaining, including mediation and any dealings that come before the Federal Service Impasses Panel. With respect to the OLMS/NULI bargaining relationship, the bargaining team specified herein shall be constituted by the ASES and include a representative of the CHCO;

(3) Subject to applicable laws, rules, and regulations, negotiating, signing, interpreting, and administering all collective bargaining agreements covering Department employees, including any supplements, amendments, corrections, alterations, substitutions, and/or changes thereto, except that with respect to the OLMS/NULI bargaining relationship this authority is delegated to the ASES;

(4) Approving all Agency-negotiated supplemental agreements covering the respective agency's employees, subject to applicable laws, rules, and regulations, except that with respect to the OLMS/NULI bargaining relationship this authority is delegated to the ASES, who shall consult with the CHCO;

(5) Issuing interpretations of all collective bargaining agreements covering Department employees (after coordination with the Office of the Solicitor on any associated legal determinations, as appropriate), except as relates to the OLMS/NULI collective bargaining agreement which shall be interpreted by the ASES in coordination with the CHCO;

(6) In coordination with representatives of appropriate DOL Agency Heads, establishing and developing the Department's positions on bargaining unit determinations, unfair labor practice cases, and arbitration cases, except that with respect to the OLMS/NULI bargaining relationship this authority is delegated to the ASES. For litigation matters, the CHCO or his or her designee shall utilize the legal services of the Office of the Solicitor to represent the Department in bargaining unit determinations; unfair labor practice proceedings, and appeals of arbitration decisions; and shall coordinate with the Office of Solicitor on the responsibility of representing the Department in arbitration proceedings. In litigation matters where the Solicitor is representing the Department, the Solicitor, after consultation with the CHCO or the ASES, as applicable, shall be responsible for determining the Department's legal positions.

(7) Advising Agency Heads on final step grievances arising from negotiated grievance procedures at the last step prior to arbitration; determining whether a dispute arising out of a collective bargaining agreement covering Department employees shall be submitted to binding arbitration; and developing the Department's strategy for those arbitration proceedings conducted by the CHCO or his or her designee(s). In arbitration proceedings conducted by the Office of the Solicitor, the Solicitor of Labor shall develop the strategy in coordination with the CHCO or his or her designee(s);

(8) Developing the primary Departmental internal labor-management relations training program and conducting it in conjunction with Agency/Regional labor relations officers and training personnel;

(9) Evaluating management's internal labor relations activities in the Agencies and regions and providing periodic reports to top management; and

(10) Developing and maintaining systems of intra-management consultation and communication on internal labor-management relations, providing, as necessary and appropriate, assistance and advice to managers and supervisors at all levels of the Department.

C. *Law Enforcement Retirement Matters*. Except as reserved to the Secretary (for decisions relating to individuals within the Office of the Inspector General), the CHCO is delegated authority and assigned responsibility for making coverage decisions under 5 U.S.C. 8331(20) and 5 U.S.C. 8401(17), in accordance with applicable regulations.

D. Employment of Individuals with Disabilities, Including Disabled Veterans, and Special Employment Programs. Consistent with the CHCO's overall human capital management authorities and responsibilities, the CHCO shall advise and assist the Secretary and the ASAM on human capital management matters pertaining to the Department's programs for employment of individuals with disabilities, including disabled veterans, and the Department's Special Employment programs.

E. *Other Duties*. The CHCO will perform such additional duties as may be assigned to the CHCO by applicable law or regulation or by the Secretary from time to time.

8. *Other Delegations of Authority and Assignments of Responsibility*.

A. The *Assistant Secretary for Administration and Management (ASAM)* is delegated authority and assigned responsibility for the following:

(1) *Employment of Individuals with Disabilities, Including Disabled Veterans*. It is the policy of the

Department to encourage the use of Government-wide special hiring authorities, as provided for by the U.S. Office of Personnel Management, including without limitation Schedule A hiring authority, to employ and advance in employment qualified persons with disabilities, including veterans. The Department shall also ensure that the accommodation needs of these employees are met so that they may have equal access to the privileges and benefits of the workplace. Accordingly, subject to the Reservations of Authority in paragraph 10 of this Order, the ASAM is hereby delegated authority and assigned responsibility for:

(a) Administering the Department's programs for employment of qualified individuals with disabilities, including veterans with disabilities;

(b) Issuing Departmental directives in support of these programs; and

(c) Overseeing the fulfillment of Agency responsibilities for effective implementation of DOL policies concerning the employment of qualified persons with disabilities, including veterans with disabilities, except processing requests for reasonable accommodation by employees and applicants with disabilities as well as administrative complaint processing for alleged discrimination on the basis of disability pursuant to the Rehabilitation Act of 1973, as amended, and 29 CFR part 1614 (EEOC Complaint Procedures Regulations).

(2) *Special Employment Programs.*

(a) Providing effective leadership in the implementation of special employment programs, such as the Federal Women's Program, the Hispanic Employment Program, and the Disability Employment Program, and appointing Departmental managers for special emphasis programs; and

(b) Preparing Employment Program Reports as may be required by the Office of Personnel Management (OPM), including the Department's Disabled Veterans Affirmative Action Program (DVAAP) Plan, the Federal Equal Employment Opportunity Recruitment Program (FEORP) Plan, and the Affirmative Employment Program (AEP) Plan for Individuals with Disabilities, and making recommendations to Agency Heads for any necessary modifications prior to preparing and forwarding the Departmental plan to the Secretary of Labor for transmittal to OPM.

(3) Consultation on Human Resources Matters. The ASAM shall advise, cooperate, and consult with the CHCO, as appropriate, on all matters relating to or affecting the Department's human capital management, including without limitation, the human capital management of the Department's programs relating to employment of individuals with disabilities, including disabled veterans, and the Department's special employment programs.

B. The *Assistant Secretary for Employment Standards (ASES)* is delegated authority and assigned responsibility for administering the internal labor-management relations program as it applies to the Office of Labor Management Standards (OLMS), and its bargaining relationship with the National Union of Labor Investigators (NULI), as and to the extent set forth in paragraph 7(B).

C. *Agency Heads* are delegated authority and assigned responsibility as set forth below:

(1) *Human Capital Management.* Each Agency Head is responsible for:

(a) Cooperating, consulting, advising, and assisting the CHCO in fulfilling the responsibilities set forth in paragraph 7(A) of this Order; and

(b) Exercising such authorities and responsibilities for the conduct of personnel management activities within the Agency as are delegated to the Agency Head by the CHCO in accordance with merit system principles and all applicable laws, regulations, and Departmental polices.

(2) *Employment of Individuals with Disabilities, Including Disabled Veterans.* Each Agency Head will promote maximum employment opportunities for qualified individuals with disabilities, including qualified veterans with disabilities, by:

(a) Effectuating affirmative employment initiatives in their respective agencies;

(b) Submitting statistical, evaluative, and narrative reports to the ASAM in support of all mandated reports;

(c) Supporting and implementing Department policies concerning the employment of qualified individuals with disabilities, including qualified veterans with disabilities, including, without limitation:

(i) Issuing policy directives to managers and supervisors expressing strong support for the employment of qualified individuals with disabilities, including qualified veterans with disabilities; and

(ii) Conducting recruitment activities through their servicing Human Resources Offices to locate qualified individuals with disabilities and qualified veterans with disabilities.

(3) *Internal Labor-Management Relations.* Agency Heads are responsible for:

(a) Implementing uniformly the Department's internal labor-management relations program throughout each such official's respective Agency;

(b) Ensuring that collective bargaining agreements are observed;

(c) Ensuring that supervisors and managers discharge their labor-management responsibilities constructively;

(d) Providing information to the Office of the CHCO on the nature of problem areas requiring policy development or interpretation;

(e) Formulating proposals for consultation and contract negotiations; and

(f) Participating, through their designees, in the contract negotiation process.

(4) *Law Enforcement Retirement Matters.* Agency Heads are responsible for reviewing agency positions for potential coverage under the law enforcement retirement system and for presenting such coverage decisions to the CHCO for determination.

D. *The Solicitor of Labor.* The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and counsel to the Department and agencies relating to the administration and implementation of this Order and the statutory provisions, regulations, and Executive Orders listed above, including without limitation, providing counsel to the Secretary, CHCO, Deputy CHCO, ASAM, Agency Heads, managers, and supervisors.

The Solicitor of Labor shall have responsibility for legal advice and assistance through opinions and interpretations of applicable laws and regulations. The bringing of legal proceedings under the authorities cited herein, the representation of the Department, the Secretary, and other officials of the Department of Labor, and determinations of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor, except for internal labor-management relations proceedings before an arbitrator, for which the responsibility for representing the Department will be coordinated with the CHCO or his or her designee(s).

9. *Redelegation.* All of the authorities delegated herein may be redelegated with the knowledge and approval of all responsible parties and to the extent permitted by law.

10. *Reservations of Authority.*

A. The Secretary of Labor retains all authorities delegated herein and has the final authority for all internal labor-

management relations within the Department; such authority includes, without limitation, the establishment of negotiation parameters with respect to labor-management relations.

B. The submission of reports and recommendations to the President and Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary of Labor.

C. This Order does not affect the authorities or responsibilities of the Office of Inspector General (OIG) under the Inspector General Act of 1978, as amended, or under Secretary's Order 4–2006 (February 21, 2006).

D. This Order does not affect the authorities and responsibilities of the Chief Financial Officer under the Chief Financial Officers Act of 1990, Secretary's Order 14–2006 (June 20, 2006), Secretary's Order 1–97 (January 10, 1997), or Secretary's Order 1–92 (March 11, 1992).

E. The Secretary retains the authority to make coverage decisions under 5 U.S.C. 8331(20) and 5 U.S.C. 8401(17), in accordance with regulations at 5 CFR 831.901–911 and 5 CFR 842.801–809 (law enforcement retirement) for individuals requesting coverage for positions within the Office of the Inspector General, or for the Inspector General's request for position-based coverage for positions within the Office of the Inspector General.

F. The Secretary retains the sole authority to grant exemptions to the mandatory retirement provisions of 5 U.S.C. 8335(b) and 8425 pertaining to the mandatory retirement of law enforcement officers.

G. The Secretary retains all authority concerning personnel actions involving Senior Executive Service (SES) and Senior Level (SL) positions and employees within the Department, except that the authority to approve the voluntary reassignment of SES and SL employees within the Department is delegated to the CHCO with the concurrence of the Agency Head(s) involved.

11. *Effective Date*. This Order is effective immediately.

Dated: July 8, 2008.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. E8–16224 Filed 7–15–08; 8:45 am]

BILLING CODE 4510–23–P

Reader Aids

Federal Register

Vol. 73, No. 137

Wednesday, July 16, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

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
39857–40166 11
40167–40452 14
40453–40714 15
40715–40938 16

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:
205 .....40194, 40197
253 38155

9 CFR

Proposed Rules:
71 38343
94 37892

10 CFR

Proposed Rules:
71 40767
430 38159
431 40770

12 CFR

575 39216
1750 40658

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, 40715
71 .....37797, 38109, 38313, 38314, 39220, 39221, 40719, 40720, 40721
97 .....37360, 40167, 40169

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
306 40154

17 CFR

30 39226
200 40144
210 38094
228 38094
229 38094
241 40144
249 38094

Proposed Rules:
210 39526
229 .....39526, 40106
230 .....37752, 40106
239 40106
240 .....37752, 39182, 40088, 40106
242 .....40088, 40201
249 .....39526, 40088
270 40124
275 40124

18 CFR

37 39092

19 CFR

0 40722
7 40722
12 40722
18 40722

24 40722
101 40722
103 40722
115 40722
123 40722
134 40722
141 40722
177 40722
181 40722
201 38316
210 38316

21 CFR

210 40453
312 39588
314 39588
530 38110
600 39588
601 39588
1310 39611
Proposed Rules:
1300 40451
1304 40451
1306 40451
1311 40451

22 CFR

Proposed Rules:
304 39270

25 CFR

11 39857
Proposed Rules:
293 37907

26 CFR

1 ....37362, 37797, 38113, 38910, 39227, 39614, 40171, 40727
20 40173
25 37362
26 37362
31 37371
53 37362
55 37362
156 37362
157 37362
301 ....37362, 37804, 38915, 40738, 40739
602 ....37371, 39227
Proposed Rules:
1 ....37389, 37910, 38162, 38940, 39270, 39630, 40792, 40793, 40914
20 40914
25 40914
26 ....37910, 40914
31 40914
40 40914
41 40914
44 40914
53 40914
54 ....40793, 40914
55 40914
56 40914
156 40914
157 40914
301 ....37910, 40471, 40799, 40914

27 CFR

Proposed Rules:
9 40474

28 CFR

0 40463
524 39863
545 39864
Proposed Rules:
32 39632

29 CFR

1615 39866
4003 38117
4022 40464
4044 40464
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
105 40739
110 ....38922, 38924
117 ....37806, 37809
165 ....37809, 37810, 37813, 37815, 37818, 37820, 37822, 37824, 37827, 37829, 37833, 37835, 38120, 39868, 40740, 40742
Proposed Rules:
110 40800
165 38951

34 CFR

Proposed Rules:
674 37694
682 37694
685 37694

36 CFR

242 40179
Proposed Rules:
2 39272
7 38954
1190 40802
1191 40802
1195 ....38352, 38353

37 CFR

201 37838
202 37838
203 37838
204 37838
205 37838
211 37838
Proposed Rules:
1 38027
201 ....40203, 40807
255 40807

38 CFR

3 40465
19 40745
20 40745
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, 40748, 40750, 40752, 40754
53 39235
58 39235
62 38925
63 ....37728, 39871
81 38124
86 38293
174 ....37846, 40756, 40760
180 ....37850, 37852, 39240, 39247, 39251, 39256, 39261, 39264
261 37858
266 37858
300 40467
Proposed Rules:
52 ....38163, 38353, 39275, 39897, 39900, 39911, 40203, 40228, 40813
55 38356
59 40230
62 38954
81 40813
271 40263

42 CFR

Proposed Rules:
405 38502
409 38502
410 38502
411 38502
414 38502
415 38502
424 38502
485 38502
486 38502

43 CFR

Proposed Rules:
415 40916

44 CFR

65 40180
67 38132
64 40468
Proposed Rules:
67 40266

47 CFR

1 ....37861, 37869
32 37882
36 37882
43 ....37861, 37869
54 37882
64 ....38928, 40183
73 ....38138, 38139, 38331, 39269, 39623, 40186
Proposed Rules:
1 37911
27 ....38955, 40271
43 37911
73 ....38361, 40272, 40273
74 40271
78 40271
90 40274
101 40271

48 CFR

Proposed Rules:
516 39275
552 39275

49 CFR

172 40914
262 39875
571 38331
594 39890
Proposed Rules:
171 38361
173 ....38164, 38361
177 38164
178 38361
523 37922
531 37922
533 37922
534 37922
536 37922
537 37922
541 40276
571 38372

50 CFR

17 ....39506, 39790
100 40179
600 40658
622 38139
635 ....38144, 40658
648 ....37382, 38340, 39587, 39624, 40186
679 ....38931, 39626, 40193, 40764, 40765, 40766
Proposed Rules:
17 ....38956, 39639
27 39272
216 39915
300 39915
404 38375
622 ....38387, 40824
648 39643
660 ....39625, 39930

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 16, 2008

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Northeastern United States; Northeast Multispecies Fishery:

Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits; published 6-16-08

ENVIRONMENTAL PROTECTION AGENCY

Exemption from the Requirement of a Tolerance:

Bacillus thuringiensis Cry 1A.105 protein; published 7-16-08

Bacillus thuringiensis Modified Cry1Ab Protein; published 7-16-08

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Technical Corrections to Customs and Border Protection Regulations; published 7-16-08

HOMELAND SECURITY DEPARTMENT

Coast Guard

Transportation Worker Identification Credential Implementation in the Maritime Sector:

Hazardous Materials Endorsement for a Commercial Driver's License; published 7-16-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directive:

Empresa Brasileira de Aeronautica S.A. Model EMB 135BJ and EMB-145XR Airplanes; published 6-11-08

Airworthiness Directives:

Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes; published 6-11-08

Boeing Model 777 Airplanes; published 6-11-08

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; published 6-11-08

Bombardier Model CL 600 2C10 (Regional Jet Series 700, 701, & 702) and CL 600 2D24 (Regional Jet Series 900) Airplanes; published 6-11-08

British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200 and 3101, and Jetstream Model 3201 Airplanes; published 6-11-08

Cessna Aircraft Company Model 525 Airplanes; published 6-11-08

MORAVAN a.s. Model Z-143L Airplanes; published 6-11-08

Establishment of Class E Airspace:

Emporium, PA; published 7-16-08

TREASURY DEPARTMENT

Internal Revenue Service

Amendments to the Section 7216 Regulations; Disclosure or Use of Information by Preparers of Returns; Correction; published 7-16-08

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent; Correction; published 7-16-08

Determining the Amount of Taxes Paid for Purposes of Section 901; published 7-16-08

VETERANS AFFAIRS DEPARTMENT

Supplemental Statement of the Case; published 7-16-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Risk Analysis Evaluating the Foot-and-Mouth Disease Status of Surrey County, England; comments due by 7-22-08; published 5-23-08 [FR E8-11659]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Regulations for Complying with the National Environmental Policy Act; comments due by 7-25-08; published 6-25-08 [FR E8-14122]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Application for Exempted Fishing Permits:

General Provisions for Domestic Fisheries; comments due by 7-23-08; published 7-8-08 [FR E8-15375]

Fisheries in the Western Pacific:

Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium; comments due by 7-22-08; published 5-23-08 [FR E8-11536]

Fisheries of the Exclusive Economic Zone Off Alaska:

Bering Sea and Aleutian Islands Crab Rationalization Program; comments due by 7-21-08; published 6-20-08 [FR E8-14012]

Taking and Importing Mammals:

U.S. Navy Training in the Hawaii Range Complex; comments due by 7-23-08; published 6-23-08 [FR 08-01371]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Ex Parte Contacts and Separation of Functions; comments due by 7-21-08; published 5-21-08 [FR E8-11326]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Implementation Plans: State of Missouri; comments due by 7-21-08; published 6-20-08 [FR E8-13838]

Approval and Promulgation of Implementation Plans; State of Missouri; comments due by 7-21-08; published 6-20-08 [FR E8-13755]

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]

Exhaust Emission Standards for 2012 and Later Model Year Snowmobiles; comments due by 7-25-08; published 6-25-08 [FR E8-14411]

National Ambient Air Quality Standards for Lead; comments due by 7-21-08; published 5-20-08 [FR E8-10808]

Proposed Tolerance Actions:

Benfluralin, Carbaryl, Diazinon, etc.; comments due by 7-21-08; published 5-21-08 [FR E8-11420]

FEDERAL COMMUNICATIONS COMMISSION

Service Rules for Advanced Wireless Services in 1915-1920 MHz Bands; comments due by 7-25-08; published 7-14-08 [FR E8-16032]

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 7-21-08; published 6-19-08 [FR E8-13849]

Financial Education Programs that Include the Provision of Bank Products and Services; comments due by 7-23-08; published 6-23-08 [FR E8-14076]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare Program:

Changes for Long-Term Care Hospitals Required by Certain Provisions of the Medicare, Medicaid, SCHIP Extension Act of 2007:

3-Year Moratorium on the Establishment of New Long-Term Care Hospitals and Long-Term Care Hospital Satellite Facilities etc.; comments due by 7-21-08; published 5-22-08 [FR 08-01285]

HEALTH AND HUMAN SERVICES DEPARTMENT

State Long-Term Care Partnership Program: Reporting Requirements for Insurers; comments due by 7-22-08; published 5-23-08 [FR E8-11559]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Implementation of Vessel Security Officer Training Certification Requirements:

International Convention on Standards of Training, Certification and Watchkeeping; comments due by 7-21-08; published 5-20-08 [FR E8-11225]

HOMELAND SECURITY DEPARTMENT

Privacy Act; Systems of Records; comments due by 7-21-08; published 6-10-08 [FR E8-12785]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Revisions to the Hospital Mortgage Insurance Program:

Technical and Clarifying Amendments; comments due by 7-25-08; published 6-25-08 [FR E8-14131]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Utah Regulatory Program; comments due by 7-24-08; published 6-24-08 [FR E8-14267]

POSTAL SERVICE

Waiver of Signature Delivery Process; comments due by 7-24-08; published 7-9-08 [FR E8-15212]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A318, A319, A320, and A321 Series Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14184]

Airbus Model A330-200, A330-300, and A340-300 Series Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14186]

Airbus Model A330 and A340 Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14480]

BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13919]

Boeing Model 737-600, -700, -700C, -800, -900, and -900ER Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12685]

Boeing Model 737-300, -400, and -500 Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12752]

Boeing Model 737-600, -700, -800, and -900 Series Airplanes; comments due by 7-24-08; published 6-9-08 [FR E8-12829]

Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747 200F, 747-300, 747SR, and 747SP Series Airplanes; comments due by 7-21-08; published 5-20-08 [FR E8-11330]

Boeing Model 747-400, -400D, and -400F Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12725]

Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, etc. Series Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12692]

Boeing Model 747 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12712]

Boeing Model 757 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12749]

Boeing Model 767 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12684]

Boeing Model 777 Airplanes; comments due by 7-21-08; published 6-6-08 [FR E8-12691]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13922]

Bombardier Model DHC 8 400 Series Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14482]

Dassault Model Falcon 7X Airplanes; comments due by 7-21-08; published 6-19-08 [FR E8-13712]

Diamond Aircraft Industries GmbH Model DA 42 Airplanes; comments due by 7-23-08; published 6-23-08 [FR E8-14078]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 135 Airplanes, and Model EMB 145, 145ER, 145MR, 145LR, 145XR, 145MP, and 145EP Airplanes; comments due by 7-21-08; published 6-20-08 [FR E8-13923]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes; comments due by 7-21-08; published 6-26-08 [FR E8-14476]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes; comments due by 7-24-08; published 6-24-08 [FR E8-14187]

Pratt & Whitney Canada PW206A, PW206B, PW206B2, PW206C, PW206E, PW207C, PW207D, and PW207E Turboshaft Engines; comments due by 7-25-08; published 6-25-08 [FR E8-14320]

Turbomeca S.A. Models Arriel 1E2, 1S, and 1S1 Turboshaft Engines; comments due by 7-25-08; published 6-25-08 [FR E8-14321]

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport; comments due by 7-21-08; published 5-21-08 [FR 08-01271]

Petitions for Exemption; Summary of Petitions Received; comments due by 7-21-08; published 7-9-08 [FR E8-15481]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Federal Motor Vehicle Safety Standards:

Side Impact Protection; comments due by 7-24-08; published 6-9-08 [FR E8-11273]

Petition for Approval of Alternate Odometer Disclosure Requirements; comments due by 7-24-08; published 6-24-08 [FR E8-13592]

TREASURY DEPARTMENT

Internal Revenue Service

Gross Estate; Election to Value on Alternate Valuation Date; comments due by 7-24-08; published 4-25-08 [FR E8-09025]

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 6304/P.L. 110–261

Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (July 10, 2008; 122 Stat. 2436)

Last List July 2, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.