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

WHEN: Tuesday, 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

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Federal Register

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

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 71

[Docket No. FAA–2008–0339; Airspace Docket No. 08–ASW–5]

Amendment of Class D and Class E Airspace; Altus AFB, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class D and Class E airspace at Altus Air Force Base (AFB), Altus OK. Additional controlled airspace is necessary to accommodate aircraft using Standard Instrument Approach Procedures (SIAPs). This action is necessary for the safety and management of Instrument Flight Rules (IFR) operations at Altus AFB, OK.

DATES: *Effective Dates:* 0901 UTC September 25, 2008. Comments must be received by September 22, 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.

ADDRESSES: Send comments on this direct final rule to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0339/Airspace Docket No. 08–ASW–5, at the beginning of your comments. You may also submit comments through the Internet at *http://regulations.gov*. You may review the public docket containing the direct final rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office, telephone number 1–800–647–5527, is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193–0530; telephone number (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date of the rule. If the FAA receives, within the comment period, an adverse or negative comment, or written comment notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the direct final rule. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the direct final rule. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0339, Airspace Docket No. 08–ASW–5.'' The postcard will be date/time stamped and returned to the commenter. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 by providing additional Class D controlled airspace extending upward from the surface and Class E airspace extending upward from 700 feet above the surface at Altus AFB. Additional controlled Class D and Class E airspace is necessary for the safety of IFR operations at Altus AFB. The area will be depicted on appropriate aeronautical charts. The Class D and E airspace areas are published in paragraphs 5000 and 6005, respectively, of FAA Order 7400.9R, dated August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 provides additional controlled airspace at Altus AFB, OK.

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 part 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designation and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW OK D Altus, OK [Amended]

Altus AFB, OK
(Lat. 34°39′01″ N., long. 99°16′00″ W.)
Altus AFB ILS Localizer
(Lat. 34°38′31″ N., long. 99°16′26″ W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 6-mile radius of Altus AFB and within 2 miles each side of the Altus AFB ILS 17R Localizer north course extending from the 6-mile radius to 7.6 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

ASW OK E5 Altus, OK [Amended]

Altus AFB, OK
(Lat. 34°39′01″ N., long. 99°16′00″ W.)
Altus VORTAC
(Lat. 34°39′46″ N., long. 99°16′16″ W.)
Altus/Quartz Mountain Regional Airport, OK
(Lat. 34°41′56″ N., long. 99°20′19″ W.)
Tipton Municipal Airport, OK
(Lat. 34°27′31″ N., long. 99°10′17″ W.)
Frederick Municipal Airport, OK
(Lat. 34°21′07″ N., long. 98°59′02″ W.)
Altus AFB ILS Localizer
(Lat. 34°38′31″ N., long. 99°16′26″ W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Altus AFB and within 1.6 miles each side of the 1850 radial of the Altus VORTAC extending from the 9.1-mile radius to 11.9 miles south of the Alms AFB and within 3 miles west and 2 miles east of the Altus AFB ILS 1 7R Localizer north course extending from the 9.1-mile radius to 15 miles north of the Altus AFB and within a 6.5-mile radius of the Altus/Quartz Mountain Regional Airport, and within a 5.4-mile radius of Tipton Municipal Airport, and within a 7.2-mile radius of the Frederick Municipal Airport, and within 2.5 miles each side of the 180° bearing from the Frederick Municipal Airport extending from the 7.2-mile radius to 7.7 miles south of the Frederick Municipal Airport and within a 12-mile radius of the Altus AFB beginning at a point 3 miles west of the Altus VORTAC 019° radial, thence clockwise along the 12-mile radius of the Altus AFB, ending at a point 3 miles west of the Altus VORTAC 185° radial.

* * * * *

Issued in Fort Worth, TX, on July 3, 2008.

Richard H. Farrell III,

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

[FR Doc. E8–17558 Filed 8–5–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0024; Airspace Docket No. 08–AGL–4]

Amendment of Class E Airspace; Black River Falls, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace at Black River Falls, WI. Additional controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Black River Falls Area Airport. This action will enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Black River Falls Area Airport, Black River Falls, WI.

DATES: *Effective Dates:* 0901 UTC September 25, 2008. Comments for inclusion in the rules Docket must be received September 22, 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.

ADDRESSES: Send comments on this direct final rule to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0024/Airspace Docket No. 08–AGL–4, at the beginning of your comments. You may also submit comments through the Internet at *http://regulations.gov*. You may review the public docket containing the direct final rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office, telephone number 1–800–647–5527, is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date of the rule. If the FAA receives, within the comment period, an adverse or negative comment, or written comment notice of intent to submit such a comment, a document withdrawing the direct final

rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the direct final rule. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the direct final rule. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0024, Airspace Docket No. 08–AGL–4.'' The postcard will be date/time stamped and returned to the commenter. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace at Black River Falls, WI, by providing additional airspace required to support the new RNAV (GPS) Runway 08 approach developed for IFR landings at Black River Falls Area Airport. Controlled airspace extending upward from 700 feet above the surface is required to encompass all SIAPs and for the safety of IFR operations at Black River Falls Area Airport, Black River Falls, WI. Designations for Class E airspace areas extending upward from 700 feet above the surface of the earth are published in the FAA Order 7400.9R, signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implication under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal 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 provides additional controlled airspace at Black River Falls Area Airport, WI.

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 Federal Aviation Administration Order 7400.9R, Airspace Designation and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

AGL WI E5 Black River Falls, WI [Amended]

Black River Falls Area Airport
(Lat. 44°15′03″ N., long. 90°51′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Black River Falls Area Airport and within 3.85 miles each side of the 260° bearing from the Black River Falls Area Airport extending from the 6.4-mile radius to 8.8 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX, on July 3, 2008.

Richard H. Farrell, III,

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

[FR Doc. E8–17559 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0003; Airspace Docket No. 08–ASW–1]

Establishment of Class E Airspace; Lexington, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Lexington, OK. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Muldrow Army Heliport make this action necessary. This action will enhance the safety and management of Instrument Flight Rules (JFR) aircraft

operations at Muldrow Army Heliport, Lexington, OK.

DATES: *Effective Dates:* 0901 UTC September 25, 2008. Comments for inclusion in the rules Docket must be received September 22, 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.

ADDRESSES: Send comments on this direct final rule to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0003/Airspace Docket No. 08–ASW–1, at the beginning of your comments. You may also submit comments through the Internet at *http://regulations.gov*. You may review the public docket containing the direct final rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office, telephone number 1–800–647–5527, is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date of the rule. If the FAA receives, within the comment period, an adverse or negative comment, or written comment notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the direct final rule. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the direct final rule. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0003, Airspace Docket No. 08–ASW–1.'' The postcard will be date/time stamped and returned to the commenter. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 establishes Class E airspace at Lexington, OK, providing the airspace required to support the new 175° Copter RNAV (GPS) approach developed for IFR landings at Muldrow Army Heliport. Controlled airspace extending upward from the surface is required to encompass all SIAPs and for the safety of IFR operations at Muldrow Army Heliport. Designations for Class E airspace areas extending upward from the surface of the earth are published in the FAA Order 7400.9R, signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implication under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal 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 establishes Class E airspace at Muldrow Army Heliport, Lexington, OK.

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 Federal Aviation

Administration Order 7400.9R, Airspace Designation and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6002 Class E2 airspace areas extending upward from the surface of the earth.

* * * * *

ASW OK E2 Lexington, OK [New]

Muldrow Army Heliport, OK
(Lat. 35°01′35″ N., long. 97°13′54″ W.)
Muldrow NDB
(Lat. 35°01′44″ N., long. 97°13′50″ W.)

That airspace extending upward from the surface to and including 3,600 feet above mean sea level (MSL) within a 3.7-mile radius of the Muldrow Army Heliport and within 3 miles each side of the 355° bearing from the Muldrow NDB extending from the 3.7-mile radius of the heliport to 6.8 miles north of the heliport.

* * * * *

Issued in Fort Worth, TX, on July 3, 2008.

Richard H. Farrell, III,

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

[FR Doc. E8–17560 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM06–23–000]

Critical Energy Information Infrastructure

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (Docket No. RM06–23–000) which were published in the **Federal Register** of Wednesday, November 14, 2007. The final rule document amended regulations for gaining access to critical energy infrastructure information (CEII).

DATES: *Effective Date:* August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Kaplan, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, 202–502–8305.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amended 18 CFR 388.109 and affect the Commission's fees for records requests.

Need for Correction

As published, the final regulations contained errors which involved the removal of subparagraphs from 18 CFR 388.109(b). These subparagraphs contain critical information addressing fees for records requests.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

■ Accordingly, 18 CFR part 388 is corrected by making the following correcting amendment:

PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557, 41 U.S.C. 7101–7352.

■ 2. Section 388.109(b) is amended by adding paragraphs (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) to read as follows:

§ 388.109 Fees for record requests.

* * * * *

(b) * * *

(1) *Definitions:* For the purpose of paragraph (b) of this section.

(i) *Commercial use* request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(iii) *Noncommercial scientific institution* refers to an installation that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representatives of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunication services), such alternative media may be included in this category. A *freelance* journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Commission may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Commission will charge the employee's hourly pay rate plus 16% for benefits for document search time and for document review time, and 15 cents per page for duplication. Commercial use requests are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(ii) If documents are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Commission will charge 15 cents per page for duplication. There is no charge for the first 100 pages.

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section, the Commission will charge the employees hourly pay rate plus 16 percent for benefits for document search and 15 cents per page for duplication. There is no charge for the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

(v) The Commission, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees assessed by Commission staff for a Freedom of Information Act request are less than the appropriate threshold, the Commission may not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

(3) *Fees for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed $25, it will notify the requester of the estimated amount of search fees, unless the requester has indicated in advance willingness to to pay fees as high as those anticipated. The requester can meet with Commission personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Interest—notice and rate.* The Commission will assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(5) *Advance payments.* The Commission will require a requester to make an advance payment, *i.e.*, payments before work is commenced or continued on a request, if:

(i) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Commission will notify the requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of charges if a requester has no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

* * * * *

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18040 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. 2008–N–0039]

Oral Dosage Form New Animal Drugs; Oxfendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA provides for revised scientific nomenclature for an internal parasite for which oxfendazole suspension is used orally in cattle.

DATES: This rule is effective August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Donald A. Prater, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8343, e-mail: *donald.prater@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 140–854 for SYNANTHIC (oxfendazole) Bovine Dewormer Suspension, approved for oral use in cattle for the removal of various internal parasites. The supplemental NADA provides for revised scientific nomenclature for a parasite. The supplemental application is approved as of July 7, 2008, and the regulations are amended in 21 CFR 520.1630 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.1630, in paragraph (e)(2)(ii), remove ''*C. mcmasteri*'' and in its place add ''*C. surnabada*''; and revise paragraph (e)(2)(iii) to read as follows:

§ 520.1630 Oxfendazole suspension.

* * * * *

(e) * * *

(2) * * *

(iii) *Limitations.* Cattle must not be slaughtered until 7 days after treatment. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age.

Dated: July 24, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–18092 Filed 8–5–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2008–N–0039]

Oral Dosage Form New Animal Drugs; Amprolium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Phibro Animal Health. The supplemental NADA provides for label revisions associated with a previous change of sponsorship and other minor changes for amprolium concentrate solution to make medicated drinking water for chickens and turkeys for the treatment of coccidiosis. The product approval is being codified for the first time.

DATES: This rule is effective August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Donald A. Prater, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8343, e-mail: *donald.prater@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 65 Challenger Rd., 3d floor, Ridgefield Park, NJ 07660, filed a supplement to NADA 13–663 that provides for the use of COCCIPROL (amprolium) 9.6% Oral Solution to make medicated drinking water for chickens and turkeys for the treatment of coccidiosis. The supplemental NADA provides for label revisions associated with a previous change of sponsorship and other minor changes. The supplemental NADA is approved as of July 8, 2008, and the regulations are amended in 21 CFR 520.100 to reflect the approval. The product approval is being codified for the first time. Also, § 520.100 is revised to reflect current pathogen spelling.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.100, revise paragraph (b), remove paragraph (d), redesignate paragraph (e) as paragraph (d), and revise new paragraphs (d)(2)(i)(A) and (d)(2)(i)(B) to read as follows:

§ 520.100 Amprolium.

* * * * *

(b) *Sponsors*. See sponsors in 510.600(c) of this chapter.

(1) No. 016592 for use of products described in paragraph (a) of this section as in paragraph (d) of this section.

(2) Nos. 051311 and 066104 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(1) of this section.

(3) No. 059130 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(2) of this section.

* * * * *

(d) * * *

(2) * * *

(i) * * * (A) As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zurnii*, administer 5 mg per kilogram (mg/kg) body weight for 21 days during periods of exposure or when experience indicates that coccidiosis is likely to be a hazard.

(B) As an aid in the treatment of coccidiosis caused by *E. bovis* and *E. zurnii*, administer 10 mg/kg body weight for 5 days.

* * * * *

Dated: July 28, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–18093 Filed 8–5–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2008–N–0039]

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia and Upjohn Co., a Division of Pfizer, Inc. The NADA provides for the veterinary prescription use of a ceftiofur hydrochloride injectable suspension for treatment of various bacterial infections in swine and cattle.

DATES: This rule is effective August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Donald A. Prater, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8343, e-mail: *donald.prater@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–288 that provides for veterinary prescription use of EXCENEL RTU EZ (ceftiofur hydrochloride) Sterile Suspension, used for treatment of various bacterial infections in swine and cattle. The NADA is approved as of July 1, 2008, and the regulations are amended in 21 CFR 522.313b to reflect the approval. A swine pathogen is also being revised to reflect current scientific nomenclature.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

The agency has determined under § 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.313b, revise paragraphs (a), (e)(1)(ii), and (e)(2)(i) to read as follows:

§ 522.313b Ceftiofur hydrochloride.

(a) *Specifications*. Each milliliter of ceftiofur hydrochloride suspension contains 50 milligrams (mg) ceftiofur equivalents in either a peanut oil or caprylic/capric triglyceride suspension.

* * * * *

(e) *Conditions of use*—

(1) * * *

(ii) *Indications for use*. For treatment and control of swine bacterial respiratory disease (swine bacterial pneumonia) associated with *Actinobacillus pleuropneumoniae*, *Pasteurella multocida*, *Salmonella* Choleraesuis, and *Streptococcus suis*.

* * * * *

(2) * * *

(i) *Amount*. For bovine respiratory disease and acute bovine interdigital necrobacillosis, administer 1.1 to 2.2 mg/kg of body weight at 24-hour intervals for 3 to 5 consecutive days. For bovine respiratory disease only, 2.2 mg/kg of body weight may be administered twice at a 48-hour interval. For acute metritis only, administer 2.2 mg/kg of body weight at 24-hour intervals for 5 consecutive days. Product in peanut oil suspension may be administered by either intramuscular or subcutaneous injection. Product in caprylic/capric triglyceride suspension may be administered by subcutaneous injection only.

* * * * *

Dated: July 28, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–18094 Filed 8–5–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9415]

RIN 1545–BB84

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9415), that were published in the **Federal Register** on Monday, July 14, 2008 (73 FR 40171). The final regulations relates to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities.

DATES: This correction is effective on August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Arturo Estrada, (202) 622–3900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9415) that is the subject of this correction is under section 1441 of the Internal Revenue Code.

Need for Correction

As published, TD 9415 contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** Section 1.1441–2 is amended by revising paragraph (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(f) *Effective/applicability date.* This section applies to payments made after December 31, 2000. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006.

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–17954 Filed 8–5–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0763]

RIN 1625–AA00

Special Local Regulation; Chris Craft Silver Cup Regatta, St. Clair River, Algonac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for an area on the St. Clair River, Algonac, Michigan. This temporary special local regulation is intended to restrict vessels from a portion of the St. Clair River during the Chris Craft Silver Cup Regatta. This temporary special local regulation is necessary to protect spectators and vessels from the hazards associated with boat race operations.

DATES: This rule is effective from 9 a.m. on August 8, 2008 until 8 p.m. on August 10, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0763 and are available online at *http://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 at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 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 CDR Joseph Snowden, Prevention, U.S. Coast Guard Sector

Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; 313–568–9580. 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 the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 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 it would be impracticable and contrary to the public interest since immediate action is needed to ensure the safety of spectators and vessels during this event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. Boat racing in close proximity to watercraft poses significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, and high speeds could easily result in serious injuries or fatalities, which makes a special local regulation necessary to safeguard spectators and vessels. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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 and property.

Background and Purpose

This temporary special local regulation is necessary to ensure the safety of waterways users and event participants from hazards associated with waterways racing. Based on accidents that have occurred in other Captain of the Port zones, and the hazards of high-speed racing, the Captain of the Port Detroit has determined boat racing in close proximity to watercraft poses significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, and high speeds could easily result in serious injuries or fatalities. This special local regulation temporarily establishes a regulated area to control vessel movement around the location of the raceway and will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary regulated area is necessary to ensure the safety of spectators and vessels during the setup and execution of a boat race in conjunction with the Chris Craft Silver Cup Regatta. The boat races will occur from 9 a.m. until 5 p.m. on August 8, 2008, from 9 a.m. until 8 p.m. on August 9, 2008, and from 9 a.m. until 8 p.m. on August 10, 2008.

The regulated area will encompass all waters of the St. Clair River, North Channel, Algonac, Michigan, bounded on the south by a line starting north of Grande Point Cut on Russel Island at position 42°36.3′ N; 082°32.5′ W extending across the channel to Algonac to a point at position 42°36.5′ N; 082°32.6′ W, following north along the Algonac shoreline to a point at position 42°37.4′ N; 082°31.4′ W, extending southeast to buoy Y ''17'' at position 42°37.3′ N; 082°31.1′ W, extending southwest to a point on the northern end of Russel Island at position 42°37.0′ N; 082°31.4′ W, continuing southwest along the Russel Island shoreline to the point of origin. All geographic coordinates are North American Datum of 1983 (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 regulated area is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated 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 area and the Coast Guard expects insignificant adverse impact to mariners from the special local regulation'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 the St. Clair River near Algonac, MI between 9 a.m. on August 8, 2008 and 8 p.m. on August 10, 2008.

This regulated area will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for three days. Additionally, in the event that this temporary regulated area affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the area. The Coast Guard will give notice to the public via a Broadcast Notice 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 offer to assist small entities in understanding the rule so that they can 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 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 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 will not result in such an 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

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 procedures; and related management systems 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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, 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 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)(h), of the Instruction, from further environmental documentation. This event establishes a regulated area for a marine event, therefore paragraph (34)(h) of the Instruction applies.

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

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.T09–0763 is added to read as follows:

§ 100.T09–0763 Special Local Regulation; Chris Craft Silver Cup Regata, St. Clair River, Algonac, MI.

(a) *Location.* The following area is a temporary regulated area: All waters of the St. Clair River, North Channel, Algonac, Michigan, bounded on the south by a line starting north of Grande Point Cut on Russel Island at position 42°36.3′ N; 082°32.5′ W extending across the channel to Algonac to a point at position 42°36.5′ N; 082°32.6′ W, following north along the Algonac shoreline to a point at position 42°37.4′ N; 082°31.4′ W, extending southeast to buoy Y ''17'' at position 42°37.3′ N; 082°31.1′ W, extending southwest to a point on the northern end of Russel Island at position 42°37.0′ N; 082°31.4′ W, continuing southwest along the Russel Island shoreline to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Time and Date.* This regulation will be enforced on August 8, 2008, from 9 a.m. until 5 p.m., on August 9, 2008 from 9 a.m. until 8 p.m., and on August 10, 2008 from 9 a.m. to 8 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 100.901 of this part, entry into, transiting, or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This regulated area is closed to all vessel traffic, except as may be permitted by the Captain of the Port

Detroit or his designated on-scene representative.

(3) *Definition.* 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. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: July 23, 2008.

F.M. Midgette,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E8–18080 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0727]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the NJTRO Lower Hack Bridge across the Hackensack River, mile 3.4, at Jersey City, New Jersey. Under this temporary deviation, the NJTRO Lower Hack Bridge may remain in the closed position for 42 days to facilitate bridge lift cable maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate necessary bridge maintenance.

DATES: This deviation is effective from August 9, 2008 through September 19, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0727 and are available online at *http://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 First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO Lower Hack Bridge, across the Hackensack River, mile 3.4, at Jersey City, New Jersey, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(b).

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New Jersey Transit Rail Operation (NJTRO), requested a temporary deviation to facilitate the replacement of cable sheaves and also the bridge lift cables.

Under this temporary deviation the NJTRO Lower Hack Bridge may remain in the closed position August 9, 2008 through September 19, 2008. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–18081 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0433]

RIN 1625–AA00

Safety Zone, 2008 Personal Watercraft Challenge, Atlantic Ocean, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Atlantic Ocean offshore from Fort Lauderdale, Florida for the 2008 Personal Watercraft Challenge. This temporary safety zone is intended to restrict vessels from entering waters within the zone unless specifically authorized by the Captain of the Port Miami, Florida, or a designated representative. This rule is necessary to provide for the safety of life on the navigable waters of the United States and protect participants, spectators, and mariner traffic from potential hazards associated with the event.

DATES: This rule is effective from 8 a.m. until 11 a.m. on August 16, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0433 and are available online at *http://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 at Sector Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Senior Chief Ray Johnson, Coast Guard Sector Miami, Florida at (305) 535–4307. 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 the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 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 notice of this event was not provided to the Coast Guard with sufficient time to publish an NPRM and receive public comment before the event date. Furthermore, good cause exists because this temporary safety zone will not significantly restrict the use of the waterway as all vessels will be able to safely transit around the zone. A Coast Guard Patrol Commander will be available and the Coast Guard will also issue a Broadcast Notice to Mariners. This temporary rule is necessary to ensure the safety of participants, spectators, and the general public on the navigable waters of the United States.

For the same reasons above, 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**.

Background and Purpose

Extreme Events is sponsoring the 2008 Personal Watercraft Challenge with approximately 300 personal watercrafts each 9 feet in length. The event will be held between the hours of 8 a.m. and 11 a.m. on August 16, 2008. The public is invited to attend. The high concentration of event participants, spectators, and the general boating public presents an extra hazard to the safety of life on the navigable waters of the United States. A regulated area encompassing the waters of the Atlantic Ocean is necessary to protect participants as well as spectators from hazards associated with the event.

Discussion of Rule

This rule establishes a temporary safety zone for the 2008 Personal Watercraft Challenge in the Atlantic Ocean. Extreme Events will sponsor the 2008 Personal Watercraft Challenge on Saturday, August 16, 2008 between the hours of 8 a.m. and 11 a.m. in the Atlantic Ocean offshore in an area from Fort Lauderdale, Florida north to Hillsboro Inlet, Florida. The Coast Guard is establishing a temporary safety zone in and on the waters of the Atlantic Ocean. This safety zone includes all waters from the surface to the bottom, encompassed by an imaginary line connecting the following points: 26°15′09″ N, 080°04′57.78″ W; thence to 26°15′08.70″ N, 080°04′47.82″ W; thence to 26°06′20.88″ N, 080°06′01.50″ W; thence to 26°06′20.76″ N, 080°06′11.40″ W; thence returning to origin. All vessels and persons are prohibited from anchoring, mooring, or transiting within this zone unless authorized by the Captain of the Port Miami, Florida or a designated representative. The safety zone will be in place from 8 a.m. to 11 a.m. on August 16, 2008.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal, since vessels should be able to safely navigate around the zone.

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 or operators of vessels intending to transit this zone between 8 a.m. and 11 a.m. on August 16, 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 only be in effect for a short period of time and the impact on routine navigation is expected to be minimal, since vessels should be able to safely navigate around the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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 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 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

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 procedures; and related management systems 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, under 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.

Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule because it concerns an emergency situation of less than 1 week in duration.

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(g), 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.T07–0433 is added to read as follows:

§ 165–T07–0433 Safety Zone, 2008 Personal Watercraft Challenge, Atlantic Ocean, Fort Lauderdale, Florida.

(a) *Regulated areas.* Temporary safety zone for the 2008 Personal Watercraft Challenge in the Atlantic Ocean offshore in an area from Fort Lauderdale, Florida north to Hillsboro Inlet, Florida. The Coast Guard is establishing a temporary safety zone in and on the waters of the Atlantic Ocean. This safety zone includes all waters from the surface to the bottom, encompassed by an imaginary line connecting the following points: 26°15′09″ N, 080°04′57.78″ W, thence to 26°15′08.70″ N, 080°04′47.82″ W, thence to 26°06′20.88″ N, 080°06′01.50″ W, thence to 26°06′20.76″ N, 080°06′11.40″ W, thence returning to origin.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), Miami, Florida in the enforcement of regulated navigation areas, safety zones, and security zones.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit a safety zone without permission of the Captain of the Port Miami, Florida or a designated representative. To request permission to enter into a safety zone, the Captain of the Port's designated representative may be contacted on VHF channel 16.

(2) At the completion of scheduled event, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(d) *Effective Period.* This temporary safety zone will be effective between the hours of 8 a.m. and 11 a.m., Saturday, August 16, 2008.

Dated: July 15, 2008.

J.O. Fitton,

Captain, U.S. Coast Guard, Captain of the Port Miami, FL.

[FR Doc. E8–18079 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0349]

RIN 1625–AA00

Safety Zone; Fireworks, Beverly, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is creating a temporary safety zone for a fireworks event being held in Beverly, Massachusetts. This safety zone will last for the limited duration of the fireworks. The zone is necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. through 11 p.m. on August 10, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0349 and are available online at *http://www.regulations.gov*. This material is 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 Boston, 427 Commercial St., Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Chief Petty Officer Eldridge McFadden at 617–223–5160. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 4, 2008, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Fireworks, Central and Northern Massachusetts in the **Federal Register** (73 FR 31785). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held. 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**. This rule must be in effect on August 10, 2008, in order to protect the public from the dangers associated with fireworks displays. Any delay in the regulation's effective date could expose the public to unnecessary danger and therefore be contrary to the public's interest.

Background and Purpose

A Notice of Proposed Rulemaking was published on June 4, 2008 (73 FR 31785), proposing the establishment of six safety zones around various fireworks displays on or near navigable waterways in Massachusetts this summer. At this time, five of those events have already occurred. This temporary rule establishes a safety zone surrounding the remaining fireworks event as described in the NPRM. The zone will protect the maritime public from the dangers inherent in waterborne fireworks displays. The Captain of the Port does not anticipate any negative impact on vessel traffic due to implementation of these temporary safety zones. Public notifications will be made prior to the effective period of the zone via Broadcast and Local Notice to Mariners.

Discussion of Comments and Changes

No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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.

No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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 would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of the coastal waterways of Massachusetts between 9 p.m. and 11 p.m. on August 10, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule would be in effect for only two hours, vessel traffic can navigate around the safety zone during the effective period, and advance notification via broadcast notice to mariners and Local Notice to Mariners will be made before and during the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM 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 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 rule under that Order and have determined that it does not have implications for federalism.

No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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. No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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. No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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. No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. No comments were made. However, the following changes were made to the original regulatory text proposed by the Notice of Proposed Rulemaking published on June 4, 2008 (73 FR 31785): Items (a)(2) through (a)(6) were removed as the events have occurred.

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, under 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.

A final environmental analysis checklist and a final categorical exclusion determination will be 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0349 to read as follows:

§ 165.T01–0349 Safety Zone; Fireworks, Beverly, MA.

(a) *Location*. The following waterborne fireworks events include safety zones as described herein: (1) *Beverly Homecoming Fireworks Event, Beverly, MA.*

(i) All waters of Beverly Harbor, from surface to bottom, within a 200-yard radius of the fireworks barge located at approximate position 42°32′37″ N, 070°52′09″ W. These coordinates are based upon NAD83 datum.

(ii) *Effective Date*. This rule will be effective from 9 p.m. through 11 p.m. on August 10, 2008.

(b) *Definition:* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer, or any Federal, State, or local law enforcement officer authorized to enforce this regulation on behalf of the Coast Guard Captain of the Port (COTP).

(c) *Regulations*. (1) In accordance with the general regulations in section 165.23 of this part, entry into or remaining in the safety zones described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port (COTP) Boston, or the COTP's designated representative.

(2) Persons desiring to transit within the safety zones established in this section may contact the Captain of the

Port at telephone number 617–223–3008 or via on-scene patrol personnel on VHF channel 16 to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 24, 2008.

Claudia C. Gelzer,

Commander, U.S. Coast Guard, Acting Captain of the Port Boston, Massachusetts.

[FR Doc. E8–18076 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2007–0830; FRL–8374–2]

Bacillus thuringiensis Vip3Aa Proteins in Corn and Cotton; 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* Vip3Aa proteins in or on the food and feed commodities of corn; corn, field; corn, sweet; corn, pop; and cotton; cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts, when used as plant-incorporated protectants in those food and feed commodities. 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* Vip3Aa proteins in or on corn; corn, field; corn, sweet; corn, pop; and cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts, when applied or used as plant-incorporated protectants.

DATES: This regulation is effective August 6, 2008. Objections and requests for hearings must be received on or before October 6, 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–2007–0830. 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 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–2007–0830 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 October 6, 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–2007–0830, 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 November 2, 2007 (72 FR 62237) (FRL–8153–8), 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 7F7254) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 E. Cornwallis Road, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* Vip3Aa proteins in or on all food commodities when applied or used as plant-incorporated protectants. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Inc. One comment was received in response to the notice of filing. The commenter objected to the petition and expressed concerns about EPA's regulation of human exposure to toxic chemicals. The Agency understands the commenter's concerns regarding toxic substances and the potential effects to humans. Pursuant to its authority under the FFDCA, and as discussed further in this Unit, EPA conducted a comprehensive assessment of representative Vip3Aa proteins, including a review of acute oral toxicity data on several Vip3Aa proteins, amino acid sequence comparisons to known toxins and allergens, as well as data demonstrating that the representative Vip3Aa proteins are rapidly degraded by gastric fluid *in vitro*, are not glycosylated, and are present in low levels in the tissues of the corn and cotton plants containing these plant-incorporated protectants. 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 these proteins in or on the food and feed commodities corn; corn, field; corn, sweet; corn, pop; and cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts, when used as plant-incorporated protectants in those food and feed commodities. 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 corn; corn, field; corn, sweet; corn, pop; and 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 Vip3Aa19 and Vip3Aa20 proteins. These data demonstrate the safety of these particular Vip3Aa proteins at levels well above the maximum possible exposure levels that are reasonably anticipated in cotton (Vip3Aa19) and corn (Vip3Aa20). 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 these plant-incorporated protectants were derived (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 mouse oral toxicity study, to verify the observed adverse effects and clarify the source of these effects.

Syngenta submitted four acute oral toxicity studies conducted on mice. Three of the studies were conducted with microbially-produced Vip3Aa proteins (Vip3Aa1, Vip3Aa19, and Vip3Aa20) with slight variations in amino acid sequence (1-2 amino acid differences), and one study was conducted with transgenic corn leaf tissue expressing Vip3Aa19 as the test material. No treatment-related adverse effects were observed in any of the studies. The results of these studies showed that the oral LD_{50} for mice (males, females, and combined) was greater than 3,675 milligrams/kilogram/body weight (mg/kg/bwt) (the highest dose tested) for the tested Vip3Aa proteins.

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, pages 3–9 (1992)). Therefore, since no acute effects were shown to be caused by the Vip3Aa19 and Vip3Aa20 proteins, even at relatively high dose levels, they are not considered toxic. (This is also true

of the Vip3Aa1 protein that was tested.) Further, amino acid sequence comparisons showed no similarities between Vip3Aa19 and Vip3Aa20, on the one hand, and known toxic proteins in protein databases, on the other hand, that would raise a safety concern.

Since Vip3Aa 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 Vip3Aa follows:

- *Source of the trait. Bacillus thuringiensis*, the microorganism from which Vip3Aa proteins are derived, is not considered to be a source of allergenic proteins.
- *Amino acid sequence*. A comparison of the amino acid sequence of Vip3Aa19 and Vip3Aa20 with known allergens showed no significant sequence identity over 80 amino acids or identity at the level of eight contiguous amino acid residues.
- *Digestibility*. Both Vip3Aa19 and Vip3Aa20 proteins are digested rapidly in simulated gastric fluid containing pepsin.
- *Glycosylation*. Both Vip3Aa19 and Vip3Aa20 were shown not to be glycosylated.

Considering all of the available information on Vip3Aa19 and Vip3Aa20, EPA concludes that the potential for these specific proteins to be food allergens is minimal. Moreover, as further explained below (and in section VI.a. of this final rule), EPA believes these data and the other submitted data demonstrating a lack of mammalian toxicity at high levels of exposure to Vip3Aa19 and Vip3Aa20 can be extrapolated to cover Vip3Aa more generally.

Vip3Aa is the designation assigned to a closely-related group of similar insecticidal proteins isolated from *Bacillus thuringiensis*. The specific variants referred to throughout this document (i.e., Vip3Aa19 and Vip3Aa20) are isolates of Vip3Aa protein. All Vip3Aa proteins (there are 25 known Vip3Aa proteins and there are sequences available for 19 of these) are highly related. Indeed, the amino acid sequence of all the Vip3Aa proteins can only vary up to 5% to be considered a part of the Vip3Aa group. With respect to the 19 Vip3Aa proteins for which sequences are available, they vary by less than 28 amino acids out of the 789 amino acids that make up the protein. This level of sequence similarity makes that group of 19 Vip3Aa protein variants 96% identical overall. The sequence identity between any two individual sequences is even higher. For example, the sequences of the protein variants tested by Syngenta (i.e., Vip3Aa19 and Vip3Aa20) are over 99.7% identical. Finally, as to the few amino acid differences that do exist between the Vip3Aa variants, these differences do not alter the surrounding sequence, rarely occur as contiguous amino acids, and are often substitutions with similar chemical side groups indicating similar chemical functionality. Therefore, EPA finds that none of the Vip3Aa variants would be expected to have significant amino acid sequence identity — which is defined as either 35% identity over an 80 amino acid stretch and, for allergens, at the level of eight contiguous amino acids — with a toxin, an anti-nutrient or an allergen.

This conclusion is further supported by EPA's overall safety assessment that includes other considerations such as the source of the trait, digestibility and glycosylation. As noted in this Unit, *Bacillus thuringiensis* (from which the Vip3Aa proteins are derived) is not considered to be a source of allergenic proteins. Furthermore, since all the Vip3Aa proteins have extremely homogenous structural similarities (as explained in this Unit), they are highly likely to show similar biochemical characteristics in terms of digestibility and glycosylation. So, as is the case for both Vip3Aa19 and Vip3Aa20, EPA expects that all Vip3Aa proteins will be rapidly digested under simulated gastric conditions and will not be glycosylated. Finally, it is also highly relevant here that microbial pesticide products, which are distinct from plant-incorporated protectant pesticide products, containing *Bacillus thuringiensis* and its components (which could include microbially-expressed Vip3Aa proteins) are already exempt from the requirement for a tolerance under 40 CFR 180.1011.

Accordingly, EPA believes that the foregoing supports EPA's reasonable certainty of no harm finding not only for the Vip3Aa19 and Vip3Aa20 protein variants, but also for all other closely-related members of the Vip3Aa designation as described using the Crickmore classification system (Crickmore, N., Zeigler, D.R., Schnepf, E., Van Rie, J., Lereclus, D., Baum, J, Bravo, A. and Dean, D.H. ''*Bacillus thuringiensis* toxin Nomenclature'' (2007) *http://www.lifesci.sussex.ac.uk/Home/Neil_Crickmore/Bt/*).

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 Vip3Aa proteins) 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 protectant's 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 Vip3Aa to be an allergen is low, 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 Vip3Aa to be an inhalation allergen. Exposure via residential or lawn use to infants and children is also not expected because the use sites for Vip3Aa proteins are agricultural. Oral exposure, at very low levels, may occur from ingestion of food commodities containing Vip3Aa protein residues and, theoretically, drinking water. However oral toxicity testing (as discussed above) 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 residues of representative Vip3Aa proteins and other substances that have a common mechanism of toxicity. These considerations include 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 resulting from exposure to Vip3Aa proteins, we conclude that there are no cumulative effects for the Vip3Aa proteins.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *Toxicity and allergenicity conclusions*. The data submitted and cited regarding potential health effects for Vip3Aa proteins includes the characterization of representative Vip3Aa proteins, as well as the acute oral toxicity studies, amino acid sequence comparisons to known allergens and toxins, and *in vitro* digestibility of the representative Vip3Aa proteins. The results of these studies were used to evaluate humansk, and the validity, completeness, and reliability of the available data from the studies were also considered.

Adequate information was submitted to show that the Vip3Aa test materials derived from microbial cultures were biochemically and functionally equivalent to the proteins produced by the plant-incorporated protectant ingredient in the plants. Microbially produced proteins were used in the studies so that sufficient material for testing was available.

The acute oral toxicity data submitted for the representative Vip3Aa proteins support the prediction that Vip3Aa proteins will be 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 (Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, pages 3–9 (1992)). Since no treatment-related adverse effects were shown to be caused by the representative Vip3Aa proteins, even at relatively high dose levels, Vip3Aa proteins are 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 158.2140). For microbial products, further toxicity testing (Tiers II and III) 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 representative Vip3Aa proteins in corn and cotton tissues.

Since Vip3Aa are proteins, potential allergenicity is also considered as part of the toxicity assessment. Considering all of the available information, including that:

- Vip3Aa originates from a non-allergenic source.
- Vip3Aa19 and Vip3Aa20 have no sequence similarities with known allergens.
- Vip3Aa19 and Vip3Aa20 are not glycosylated.
- Vip3Aa19 and Vip3Aa20 are rapidly digested in simulated gastric fluid.
- The data developed for Vip3Aa19 and Vip3Aa20 can be extrapolated to all Vip3Aa proteins due to the extremely high level of structural similarity that exists between and among Vip3Aa proteins, EPA has concluded that the potential for Vip3Aa 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 representative Vip3Aa proteins, as well as the minimal potential to be a food allergen, demonstrate the safety of Vip3Aa 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 deoxyribo nucleic acids/ribonucleic acid (DNA/RNA) that encode these proteins and regulatory regions. The genetic material DNA/RNA necessary for the production of Vip3Aa proteins 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).

2. *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 Vip3Aa proteins. 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.

3. *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 Vip3Aa proteins. 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 Vip3Aa proteins.

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(s)

A lateral flow enzyme-linked immunosorbent assay (ELISA) protocol has been provided to the Agency for detecting Vip3Aa in cotton as well as a qualitative ELISA method for detecting Vip3Aa in corn.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the plant-incorporated protectant *Bacillus thuringiensis* Vip3Aa proteins and the genetic material necessary for their production in corn and cotton.

VIII. 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).

IX. 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: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.501 in subpart D is revised to read as follows:

§ 174.501 Bacillus thuringiensis Vip3Aa protein in corn and cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vip3Aa proteins in or on corn or cotton are exempt from the requirement of a tolerance when used as plant–incorporated protectants in or on the food and feed commodities of corn; corn, field; corn, sweet; corn, pop; and cotton; cotton, undelinted seed; cotton, refined oil; cotton, meal; cotton, hay; cotton, hulls; cotton, forage; and cotton, gin byproducts.

§ 174.528 [Removed]

■ 3. Section 174.528 is removed from Subpart D.

[FR Doc. E8–17931 Filed 8–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0484; FRL–8375–5]

Difenoconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole in or on almond, almond hulls, cantaloupe, cucumber, and watermelon. This action is in response to EPA's granting crisis exemptions to the California Environmental Protection Agency and the Georgia Department of Agriculture under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on almond, almond hulls, cantaloupe, cucumber, and watermelon. This regulation establishes a maximum permissible level for residues of difenoconazole in these food commodities. The time-limited tolerances expire and are revoked on December 31, 2011.

DATES: This regulation is effective August 6, 2008. Objections and requests for hearings must be received on or before October 6, 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–2008–0484. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket

at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Stacey Groce, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address: *groce.stacey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0484 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 October 6, 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–2008–0484, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for residues of the fungicide difenoconazole, in or on almond at 0.05 parts per million (ppm), almond, hulls at 5.0 (ppm), cantaloupe at 1.0 (ppm), cucumber at 1.0 (ppm), and watermelon at 1.0 (ppm). These time-limited tolerances expire and are revoked on December 31, 2011. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Difenoconazole on Various Commodities: Almond, Almond Hulls, Cantaloupe, Cucumber, and Watermelon and FFDCA Tolerances

The California Environmental Protection Agency, Department of Pesticide Regulation, requested an

emergency exemption for difenoconazole on almond and almond hulls to control *Alternaria* leaf blight disease, and issued a crisis exemption for this use pursuant to 40 CFR part 166, subpart C. *Alternaria* leaf spot disease is caused by a common fungus that results in premature defoliation and interference with hull split and nut removal of almonds. Further, it appears that in California a significant portion of the spores that cause *Alternaria* leaf blight disease has developed resistance against registered alternative fungicides.

In addition, the Georgia Department of Agriculture requested a specific emergency exemption and subsequently issued a crisis exemption for the use of difenoconazole on cucurbits (cucumber, cantaloupe, and watermelon) as a tank mixture with cyprodinil to control gummy stem blight disease (caused by *Didymella bryonia*).

After having reviewed the submissions, EPA determined that the conditions described by the California Department of Environmental Protection and the Georgia Department of Agriculture meet the criteria for emergency exemptions. EPA authorized under FIFRA section 18 the use of difenoconazole on almond, and almond, hulls for control of *Alternaria* leaf and stem blight in California, and on cantaloupe, cucumber, and watermelon in Georgia to control Gummy stem blight disease.

As part of its evaluation of the emergency exemption applications, EPA assessed the potential risks presented by residues of difenoconazole in or on almond, cantaloupe, cucumber, and watermelon. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address urgent non-routine situations and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2011, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on almond, cantaloupe, cucumber, and watermelon after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether difenoconazole meets FIFRA's registration requirements for use on almond, cantaloupe, cucumber, and watermelon or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these time-limited tolerance decisions serve as a basis for registration of difenoconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for persons in any State other than California and Georgia to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for difenoconazole contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of these actions. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of these emergency exemption requests and the time-limited tolerances for residues of difenoconazole on almond at 0.05 ppm, almond, hulls at 5.0 ppm, cantaloupe at 1.0 ppm, cucumber at 1.0 ppm, and watermelon at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing these time-limited tolerances follows.

A. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for difenoconazole used for human risk assessment can be found at *http://www.regulations.gov* in the November 9, 2007 document: *Difenoconazole in/on Fruiting Vegetables, Pome Fruit, Sugar Beets,*

Tuberous and Corn Vegetables, and Imported Papaya. Health Effects Division (HED) Revised Risk Assessment, pages 13 and 14 of 57 in docket ID number EPA–HQ–OPP–2008–0484.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to difenoconazole, EPA considered exposure under the time-limited tolerances established by this action as well as all existing difenoconazole tolerances in (40 CFR 180.475). EPA assessed dietary exposures from difenoconazole in food as follows:

i. *Acute exposure.* In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA's acute dietary analysis assumed tolerance-level residues and 100% crop treated (PCT) for all registered and proposed crops. Tolerance-level residues were also assumed for all livestock tissues in this assessment. Experimental processing factors were used for apple juice (0.04x), potato chips (0.5x), potato granules/flakes (0.5x), sugar beet molasses (0.6x), sugar beet refined sugar (0.6x), tomato paste (1.6x), and tomato puree (0.5x). The Dietary Exposure Evaluation Model (DEEM)™ version 7.76 default processing factors were assumed (when appropriate) for other processed commodities. The resulting acute dietary (food + water) exposure estimates are not of concern to the Agency (<100% of the aPAD at the 95th percentile of the exposure distribution for the U.S. general population (2.9% aPAD) and all population subgroups.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA's chronic dietary analysis assumed tolerance-level residues and 100 PCT for all registered and proposed crops. Tolerance level residues were also assumed for all livestock tissues in this assessment. Experimental processing factors were used for apple juice (0.04x), potato chips (0.5x), potato granules/flakes (0.5x), sugar beet molasses (0.6x), sugar beet refined sugar (0.6x), tomato paste (1.6x), and tomato puree (0.5x). The DEEM™ version 7.76 default processing factors were assumed (when appropriate) for other processed commodities. The resulting chronic dietary (food + water) exposure estimates are not of concern to the Agency (<100% of the cPAD for the U.S. general population (23% cPAD) and all population subgroups.

iii. *Cancer.* A cancer dietary assessment was not conducted for difenoconazole because the cancer no-observable-adverse-effect level (NOAEL) is higher than the chronic reference dose (RfD); therefore, the chronic dietary risk estimate is protective of any cancer effects.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for difenoconazole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for difenoconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of difenoconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of difenoconazole for acute exposures are estimated to be 13.3 parts per billion (ppb) for surface water and 0.00128 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 9.43 ppb for surface water and 0.00108 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. In this assessment, 1-in-10–year annual peak (13.3 ppb) and 1-in-10–year annual mean (9.43 ppb) residue values were used for acute and chronic dietary exposure assessments respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Difenoconazole is currently registered for ornamental foliar treatment that could result in residential exposure. EPA assessed residential exposure using the following assumptions: Residential pesticide handlers will be exposed to short-term duration (1 to 30 days) only. The dermal and inhalation (short-term) residential exposure was assessed for homeowners (mixer/loader/applicator) wearing short pants and short-sleeved shirts as well as shoes plus socks using garden hose-end sprayer, pump-up compressed air sprayer, and backpack sprayer. With regard to residential post-application exposures, no significant post application exposure is anticipated from ornamentals by residents. Therefore, no residential post-application assessment was conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biological events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles.

However, this class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derived pesticides, including difenoconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived

fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of UFs) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment can be found in the propiconazole reregistration docket at http://www.regulations.gov, (Docket ID number EPA–HQ–OPP–2005–0497).

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

C. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) 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 on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, and prenatal/postnatal exposure in the 2–generation toxicity study in arts. There was no evidence of abnormalities in the development of the fetal nervous system in the prenatal/postnatal studies.

3. *Conclusion*. EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for difenoconazole is complete.

ii. There is no indication that difenoconazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that difenoconazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to difenoconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by difenoconazole.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 9% of the aPAD for (the population group all infants (< 1 year old)) the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 65% of the cPAD for (children 1-2 years old) the population group receiving the greatest exposure. Based on the residential use patterns, chronic residential exposure to residues of difenoconazole is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Difenoconazole is currently registered for an ornamental foliar use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to difenoconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of greater than or equal to 170. Therefore, short-term aggregate exposure to difenoconazole is not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). The Agency believes residential pesticide handlers will be exposed to short-term duration (1-30 days) only. Therefore, intermediate and long-term aggregate risks are not of concern.

Difenoconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to difenoconazole through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*.The chronic dietary risk assessment is protective of carcinogenic effects of difenoconazole. The cancer NOAEL is higher than the chronic RfD.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to difenoconazole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method AG-575B) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350;

telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) for difenoconazole.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy) phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole, in or on almond at 0.05 parts per million (ppm), almond, hulls at 5.0 (ppm), and cantaloupe at 1.0 (ppm), cucumber at 1.0 (ppm), and watermelon at 1.0 (ppm). These tolerances expire and are revoked on December 31, 2011.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.475 is amended by adding text to paragraph (b) to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions*. Time-limited tolerances specified in the following table are established for residues of the fungicide difenoconazole in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/ revocation date
Almond	0.05	12/31/11
Almond, hulls	5.0	12/31/11
Cantaloupe	1.0	12/31/11
Cucumber	1.0	12/31/11
Watermelon	1.0	12/31/11

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[FR Doc. E8–17937 Filed 8–5–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0221; FRL–8367–5]

Dodine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dodine in or on bananas and peanuts. Agriphar S.A. c/o Ceres International LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 6, 2008. Objections and requests for hearings must be received on or before October 6, 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–2007–0221. 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:

Mary L. Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354 e-mail address: *waller.mary@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 those engaged in the following activities:

- 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 to provide 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 EPA's tolerance regulations at 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, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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–2007–0221 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 as required by 40 CFR part 178 on or before October 6, 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 this copy, identified by docket ID number EPA–HQ–OPP–2007–0221, 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. Petition for Tolerance

In the **Federal Register** of May 9, 2007 (72 FR 26372) (FRL–8121–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7185) by Agriphar S.A. c/o Ceres International LLC, 1087 Heartsease Dr., West Chester, PA 10382. The petition requested that 40 CFR 180.172 be amended by establishing tolerances for residues of the fungicide dodine, n-dodecylguanidine acetate, in or on bananas at 0.50 parts per million (ppm) and on peanuts at 0.03 ppm. That notice referenced a summary of the petition prepared by Agriphar S.A. c/o Ceres International LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has lowered the tolerance for peanuts from 0.03 ppm to 0.013 ppm. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of dodine on bananas at 0.50 ppm and on peanuts at

0.013 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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.

Technical dodine has moderate toxicity via the acute oral, dermal and inhalation routes of exposure. It is a severe eye irritant and causes severe dermal irritation; it is not a skin sensitizer. A definitive target organ has not been identified for dodine. The most common effects observed in subchronic and chronic oral and inhalation studies were decreases in food consumption, body weight and/or body weight gain. There is no evidence of neurotoxicity. Effects from dermal exposure were limited to dermal lesions. There is no evidence of increased susceptibility (quantitative or qualitative) in pups versus adults based on rat and rabbit developmental studies and the rat multi-generation reproduction study. A weight of evidence evaluation of the carcinogenic potential of dodine was performed, and based on the results it was concluded that there is no evidence of carcinogenicity after exposure to dodine. All toxicological endpoints chosen for risk assessment were based on body weight effects plus, in the case of inhalation, reduced food consumption.

Specific information on the studies received and the nature of the adverse effects caused by dodine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Dodine: Human Health Risk Assessment for Proposed Use Bananas and Peanuts*, pages 12 and 44 in docket ID number EPA–HQ–OPP–2007–0221.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for dodine used for human risk assessment can be found at *http://www.regulations.gov* in document *Dodine: Human Health Risk Assessment for Proposed Use Bananas and Peanuts*, page 17 in docket ID number EPA–HQ–OPP–2007–0221.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to dodine, EPA considered exposure under the petitioned-for tolerances as well as all existing dodine tolerances in (40 CFR 180.172). EPA assessed dietary exposures from dodine in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for dodine; therefore, a quantitative acute dietary exposure assessment is unnecessary

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 (CSFII). As to residue levels in food, EPA assumed that tolerance level residues were used for all crops. In terms of extent of usage, percent crop treated information was used for pome fruit, stone fruit, strawberry, pecan and walnut. One hundred percent crop treated was assumed for banana and peanut crops.

iii. *Cancer*. There was equivocal evidence of carcinogenicity in a mouse carcinogenicity study. However, based on a weight of evidence evaluation of the carcinogenic potential of dodine, the Agency concluded that there is no evidence of carcinogenicity after exposure to dodine. Factors bearing on this weight of the evidence determination are described in *Dodine: Human Health Risk Assessment for Proposed Use Bananas and Peanuts*, pages 20–21 in docket ID number EPA–HQ–OPP–2007–0221. EPA principally relied on the fact that the only evidence of cancer was a finding of statistically significant liver tumors (primarily adenomas) in female mice at the highest dose tested and no evidence of genotoxicity was found. There was no evidence of cancer in male mice or rats.

iv. *Percent crop treated (PCT) information*. Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition* a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition* b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition* c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The Agency used the following PCT information for the currently registered uses of dodine: 10% PCT for pears and quinces; 5% PCT for apples, crabapples, loquats, cherries, walnuts and pecans; and 1% PCT for strawberries, apricots, nectarines, peaches, and plums.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which dodine may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dodine in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of dodine. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of dodine for chronic exposures for non-cancer assessments are estimated to be 4.0 parts per billion (ppb) for surface water and <0.08 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.0 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Dodine is not registered for any specific use patterns that would result in residential exposure. However, a closely related chemical, dodecylguanidine hydrochloride (DGH) is used as an antimicrobial in household, industrial, and commercial products having residential and non-occupational exposure potential. DGH is used as a bacteriostat in paints and in absorbent material in disposal diapers. Dodine and DGH have similar chemical compositions and properties and are therefore considered bio-equivalents.

Residential painters may have short-term dermal and inhalation exposure as a result of using DGH treated paint. Infants < 1–year old may have short-, intermediate, and long term dermal exposure as a result of wearing DGH impregnated diapers. Inhalation exposure of infants and children is expected to be negligible. Although small children may have short-term post application oral exposure as a result of accidental ingestion of paint chips which contain DGH, the Agency does not believe that this would occur on a regular basis.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found dodine to share a common mechanism of toxicity with any other substances, and dodine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that dodine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) 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 on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence (quantitative or qualitative) of increased susceptibility and no residual uncertainties with regard to prenatal and/or postnatal toxicity following *in utero* exposure to rats or rabbits and prenatal and/or postnatal exposure to rats. In a rat developmental toxicity study, decreased body weight gain and food consumption were observed at ≥ 45 milligrams/kilograms/day (mg/kg/day) in maternal animals. No treatment-related effects were observed in fetuses up to 90 mg/kg/day. In a rabbit developmental toxicity study, dams demonstrated decreased food consumption at 80 mg/kg/day; however, this finding was not considered adverse. No treatment-related effects were observed in fetuses up to 80 mg/kg/day. In a 2–generation reproduction toxicity study in rats, decreases in parental body weight, body weight gain and food consumption were noted in both generations of rats at 53 mg/kg/day. Additionally at 53 mg/kg/day, the offspring of both generations demonstrated decreased body weight after postnatal day 4 which continued through pre-mating.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for dodine is complete.

ii. EPA concluded that dodine is not a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Possible neurological clinical signs (excessive salivation and hunched posture/hypoactivity) were observed in chronic studies in rats and mice but were not dose-related or statistically significant. Excessive salivation in the chronic study in dogs showed a treatment related dose response. However, the effect was not consistent with a neurological adverse effect since it was seen prior to dosing and was a persistent finding throughout the study. In addition, no evidence of neuropathology was observed in the available studies. Therefore, it was determined that there was no evidence of neurotoxicity. Based on the weight of evidence, the Agency determined that a developmental neurotoxicity study is not required.

iii. There is no evidence that dodine results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on Agency recommended tolerance-level residues and health-protective modeling assumptions. Although PCT estimates were used for crops with existing tolerances, the use of tolerance values for residue levels will likely overestimate actual exposures. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dodine in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by dodine.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, dodine is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dodine from food and water will utilize 20% of the cPAD for (children 1-2 years of age) the population group receiving the greatest exposure. Although dodine is not currently registered for any use patterns that would result in residential exposure, DGH is currently registered for uses that could result in long-term residential post-application exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to dodine through food and water with long-term residential post-application exposure to DGH. EPA has concluded that the combined long-term food, water, and dermal exposure for infants wearing diapers containing DGH treated material results in aggregate MOEs as follows: 300 when using a 5% transfer factor and 100 when using a 30% transfer factor. The Agency believes that a transfer factor of 30% is an overestimate of exposure in determining the amount of DGH transferred to infants from diapers based on a transfer study using dodine-treated paper exposed to extreme conditions. Additionally, the Agency has requested an impregnated diaper migration study as confirmatory data.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although dodine is not registered for any use patterns that would result in residential exposure, DGH is currently registered for uses that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to dodine through food and water with short- and intermediate-term residential exposures to DGH.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the short- and intermediate-term combined food, water, and residential exposures aggregated result in aggregate MOEs of 4,500 for adult males handling paint and 4,600 for adult females handling paint do not exceed the Agency's level of concern. EPA has concluded that the combined intermediate-term food, water, and dermal exposure for infants wearing diapers containing DGH treated material results in aggregate MOEs of 640 when using a 5% transfer factor and 120 when using a 30% transfer factor. For the reasons stated in Unit III.E.2. the Agency believes the risks do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Based on its weight of the evidence calculation, the Agency believes that there is no cancer risk associated with the use of dodine.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to dodine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits for dodine on bananas or peanuts.

C. Response to Comments

There was one favorable comment from Del Monte in favor of establishing the tolerance for use of dodine on bananas in order to control black sigatoka disease.

D. Revisions to Petitioned-For Tolerances

The proposed tolerance of 0.03 ppm for residues of dodine on peanuts was revised to 0.013 ppm because the tolerances were proposed in terms of dodine free base, and the Agency recalculated the residue results in terms of dodine using a molecular weight conversion factor of 1.258.

V. Conclusion

Therefore, tolerances are established for residues of dodine, n-dodecylguanidine acetate, in or on bananas at 0.50 ppm and on peanuts at 0.013 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.172 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.172 Dodine; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Banana	0.50
* * * *	*
Peanut	0.013
* * * *	*

* * * * *

[FR Doc. E8–17934 Filed 8–5–08; 8:45 am]

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Proposed Rules

Federal Register
Vol. 73, No. 152
Wednesday, August 6, 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 35

RIN 3150–AI26

[NRC–2008–0071]

Medical Use of Byproduct Material—Amendments/Medical Event Definitions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern medical use of byproduct material related to reporting and notifications of medical events (MEs) to clarify requirements for permanent implant brachytherapy. The proposed amendments would change the criteria for defining an ME for permanent implant brachytherapy from dose-based to activity-based; add a requirement to report, as an ME, any administration requiring a written directive (WD) if a WD was not prepared; clarify requirements for WDs for permanent implant brachytherapy; and make certain administrative and clarification changes.

These amendments regarding permanent implant brachytherapy are being proposed in response to several incidents involving therapeutic use of byproduct material. The proposed changes are based in part on recommendations from NRC's Advisory Committee on the Medical Use of Isotopes (ACMUI) and the NRC's Medical Radiation Safety Team. This proposed rule would affect all medical licensees that perform procedures using byproduct material that require completion of a WD.

DATES: The comment period expires October 20, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include the following number RIN 3150–AI26 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Web site in the Agencywide Documents Access and Management System (ADAMS) and at *http://www.regulations.gov.* Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. You may submit comments by any one of the following methods.

Electronically: Via the Federal eRulemaking Portal (Docket ID NRC–2008–0071) and follow instructions for submitting comments. Address questions about this docket to Carol Gallagher 301–415–5905; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, 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 PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0253, e-mail, *Edward.Lohr@nrc.gov.*

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I. Background

MEs are events that meet the criteria in 10 CFR 35.3045(a) or (b). These events are incidents in which the end result of a medical use of radioactive material is significantly different from what was planned. The ME could be a result of an error in calculating or

delivering a radiation dose, administering the wrong radionuclide or the wrong amount of the correct radionuclide, or other factors that are described in 10 CFR 35.3045.

Medical licensees are required to report MEs to the NRC and to notify the referring physician and the individual who is the subject of the ME so that: (1) NRC is aware of the events that led to the unplanned outcome, to determine what actions, if any, need to be taken to prevent recurrence; (2) other medical use licensees can be made aware of generic problems that result in MEs; and (3) patients and their physicians can make timely decisions regarding remedial and prospective health care.

For all medical uses, the variance criterion threshold for licensee submission of an ME report is an administered total dose (or dosage) that differs from the prescribed dose (or dosage), as defined in the WD, by more than 20 percent. The basis for this ME criterion reporting threshold is that variances of this magnitude may reflect quality assurance (QA) problems with the licensees' programs and also have the potential to result in harm to the patient. This 20 percent criterion, and others relating to reporting of MEs, appears in 10 CFR 35.3045. 10 CFR 35.40 establishes the requirements for a WD.

Several medical use events in 2003 involving therapeutic use of byproduct material, as well as advice from ACMUI, prompted the NRC to reconsider the appropriateness and adequacy of the regulations for MEs and WDs with regard to use of byproduct material that require completion of a WD. These medical use events included the implantation of brachytherapy sources in the wrong treatment site by several licensees. Other medical use events were not reportable as MEs because a WD was not prepared for use of byproduct material when a WD was required, and under current regulations such events are not reportable as MEs. In addition, there is no basis for determining whether an ME has occurred.

Another issue identified from these medical use events was that criteria for MEs for permanent implant brachytherapy are dose-based. Under current regulations, determining whether an ME has occurred for permanent implant brachytherapy is not done until the dose to the treatment site is determined, and often this is not done for some time after the procedure. ACMUI recommended that the criteria for defining most MEs for permanent implant brachytherapy be based on activity, which allows for a determination if an ME has occurred at the end of the procedure. Activity-based criteria allows for earlier recognition by the licensee that an ME has occurred and allows corrective actions to be taken sooner, resulting in an increase in the health and safety of the patient. Additionally, because the AU can control where the brachytherapy sources are implanted, activity-based ME criteria would result in fewer occurrences of MEs for permanent implant brachytherapies.

ACMUI, in considering the issue of defining MEs involving permanent implant brachytherapy, concluded that the 20 percent variance from the prescription criterion in the existing rule continued to be appropriate for permanent implant brachytherapy if both the prescription and the variance could be expressed in units of activity, rather than in units of dose, because there is no suitable clinically used dose metric available for judging the occurrence of MEs. The NRC staff agrees that, for permanent implant brachytherapy, total source strength (activity-based) is an acceptable alternative to total dose (dose-based) for the purpose of determining the occurrence of most MEs.

In March 2004, the NRC staff began its interactions with the ACMUI on issues relating to the adequacy of ME criteria for permanent implant brachytherapy. ACMUI established a Medical Event Subcommittee (MESC) in October 2004 to develop ACMUI recommendations on these issues. In June 2005, ACMUI received and approved, with modification, the recommendations prepared by the MESC.

The ACMUI recommendations included:

1. For all permanent implants, most MEs should be defined in terms of the total source strength implanted in the treatment site, not in terms of absorbed dose.

2. Any implant in which the total source strength implanted in the treatment site deviates from the WD by more than 20 percent (in either direction) should be classified as an ME.

3. Implants in which more than 20 percent of the total source strength documented in the preimplantation WD is implanted in tissue or organs adjacent to the treatment site [within 3 centimeters (cm) (1.2 in.) of the treatment site boundary] should be classified as MEs.

4. Implants should be classified as MEs if:

a. Sealed radioactive sources (seeds) are implanted in distant [beyond 3 cm (1.2 in.) from the treatment site boundary] tissue or organs;

b. The excess dose to the distant tissue or organ exceeds 0.5 Sv (50 rem); and

c. The excess dose to the tissue or organ is at least 50 percent greater than the dose that would have been delivered if the seeds had been implanted in the correct tissue volume.

5. An implant is an ME if the dose calculations used to determine the total source strength documented in the WD, to achieve the authorized user's intention for absorbed dose to the treatment site, are in error by more than 20 percent in either direction.

6. The AU is to complete any revisions (to the WD for permanent implants) to account for any medically necessary plan adaptations before the patient is released from licensee control after the implantation procedure and immediate post-operative period.

7. Seeds that were correctly implanted but subsequently migrated are excluded as grounds for any ME.

ACMUI meetings on these issues were noticed in the **Federal Register** and open to the public. Members of the public participated in discussions of these matters during the meetings.

Based on the ACMUI and NRC staff recommendations, the Commission directed the NRC staff in a Staff Requirements Memorandum (SRM–SECY–05–0234, February 15, 2006) to:

(1) Retain the 20 percent delivered dose variation in 10 CFR 35.3045(a) as an appropriate threshold for ME reporting for all medical use modalities except permanent implant brachytherapy; and

(2) Develop a proposed rule to modify both the WD requirements in 10 CFR 35.40 and the ME reporting requirements in 10 CFR 35.3045 for permanent implant brachytherapy medical use to convert from dose-based to activity-based.

II. Discussion

A. What Action Is the NRC Taking?

The NRC is proposing to modify 10 CFR 35.40 and 35.3045 to establish separate ME criteria and WD requirements for permanent implant brachytherapy. This proposed amendment would add as an ME a criterion for the failure to prepare a WD when required. Additionally, the proposed rule would make minor administrative and clarification changes.

Section 35.3045 would be restructured to create separate paragraphs specific to ME criteria for permanent implant brachytherapy (such as seeds and microspheres). Regulations for all other uses of byproduct material

requiring a WD (such as temporary implant brachytherapy and radiopharmaceuticals) would be left combined. Additionally, minor changes would also be made to the language in the regulations to accommodate this proposed revision.

B. Who Would This Action Affect?

This proposed rule would affect all NRC and Agreement State medical licensees who perform procedures using byproduct material that require completion of a WD.

C. What Steps Did NRC Take To Involve the Public in This Proposed Rulemaking?

The NRC took several initiatives to enhance stakeholder involvement and to improve efficiency during the rulemaking process. Public input was solicited on the preliminary draft rule language via *http://www.regulations.gov* (Docket ID # NRC–2008–0071) on February 8, 2008, and noticed in the **Federal Register** on February 15, 2008. Additionally, the preliminary draft rule language and information on how to provide input was sent out on the NRC's Medical List Server on February 8, 2008. All public input on the preliminary draft rule language received was considered in formulating this proposed rule.

After consideration of public input on the preliminary language, the NRC revised the proposed language related to information required on a preimplantation WD and made other clarifications to the proposed regulations. The NRC also received comments that concerned the technical basis for this rulemaking. These comments will be considered with all other public comments received during the comment period on this proposed rule.

In addition, this proposed rule is based partly on recommendations from ACMUI. The issues were addressed in ACMUI's briefing to the Commissioners on March 2, 2004, and discussed in its March 2004 meeting. As a result of ACMUI's briefing, the Commission directed the NRC staff in SRM–M040302B, dated March 16, 2004, to provide recommendations concerning the current ME definition.

A MESC was established by ACMUI at its October 2004 meeting to develop recommendations on these issues. ACMUI subsequently considered these issues: (1) As the principal subject of its mid-cycle teleconference in January 2005 and during a March 2005 teleconference; (2) during the ACMUI spring meeting in April 2005; and (3) as the principal subject of a teleconference in June 2005. MESC's recommendations were accepted by ACMUI and forwarded to the NRC on July 19, 2005.

ACMUI meetings on these issues were noticed in the **Federal Register** and open to the public. Members of the public participated in discussions of these matters during the meetings.

D. Why Change the ME Criteria for Permanent Implant Brachytherapy?

Currently, the ME criteria for permanent implant brachytherapy are dose-based. The proposed rule would define ME criteria in terms of the total source strength (activity-based) rather than dose or dosage (dose-based). This change focuses on what the AU can control; namely, into which organ or treatment site the sources are implanted, instead of the absorbed dose distribution, over which AU control is limited. Additionally, for the most commonly practiced forms of image-guided source implantation, definitive dose distributions may not be available until several weeks after completion of the procedure. On the other hand, the number of sources implanted in the treatment site (and hence total source strength) can be assessed before releasing the patient from licensee control (e.g., via intraoperative imaging for prostate implants).

Criteria for defining an ME for permanent implant brachytherapy would address situations that are specific to permanent implant brachytherapy. Currently, the criteria for defining an ME for permanent implant brachytherapy are incorporated into requirements for temporary implant brachytherapy and therapeutic use of unsealed byproduct materials.

E. Would All MEs for Permanent Implant Brachytherapy Be Assessed in Terms of Activity?

The proposed rule would allow for a limited situation in which a dose-based criterion is retained in assessing if an ME occurred in permanent implant brachytherapy. Specifically, prior to implantation, an AU prescribes his or her treatment intention in units of absorbed dose to the treatment site, and the intended dose along with the corresponding calculated total source strength is documented in the preimplantation WD. However, an error may be made in the calculations used to determine the total source strength that will deliver the desired dose. As a result, although the prescribed total source strength is delivered, the intended dose to the treatment site is not achieved. If an ME were assessed solely in terms of whether the correct source strength specified in the preimplantation WD was implanted, treatment planning errors, many of which could adversely affect the patient's clinical outcome, would not be subject to regulatory oversight. Therefore, as recommended by ACMUI, the proposed rule would provide in § 35.3045(a)(3) that an administration is an ME if an error in the calculations used to determine the total source strength documented in the preimplantation WD results in a delivered dose differing by more than 20 percent from the intended dose to the treatment site.

F. Why Add an ME Criterion for Failure To Prepare a WD When Required?

Under current regulations, a WD must be dated and signed by an AU before the administration of I–131 sodium iodine greater than 1.1 megabecquerels (30 microcuries), any therapeutic dosage of unsealed byproduct material, or any therapeutic dose of radiation from byproduct material. Prescribed dosage and dose are defined differently in § 35.2.

The NRC has determined that all therapeutic and certain diagnostic procedures involving radioactive material, sealed or unsealed, must have WDs to ensure that the health and safety of the patient is protected. Unintended events have occurred at licensed facilities in which therapeutic doses requiring a WD have been administered to patients without a WD. These incidents were not reportable or subject to the requirements of the current regulations for determining if an ME has occurred because a WD was not prepared. Under the current regulations, if a WD is not prepared for therapeutic procedures that prescribe dose or dosage, then licensees do not have a basis for determining if an ME has occurred, nor is there a requirement to report such an event as an ME to the NRC. Adding a criterion that an incident must be reported as an ME if there has been a failure to prepare a WD when required would ensure that the health and safety of medical patients are protected.

G. Can the AU Modify the Preimplantation WD During the Administration of Brachytherapy?

No. Making changes to the preimplantation WD would constitute revising the WD. As is also provided by the current regulations, revisions to the WD must be made before implantation begins. The reason the preimplantation WD cannot be changed is that the preimplantation WD serves as the basis for determining if an ME has occurred.

However, the current regulations specify that after implantation but before completion of the procedure, certain information required by the regulations must be added to the WD. The current regulations do not clearly define ''completion of the procedure'' for permanent implant brachytherapy. As a result, there has been confusion as to when the required information must be added to the WD. The proposed rule would clarify that this information must be added after administration, but before the patient leaves the post-treatment recovery area.

The requirement in the current regulation to document the treatment site and nuclide on the WD after administration for permanent implant brachytherapy would be removed because this information is already required by the preimplantation WD and modifying these two items after the procedure has begun would constitute a revision of the WD. A requirement for the AU to sign the WD after administration but before the patient leaves the post-treatment recovery area would be added to ensure that the information added to the WD has been reviewed and approved by the AU. This change would clarify the intent of the current regulation that the AU must approve all required information on the WD.

H. Where Does the 20 Percent Deviation From the Preimplantation WD Originate?

ACMUI, in its recommendations to the NRC, stated that ''any implant in which the total source strength implanted in the treatment site deviates from the written directive by more than 20 percent (in either direction) should be classified as an ME.'' The rationale for this recommendation was that the AU should be afforded the option of positioning up to 20 percent of the total source strength for seed implantation into tissue or organs adjacent to the treatment site. For example, in treating the prostate with permanent implant brachytherapy, a small number of radioactive seeds need to be placed 2–10 millimeters outside the prostate in order to provide adequate dosimetric coverage. In addition, the 20 percent latitude also accounts for variations in treatment-site definition, difficulties in visualizing the target organ by intraoperative imaging, and other phenomena that contribute to uncertainty in estimating the fraction of seeds implanted in the treatment site.

The 20 percent dose threshold is comparable to the variation encountered in normal medical practice, due mainly to the limited control the AU has over the positioning of seeds and hence the dose delivered by permanent implants. Raising the relative absorbed dose threshold (e.g., to 50 percent), would reduce the number of clinically acceptable implants deemed to be MEs, but would not take into consideration implants that constitute technical errors with quality assurance (QA) significance that could relate to health issues.

I. Would One Sealed Source Implanted Beyond the 3 cm Boundary Constitute an ME?

Yes, with the exception of sealed sources that migrate after implantation, a single brachytherapy source implanted beyond 3 cm from the outside boundary of the treatment site would constitute an ME. In its recommendations to the NRC (SECY–05–0234, December 27, 2005, Enclosure 2), ACMUI distinguished between two scenarios for defining MEs for implants outside the treatment site.

The first scenario relates to sealed sources permanently implanted in tissue or organs adjacent to the treatment site. In this case, ACMUI recommended that up to 20 percent of the total source strength documented in the preimplantation WD be allowed in the adjacent area before being considered an ME. ACMUI concluded that ''a 20 percent threshold strikes a reasonable balance between permitting seed implantation outside of the target to boost peripheral doses [a medically legitimate objective] and detecting gross mispositioning of seeds into an adjacent organ rather than the intended treatment site.'' ACMUI recommended that 3 cm from the outside boundary of the treatment site be used to define the adjacent area.

The second scenario relates to sealed sources permanently implanted in tissue or organs beyond the adjacent area (3 cm) of the treatment site. In this case, ACMUI concluded that tissues and organs that are more than 3 cm from the outside treatment site boundary would be considered distant sites and that any sealed source implanted beyond the 3 cm boundary would constitute an ME. Both of ACMUI's recommendations have been incorporated into this proposed rule.

J. What Are the New Information Requirements for a Brachytherapy WD?

Information that is required in a WD is crucial to ensuring that a patient receives the appropriate treatment. Therefore, based on recommendations from ACMUI, the specific WD requirements for permanent implant brachytherapy would be changed from dose-based to activity-based.

The permanent implant brachytherapy WD requirements would include specifying at what point a permanent implant brachytherapy procedure is considered to be complete. ACMUI, in its recommendations to the NRC, noted that ''completion of the procedure'' is not currently defined in Part 35.

Requiring the AU to sign the WD after administration but before the patient leaves the post-treatment area would ensure that the information added to the WD has been reviewed and approved by the AU. This change would clarify the intent of the current regulation that the AU approve all required information on the WD.

K. Has NRC Prepared a Cost-Benefit Analysis of the Proposed Actions?

The NRC staff has prepared a draft Regulatory Analysis for this rulemaking. This analysis shows a reduction in cost by approximately $5,211 annually from this proposed rule. More detailed information on this subject is in Section XI of this document.

L. Has NRC Evaluated the Paperwork Burden to Licensees?

This proposed rule would contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The NRC staff has estimated the impact this proposed rule would have on reporting and recordkeeping requirements of NRC and Agreement State licensees. The NRC seeks public comment on these estimates of reduced burden to licensees from the proposed rule. More information on this subject is in section IX, Paperwork Reduction Act Statement, of this document.

M. What Should I Consider as I Prepare My Comments to NRC?

Commenters may wish to consider the following in providing their comments:

(1) Identify the rulemaking (RIN 3150–AI26);

(2) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes;

(3) Describe any assumptions and provide any technical information and/or data that you used;

(4) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

(5) Provide specific examples to illustrate your concerns, and suggest alternatives;

(6) Explain your views as clearly as possible;

(7) Make sure to submit your comments by the comment period deadline identified; and

(8) See Section VI of the Supplemental Information for the request for comments on the use of plain language, Section IX for the request for comments on the information collection, and Section XI for the request for comments on the draft regulatory analysis.

III. Discussion of Proposed Amendments by Section

1. Section 35.40 Written Directives

This section would be amended to create specific requirements for a WD for permanent implant brachytherapy. The section would be restructured to accommodate the specific requirements for a WD for permanent implant brachytherapy. Additionally, there would be an administrative change to the paragraph numbering.

2. Section 35.3045 Report and Notification of a Medical Event

This section would be amended to separately establish the criteria for MEs involving permanent implant brachytherapy. The proposed amendment would change the requirements for defining most MEs for permanent implant brachytherapy from dose-based to activity-based. A requirement would be added to report, as an ME, any administration requiring a WD if a WD was not prepared. In addition, the NRC is proposing to make certain administrative and clarification changes including an update to reflect the new NRC Operations Center phone number.

IV. Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR Part 35 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997 (62 FR 46517), specific requirements within this rule should be adopted by Agreement States for purposes of compatibility or because of health and safety significance. Implementing procedures for the Policy Statement establish specific categories which have been applied to categorize the requirements in Part 32 and 35. A Compatibility Category ''A'' designation means the requirement is a basic radiation protection standard or deals with related definitions, signs, labels, or terms necessary for a common understanding of radiation protection principles. Compatibility Category ''A'' designated Agreement State requirements should be essentially identical to those of the NRC. A Compatibility Category ''B'' designation means the requirement has significant transboundary implications. Compatibility Category ''B'' designated Agreement State requirements should be essentially identical to those of the NRC. A Compatibility Category ''C'' designation means the essential objectives of the requirement should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed in the Agreement State requirement need not be the same as NRC provided the essential objectives are met. A Compatibility Category ''D'' designation means the requirement does not have to be adopted by an Agreement State for purposes of compatibility. The Compatibility Category Health & Safety (H&S) identifies program elements that are not required for purposes of compatibility, but have particular health and safety significance. States should adopt the essential objectives of such program elements in order to maintain an adequate program.

SUMMARY OF NRC RULES WITH COMPATIBILITY OR HEALTH AND SAFETY DESIGNATIONS UNDER THE PROPOSED RULE COVERING 10 CFR PART 35

Section and paragraph	Section title
Category C	
§ 35.3045	Report and notification of a medical event.
Category D	
§ 35.40(c)	Written directives.
Category H&S	
§ 35.40(b)	Written directives.

VI. Plain Language

The Presidential Memorandum ''Plain Language in Government Writing'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would amend 10 CFR 35.40 and 35.3045 to revise the criteria for defining MEs and clarify requirements for WDs for permanent implant brachytherapy. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: Part 35 Medical Use of Byproduct Material—Amendments/Medical Event Definitions.

The form number if applicable: N/A.

How often the collection is required: As events occur. Historically, the number of MEs reported from the NRC and Agreement State medical licensees have averaged 35 annually.

Who will be required or asked to report: NRC and Agreement State medical licensees who perform therapeutic procedures using byproduct material.

An estimate of the number of annual responses: −2 (reduction of one from NRC medical licensees and one from Agreement State licensees).

The estimated number of annual respondents: −2 (reduction of one from NRC medical licensees and one from Agreement State licensees).

An estimate of the total number of hours needed annually to complete the requirement or request: Reduction of −20.2 hours (10.1 hours per response).

Abstract: The NRC is proposing to amend 10 CFR 35.40 and 35.3045 to revise the criteria for defining MEs and clarify requirements for WDs for permanent implant brachytherapy. The proposed amendments would change the criteria for defining an ME for permanent implant brachytherapy from dose-based to activity-based; add a requirement to report, as an ME, any administration requiring a WD if a WD was not prepared; clarify requirements for WDs for brachytherapy; and would make certain administrative and clarification changes.

These proposed amendments regarding permanent implant brachytherapy are based in part on ACMUI recommendations and on the NRC's Medical Radiation Safety Team recommendations in response to several incidents involving therapeutic use of byproduct material. This proposed rule would affect all medical licensees that perform therapeutic procedures using byproduct material.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by September 5, 2008 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV* and to the Desk Officer, Nathan J. Frey, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0010), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *Nathan_J._Frey@omb.eop.gov* or comment by telephone at (202) 395–7345.

Public Protection Notification

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

X. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation and has included it in this document. The analysis examines the costs and benefits of the alternatives considered by the Commission.

1. Introduction

The NRC proposes to amend its regulations to revise the criteria for defining MEs and clarify requirements for WDs for permanent implant brachytherapy. The rule would amend 10 CFR 35.40 and 35.3045. The proposed amendments would change the criteria for defining an ME for permanent implant brachytherapy from dose-based to activity-based; would add a requirement to report, as an ME, any administration requiring a WD if a WD was not prepared; would clarify requirements for WDs for brachytherapy, and would make certain administrative and clarification changes.

This proposed rule regarding permanent implant brachytherapy is based in part on the recommendations from ACMUI and the NRC's Medical Radiation Safety Team in response to several incidents involving brachytherapy. The issues raised by these incidents were discussed in several ACMUI public meetings. Public input was solicited during the development of the proposed rule language.

Several medical use events involving therapeutic use of byproduct material in 2003, as well as advice from ACMUI, prompted the NRC to reconsider the appropriateness and adequacy of the regulations for MEs and WDs with regard to therapeutic use of byproduct material.

1.1 Description of the Proposed Action

The proposed rule would amend § 35.3045 to change the criteria for defining an ME for permanent implant brachytherapy in terms of total source strength implanted rather than in terms of absorbed dose. The proposed rule does retain a limited dose-based ME criterion as recommended by ACMUI. This criterion applies if the calculations used to determine the total source strength documented in the WD are in error by more than 20 percent. As in the current regulations, source migration would be specifically excluded as grounds for treatment-site-accuracy MEs. One additional ME criterion would be added that would require a medical licensee to report, as an ME, any administration requiring a WD if a WD was not prepared.

Section 35.40 would be amended to clarify requirements for WDs required for permanent implant brachytherapy for before and after administration. A detailed analysis of this amendment is included in Section 4 of this Regulatory Analysis.

The proposed rule would also make certain administrative and clarification changes. These changes include updating the phone number for the NRC Operations Center, revising the numbering of various paragraphs in §§ 35.40 and 35.3045, and other minor clarifications.

1.2 Need for the Proposed Action

The change from a dose-based to an activity-based criterion for establishing criteria for MEs for permanent brachytherapy implants is proposed because the current dose-based criteria do not adequately address MEs for permanent brachytherapy implants.

Several medical use events involving therapeutic use of byproduct material in 2003, as well as advice from ACMUI, prompted the NRC to reconsider the appropriateness and adequacy of the regulations for MEs and WDs with regard to use of byproduct material that require completion of a WD. These medical use events included the implantation of brachytherapy sources in the wrong treatment site by several licensees. Other medical use events were not reportable as MEs because a WD was not prepared for use of byproduct material when a WD was required, and under current regulations such events are not reportable as MEs. In addition, there is no basis for determining whether an ME has occurred.

Another issue identified from these medical use events was that criteria for MEs for permanent implant

brachytherapy are dose-based. Under current regulations, determining whether an ME had occurred for permanent implant brachytherapy was not done until the dose to the treatment site was determined and often was not done for some time after the procedure. ACMUI recommended that the criteria for defining most MEs for permanent implant brachytherapy be based on activity which allows for a determination if an ME has occurred at the end of the procedure. Activity-based criteria allow for earlier recognition by the licensee that an ME has occurred and allow corrective actions to be taken sooner, which results in an increase in the health and safety of the patient. Additionally, because the AU can control where the brachytherapy sources are implanted, activity-based ME criteria would result in less occurrences of MEs for permanent implant brachytherapies.

Information required on a WD is crucial to ensure that a patient receives the appropriate administration. Changing from a dose-based to activity-based criteria for defining most MEs for permanent implant brachytherapy would also entail changing the information required in a WD.

2. Technical Basis for the Proposed Rule

For all medical uses, the variance criterion threshold for licensee submission of an ME report is an administered total dose (or dosage) that differs from the prescribed dose (or dosage), as defined in the WD, by more than 20 percent. The basis for this ME criterion reporting threshold is that variances of this magnitude may reflect quality assurance (QA) problems with a licensee's program and also have the potential to harm the patient. This 20 percent criterion, and others relating to reporting of MEs, appears in 10 CFR 35.3045. 10 CFR 35.40 defines the requirements for a WD.

Several medical use events involving therapeutic use of byproduct material that require completion of a WD in 2003, as well as advice from the ACMUI, prompted the NRC to reconsider the appropriateness and adequacy of the regulations for MEs and WDs. ACMUI, in considering the issue of defining MEs involving permanent implant brachytherapy, concluded that the 20 percent variance from the prescription criterion in the existing rule continued to be appropriate for permanent implant brachytherapy if both the prescription and the variance could be expressed in units of activity, rather than in units of dose, because there is no suitable clinically used dose metric available for judging the occurrence of MEs. The NRC staff agreed that, for permanent implant brachytherapy, total source strength (activity-based) is an acceptable alternative to total dose (dose-based) for the purpose of determining the occurrence of most MEs.

In March 2004, the NRC staff began its interactions with the ACMUI on the issues related to the adequacy of ME definitions. ACMUI established a MESC in October 2004 to develop ACMUI recommendations on these issues. In June 2005, ACMUI received and approved, with modification, the recommendations prepared by the MESC. ACMUI meetings on these issues were noticed in the **Federal Register** and open to the public. Members of the public participated in discussions of these matters during the meetings.

Based on the ACMUI and NRC staff recommendations, the Commission directed the NRC staff in a Staff Requirements Memorandum (SRM–SECY–05–0234, February 15, 2006) to (1) retain the 20 percent delivered dose variation in 10 CFR 35.3045(a), as an appropriate threshold for ME reporting for all medical use modalities except permanent implant brachytherapy; and (2) develop a proposed rule to modify both the WD requirements in 10 CFR 35.40 and the ME reporting requirements in 10 CFR 35.3045 for permanent implant brachytherapy medical use to convert from dose-based to activity-based.

3. Identification of Alternative Approaches

The NRC considered two alternatives for the proposed rule:

Alternative 1: No-Action

Under this alternative, the Commission would make no changes to current regulations. This could result in the continued delay in recognizing MEs related to implant brachytherapy by medical licensees. Corrective actions based on MEs might not be taken in a timely manner which could affect the health and safety of patients.

Alternative 2: Revise the Criteria for Defining MEs and Clarify Requirements for WDs for Permanent Implant Brachytherapy

This alternative would amend the regulations as described in section 1.1 and 1.2 of this Regulatory Analysis and is the preferred alternative for reasons stated in section 1.2.

4. Analysis of Values and Impacts

This section examines the values (benefits) and impacts (costs) expected to result from NRC's proposed rule.

Report and Notification of a Medical Event (§ 35.3045)

The NRC staff, based on a review of historic reporting of MEs, anticipates a decrease in reported MEs from the use of the new ME criteria for permanent implant brachytherapy by approximately four per year. This would result in a reduction of cost by approximately $10,423.

Based on NRC staff estimates, the number of MEs would increase by approximately two per year from the new reporting requirements when a WD is not prepared when required. This would result in an increase of cost by approximately $5,211.

The net result is that the proposed amendment to § 35.3045 would decrease cost to medical licensees by $5,211.

Written Directives (§ 35.40)

INFORMATION REQUIRED TO BE DOCUMENTED ON A WRITTEN DIRECTIVE FOR PERMANENT IMPLANT BRACHYTHERAPY

Current regulations	Proposed rule change
(Before Implantation)	(Before Implantation *)
Date &signature of the Authorized User	Date & signature of the Authorized User
Treatment site	Treatment site
Radionuclide	Radionuclide
Dose	Intended dose
	Calculated total source strength
(After Implantation)	(After Implantation *)
Total source strength	Total source strength
Number of sources implanted	Date & signature of the Authorized User

INFORMATION REQUIRED TO BE DOCUMENTED ON A WRITTEN DIRECTIVE FOR PERMANENT IMPLANT BRACHYTHERAPY—Continued

Current regulations	Proposed rule change
(After Implantation)	(After Implantation *)
Treatment site Radionuclide	

* The proposed rule language uses ''administration'' in lieu of ''implantation.''

As noted in the table above, the information required on a WD for permanent implant brachytherapy under the proposed rule does not differ greatly from the current regulatory requirements. The proposed rule would add the requirement of documenting the calculated total source strength in the WD before implantation. Source strength must be known before a dose can be calculated; therefore this requirement is not a new burden on the medical licensee. Also, requiring the source strength to be documented in the WD would be an insignificant change. The term ''dose'' in the current language means ''intended dose'' and is a clarification in the proposed rule language and would not constitute a new requirement.

Under both the current regulations and the proposed rule the WD must be completed after implantation. The requirement under the proposed rule to have the AU sign and date the WD when the post implantation information is documented would be an insignificant change for the medical licensee.

The result of the proposed amendment to § 35.40 is that there would be a negligible increase of burden or cost to the medical licensees.

The characteristics, in both the public and private sectors that would be affected by the proposed rule, are listed below. These are called ''attributes,'' and are based on the list of potential attributes provided by NRC in Chapter 5 of its Regulatory Analysis Technical Evaluation Handbook. Only the following attributes would be impacted by this proposed rule:

Industry Implementation. The NRC anticipates that there would be a reduction in the number of MEs reported under the new criteria for permanent implant brachytherapy and an increase in the number of MEs reported from the new reporting requirement when a WD is not prepared when required, resulting in a decrease in the total number of MEs reported. The change in information required to be documented in the WD for permanent implant brachytherapy would not place any significant additional burden on the medical licensees. Therefore, the industry would have a decrease in expenses from implementation of this proposed rule.

NRC Implementation. NRC would incur one-time costs to support development of the rule following publication in the **Federal Register** through publication of the final rule. NRC may also need to revise guidance documentation during the implementation time period.

Other Government. Agreement State governments may incur a one-time cost for adopting this proposed rule, if it becomes a final rule, into their State regulations governing the use of radioactive material. Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997 (62 FR 46517), specific requirements within this rule should be adopted by Agreement States for purposes of compatibility or because of health and safety significance. Implementing procedures for the Policy Statement establish specific categories which have been applied to categorize the requirements in Parts 35. The proposed rule would amend the following sections and paragraphs that are covered under the Policy Statement:

1. § 35.3045, which has a Compatibility Category C designation under the Policy Statement. A Compatibility Category ''C'' designation means the essential objectives of the requirement should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed in the Agreement State requirement need not be the same as NRC provided the essential objectives are met.

2. § 35.40(c), which has a Compatibility Category D designation under the Policy Statement. A Compatibility Category ''D'' designation means the requirement does not have to be adopted by an Agreement State for purposes of compatibility.

3. § 35.40(b), which has a Compatibility Category Health & Safety (H&S) designation under the Policy Statement. The Compatibility Category H&S identifies program elements that are not required for purposes of compatibility, but have particular health and safety significance. States should adopt the essential objectives of such program elements in order to maintain an adequate program.

Each Agreement State had its own unique procedure it must follow to amend its State regulations governing the use of radioactive material. The NRC recognizes that there is a cost for Agreement States to amend their State regulations to adopt this proposed rule if it becomes a final rule. On average each State would expend 0.1 FTE to amend their State regulation, which, based on $76,000 per FTE, would equal $7,600 per State. With 34 Agreement States, the total cost would be $258,400.

The Agreement States are required to report MEs that occur under their license jurisdiction to the NRC. As noted in Section 4 of this Regulatory Analysis, the proposed amendment to § 35.3045 would decrease the cost to the medical licensees and the proposed amendment to § 35.40 would have a negligible increase of burden or cost to the medical licensees. Also, there would be no additional burden to the Agreement States for licensing or inspections.

Other Considerations. Public confidence in NRC may be affected positively by the rule. The public may have more confidence in NRC's program for protection of patient health and safety as a result of clarifying the specific criteria for MEs resulting from permanent implant brachytherapy.

5. Decision Rationale and Implementation

The assessment of costs and benefits discussed previously leads the NRC to the conclusion that the proposed rule, if implemented, would not have a significant economical impact on medical licensees who are performing therapeutic procedures using byproduct material. The proposed rule would make it easier for AUs to determine if MEs have occurred, thereby facilitating timely reporting and other appropriate actions and therefore, increase patient health and safety. Requiring licensees to report, as an ME, when a WD is not prepared when required would increase

patient health and safety as well as ensure the proper documentation of the procedure.

The revised requirements for a WD for permanent implant brachytherapy would make determining if an ME has occurred during the procedure easier, therefore improving the reliability of ME recognition and reporting. Requiring the AU to sign and date the WD at the end of the procedure would ensure that any changes made during the procedure were authorized by the AU.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

After publication of this proposed rule in the **Federal Register** and consideration and resolution of public comments, a final rule will be published.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 35.40, paragraphs (b)(5) and (c) are revised, paragraph (b)(6) is redesignated as paragraph (b)(7), and a new paragraph (b)(6) is added to read as follows:

§ 35.40 Written directives.

* * * * *

(b) * * *

(5) For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose;

(6) For permanent implant brachytherapy:

(i) Before administration (preimplantation): the treatment site, the radionuclide, the intended dose to the treatment site and other sites as necessary, and the corresponding calculated total source strength required; and

(ii) After administration but before the patient leaves the post-treatment recovery area: the total source strength implanted, the date, and signature of AU; or

* * * * *

(c)(1) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(2) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within 48 hours of the oral revision.

* * * * *

3. In § 35.3045, paragraph (a) and the footnote to paragraph (c) are revised to read as follows:

§ 35.3045 Report and notification of a medical event.

(a) A licensee shall report as a medical event any administration requiring a written directive if a written directive was not prepared or any event, except for an event that results from patient intervention, in which—

(1) The administration of byproduct material or radiation from byproduct material, except permanent implant brachytherapy, results in—

(i) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin; and

(A) The total dose delivered differs from the prescribed dose by 20 percent or more;

(B) The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or

(C) The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.

(ii) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin from any of the following—

(A) An administration of a wrong radioactive drug containing byproduct material or the wrong radionuclide for a brachytherapy procedure;

(B) An administration of a radioactive drug containing byproduct material by the wrong route of administration or by use of the wrong applicator in a brachytherapy procedure;

(C) An administration of a dose or dosage to the wrong individual or human research subject;

(D) An administration of a dose or dosage delivered by the wrong mode of treatment; or

(E) A leaking sealed source.

(iii) A dose to the skin or an organ or tissue other than the treatment site that exceeds by 0.5 Sv (50 rem) and by 50 percent or more the dose expected to that site if the administration had been carried out as specified in the written directive.

(2) The administration of byproduct material or radiation from byproduct material for permanent implant brachytherapy (excluding sources that were implanted in the correct site but migrated outside the treatment site) results in—

(i) The total source strength administered differing by 20 percent or more from the total source strength documented in the preimplantation written directive.

(ii) The total source strength administered outside the treatment site and within 3 cm (1.2 in) of the boundary of the treatment site exceeding 20 percent of the total source strength documented in the preimplantation written directive.

(iii) Brachytherapy source(s) implanted beyond 3 cm (1.2 in) from the outside boundary of the treatment site, except for brachytherapy source(s) at

other sites noted in the preimplantation written directive.

(iv) A dose to the skin or an organ or tissue other than the treatment site exceeding by 0.5 Sv (50 rem) and by 50 percent or more the dose expected to that site if the administration had been carried out as specified in the preimplantation written directive.

(v) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin from any of the following—

(A) An administration of the wrong radionuclide;

(B) An administration by the wrong route of administration;

(C) An administration to the wrong individual or human research subject;

(D) An administration delivered by the wrong mode of treatment; or

(E) A leaking sealed source.

(3) An error in calculating the total source strength for permanent implant brachytherapy documented in the preimplantation written directive that resulted in an administered total source strength that delivered a dose differing by more than 20 percent from the intended dose to the treatment site.

* * * * *

(c) * * *

[3] The commercial telephone number of the NRC Operations Center is (301) 816–5100.

* * * * *

Dated at Rockville, Maryland, this 31st day of July 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–18014 Filed 8–5–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0834; Directorate Identifier 2007–SW–78–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109A and A109A II Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a superseding airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) model helicopters. This proposed AD results from a revised mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The aviation authority of Italy, with which we have a bilateral agreement, reports that the previous MCAI should not apply to newly redesigned and improved tail rotor blades. This action proposes the same inspection requirements as the current AD but would limit the applicability to only three part-numbered tail rotor blades. The proposed AD would require actions that are intended to prevent fatigue failure of a tail rotor blade (blade), loss of a tail rotor, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by September 5, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0834; Directorate Identifier 2007–SW–78–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Ente Nazionale Per L'Aviazione Civile (ENAC), which is the Aviation Authority for Italy, has issued an MCAI in the form of ENAC AD No. 2006–001, Revision 1, dated January 3, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the Italian-certificated product. The aviation authority of Italy, with which we have a bilateral agreement, reports that this MCAI cancels Registro Aeronautico Italiano AD 1999–325, which was our basis for issuing FAA AD 99–27–12. They state that the AD should not apply to certain newly redesigned and improved blades. You may obtain further information by examining the MCAI and the service information in the AD docket.

Relevant Service Information

Agusta has issued Bollettino Tecnico No. 109–110, Revision A, dated December 12, 2005 (BT). The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the BT. Agusta advises that the inspection for cracks should only apply to blades, part number (P/N) 109–0132–02–11/–15/–121 with 400 or more flight hours and not to new blade, P/N 109–0132–02–125, because it was designed and certified with improved structural characteristics. The BT continues to stress the importance of performing a detailed inspection of the subject blades for cracks already prescribed in Telegraphic Technical Bulletin No. 109–5, dated January 27, 1987.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Italy, and is

approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

Differences Between the AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. The MCAI states to comply with the manufacturer's BT. This AD differs from the incorporated portions of the BT as follows:

(1) We refer to the compliance time as hours time-in-service rather than flight hours.

(2) We do not require you to contact the manufacturer.

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

Costs of Compliance

We estimate that this proposed AD would affect 40 helicopters of U.S. registry. We also estimate that it would take about 2.5 work-hours to inspect the affected blades of each helicopter at an average labor rate of $80 per work-hour. The cost of performing the daily magnifying glass visual inspection is negligible. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $48,000, assuming 6 dye-penetrant inspections a year, the cost of performing the daily magnifying glass inspection is negligible, and no cracked blades are found.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing AD 99–27–12, Amendment 39–11493, Docket No. 99–SW–91–AD (65 FR 346, January 5, 2000), and by adding the following new AD:

Agusta S.p.A.: Docket No. FAA–2008–0834; Directorate Identifier 2007–SW–78–AD.

Comments Due Date

(a) We must receive comments by September 5, 2008.

Affected ADs

(b) This AD supersedes AD 99–27–12, Amendment 39–11493, Docket No. 99–SW–91–AD.

Applicability

(c) This AD applies to Model A109A and A109A II helicopters, with a tail rotor blade (blade), part number (P/N) 109–0132–02–11, –15, and –121, with 400 or more hours time-in-service (TIS), installed, certificated in any category.

Reason

(d) Based on the Italian mandatory continued airworthiness information (MCAI) AD, this action contains the same requirement as superseded AD 99–27–12 but narrows the applicability from blade, P/N ''109–0132–02–all dash numbers,'' to specific P/Ns ''109–0132–02–11, –15, and –121.'' Thus, this action does not apply to blades with any other P/N, including newly-designated blade, P/N 109–0132–02–125. The actions specified by this AD are intended to continue the requirements to prevent fatigue failure of a blade, loss of a tail rotor, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Required as indicated, unless already done, do the following actions.

(1) Before further flight, dye-penetrant inspect each blade for a crack by following the Compliance Instructions, Part I, of Agusta S.p.A. Bollettino Tecnico No. 109–110, Revision A, dated December 12, 2005 (BT). Thereafter, at intervals not to exceed 100 hours TIS, dye-penetrant inspect each blade for a crack by following the Compliance Instructions, Part III, of the BT. If you find a crack, replace the cracked blade with an airworthy blade before further flight.

(2) Before the first flight each day, visually inspect each blade for a crack using a 3 to 5 power magnifying glass by following the Compliance Instructions, Part II, of the BT. If you find a crack, replace the cracked blade with an airworthy blade before further flight.

Differences Between the FAA AD and the MCAI

(f) The MCAI states to comply with the manufacturer's BT. This AD differs from the incorporated portions of the BT as follows:

(1) We refer to the compliance time as hours TIS rather than flight hours.

(2) We do not require you to contact the manufacturer.

Other Information

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

Related Information

(h) Mandatory Continuing Airworthiness Information (MCAI) ENAC AD No. 2006–001, Revision 1, dated January 3, 2006, contains related information.

Subject

(i) Air Transport Association of America (ATA) Code 6410: Main Rotor Blades.

Issued in Fort Worth, Texas, on July 27, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–17992 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release Nos. 33–8949; IC–28346; File No. S7–28–07]

RIN 3235–AJ44

Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission is reopening the period for public comment on amendments it originally proposed in Securities Act Release No. 8861 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)]. The rule proposal would, if adopted, require key information to appear in plain English in a standardized order at the front of the mutual fund prospectus; and permit a person to satisfy its mutual fund prospectus delivery obligations under section 5(b)(2) of the Securities Act of 1933 by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site.

DATES: Comments should be received on or before August 29, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. S7–28–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–28–07. This file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also available for public 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Deborah D. Skeens, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is reopening the period for public comment on proposed rule and form amendments that are intended to enhance the disclosures that are provided to mutual fund investors. These amendments were proposed on November 21, 2007,[1] and the comment period initially closed on February 28, 2008. The Commission's proposal would, if adopted, require key information to appear in plain English in a standardized order at the front of the mutual fund statutory prospectus. The proposals also would permit a person to satisfy its mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act of 1933 by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site. Upon an investor's request, mutual funds would also be required to send the statutory prospectus to the investor.

The Commission recently engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about, among other things, a hypothetical summary prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. We have placed in the comment file (available at *http://www.sec.gov*) for the proposed rule the following documents from the investor testing that relate to mutual fund prospectuses and the proposed summary prospectus: (1) The consultant's report concerning focus group testing of the hypothetical summary prospectus and related disclosures; (2) transcripts of focus groups relating to the hypothetical summary prospectus and related disclosures; (3) disclosure examples used in these focus groups; and (4) an excerpt from the consultant's report concerning the telephone survey of individual investors. In order to provide all persons who are interested in this matter an opportunity to comment on these additional materials, we believe that it is appropriate to reopen the comment period before we take action on the proposal.

We invite additional comment on the proposal in light of these materials, and on any other matters that may have an effect on the proposal.

Accordingly, we will extend the comment period until August 29, 2008.

By the Commission.

Dated: July 31, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18036 Filed 8–5–08; 8:45 am]

BILLING CODE 8010–01–P

[1] Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Release No. 8861 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)].

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. 34–58264; IC–28345; IA–2763 File No. S7–22–08]

RIN 3235–AJ45

Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors With Respect to Investment Adviser Portfolio Trading Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed guidance; request for comment.

SUMMARY: The Securities and Exchange Commission is publishing for comment this proposed guidance to boards of directors of registered investment companies to assist them in fulfilling their fiduciary responsibilities with

respect to overseeing the trading of investment company portfolio securities. The guidance focuses on the role of an investment company board in overseeing the best execution obligations of the investment adviser hired to invest in securities and other instruments on the investment company's behalf. In this respect, we address the conflicts of interest that may exist when an investment adviser uses an investment company's brokerage commissions to purchase services other than execution, such as the purchase of brokerage and research services through client commission arrangements. The Commission also is requesting comment on whether to propose that advisers be subject to new disclosure requirements concerning the use of client commission arrangements to investment company shareholders and other investment advisory clients.

DATES: Comments should be received on or before October 1, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–22–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Please follow the instructions provided for submitting comments.

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 S7–22–08. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Matthew N. Goldin, Senior Counsel, Karen L. Rossotto, Advisor to the Director, or Thomas R. Smith, Jr., Senior Advisor to the Director, Office of the Director, at 202–551–6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506.

I. Introduction and Summary

Many investment advisers, in connection with trades placed on behalf of their registered investment company, or ''fund,'' clients, receive brokerage and research services in reliance on the safe harbor provided under section 28(e) [1] of the Securities Exchange Act of 1934 (''Exchange Act'').[2] In recent years, changes in client commission practices, evolving technologies, and marketplace developments have transformed the brokerage and investment management industries and securities trading practices. In recognition of changing market conditions and current industry practices, in July 2006, we issued an interpretive release that provided guidance to investment advisers with respect to, among other things, the scope of the safe harbor provided under section 28(e) when advisers use brokerage commissions to purchase brokerage and research services for their managed accounts.[3] In addition to providing guidance to investment advisers on their use of soft dollars, we believe it is important to provide guidance to fund boards of directors concerning their responsibilities to oversee the adviser's satisfaction of its best execution obligations, including the adviser's use of fund brokerage commissions and the overall transaction costs that the fund incurs when the fund buys or sells portfolio securities.[4] As we have stated previously, transaction costs are a concern for fund investors for two reasons.[5] First, for many funds, the amount of transaction costs incurred may be substantial.[6] Second, fund advisers are subject to a number of potential conflicts of interest in conducting portfolio transactions on behalf of clients that are funds.[7] Fund brokerage commissions, which are paid out of fund assets, may, for example, be used to obtain brokerage and research services under section 28(e) of the Exchange Act that might otherwise be paid for directly by the fund's investment adviser.

We recognize that conflicts of interest are inherent when an investment adviser manages money on behalf of multiple clients. As discussed in section II of this Release, conflicts are also inherent in the external management structure of funds. Investment advisers are required to disclose material conflicts of interest to their clients, and those conflicts should be managed appropriately. Fund directors play a pivotal role in overseeing conflicts of interest investment advisers face when they have funds as clients. As explained in further detail in section III of this Release, fund transaction costs may not be readily apparent to investors. It is imperative that the fund's directors both understand and scrutinize the payment of transaction costs by the fund [8] and determine that payment of transaction costs is in the best interests of the fund and the fund's shareholders.[9] Although

[1] 15 U.S.C. 78bb(e). For a discussion of the section 28(e) safe harbor, see *infra* section III.C. Whereas section 28(e) refers to a money manager as a ''person * * * [who] exercise[s] * * * investment discretion with respect to an account,'' we refer to money managers to funds in this Release as ''investment advisers.''

[2] 15 U.S.C. 78a.

[3] *Commission Guidance Regarding Client Commission Practices Under section 28(e) of the Securities Exchange Act of 1934,* Exchange Act Release No. 54165 (July 18, 2006) [71 FR 41978 (July 24, 2006)] (''2006 Release'').

[4] *See infra* section III (discussing fund directors' obligations with respect to overseeing advisers' trading of fund portfolio securities). Broadly defined, a fund's transaction costs include all of its costs that are associated with trading portfolio securities. Transaction costs may include, among other things, commissions, spreads, market impact costs, and opportunity costs. *Concept Release: Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs,* Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)] (''Concept Release''), at section II.A. For purposes of this Release, the use of the term ''securities'' includes all instruments that an investment company may invest in under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'').

[5] *See* Concept Release at section I. However, we are aware that the interests of a fund's adviser and the fund's investors generally are aligned when an adviser places fund trades because advisers typically seek to minimize transaction costs due to the fact that such costs may detract from the fund's performance.

[6] For example, one study estimates that the average annual trading cost for a sample of 1706 U.S. equity funds during the period 1995–2005 was almost 20 percent higher than the average expense ratio for those funds. These estimates include the effect of commissions, spreads, and market impact costs. Roger M. Edelen, Richard Evans & Gregory Kadlec, *Scale Effects in Mutual Fund Performance: The Role of Trading Costs* (working paper dated March 17, 2007), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951367.*

[7] *See* Concept Release at section I.

[8] *See id. See also infra* section II at note 26 and accompanying text (discussing the external management structure of most funds).

[9] *See Role of Independent Directors of Investment Companies,* Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)], at nn.7 & 12 (''Mutual funds are formed as corporations or business trusts under state law and, like other corporations and trusts, must be operated for the benefit of their shareholders. * * * Under state law, directors are generally responsible for the

Continued

directors are not required or expected to monitor each trade, they should monitor the adviser's trading practices and the manner in which the adviser fulfills its obligation to seek best execution when trading fund portfolio securities.[10] In doing so, the fund's board should demand, and the fund's adviser must provide, all information needed by the fund's board to complete this review process.[11] Without sufficient oversight by the fund's board, transaction costs might inappropriately include payment for services that benefit the fund's adviser at the expense of the fund and that the board believes should be paid directly by the adviser rather than with fund assets.

We have received requests from fund directors for guidance on our view of their responsibilities in overseeing the activities of the investment advisers that trade their funds' portfolio securities. These requests include inquiries as to how directors may properly fulfill their responsibilities with respect to overseeing an adviser's satisfaction of its best execution obligations, including the adviser's trade execution practices and the adviser's use of fund brokerage commissions.[12] Today we are proposing guidance with respect to information a fund board should request that an investment adviser provide to enable fund directors to determine that the adviser is fulfilling its fiduciary obligations to the fund and using the fund's assets in the best interest of the fund. Our proposed guidance also is intended to assist the board in directing the adviser as to how fund assets should be used.[13]

Our proposed guidance would not impose any new or additional requirements. Rather, it is intended to assist fund directors in approaching and fulfilling their responsibilities of overseeing and monitoring the fund adviser's satisfaction of its best execution obligations and the conflicts of interest that may exist when advisers trade the securities of their clients that are funds.[14] In developing this proposed guidance, we have taken into account the wide variety of funds and advisers in terms of size, asset classes, complexity, and operations. We have also considered the changing market environment in the brokerage and investment management industries.[15] We feel that with rapidly evolving market conditions and trading practices, it is appropriate to give guidance at this time. For these reasons, we are proposing guidance for fund directors to consider in performing their responsibilities and in determining what is appropriate in light of their fund's particular circumstances.

Our intention in this proposed guidance is to assist boards. We wish to provide guidance that is relevant, useful, and beneficial to fund directors in fulfilling their responsibilities to act in the best interest of investors in this area. We request comment on all aspects of our proposed guidance to help us in achieving this goal. In addition, as the evolving nature of brokerage practices greatly influences how directors approach their oversight responsibilities in this area, we specifically request comment on the current state of the brokerage and investment management industries and its effect on advisers' trading of fund portfolio securities.

II. Summary of Law Regarding Fiduciary Responsibilities of Investment Company Directors

In fulfilling their responsibilities to a fund that they oversee, fund directors should understand the nature and source of their legal obligations to the fund and the fund's shareholders. Because funds are generally formed as corporations, business trusts, or partnerships[16] under state law, fund directors and trustees, like other corporate directors, are subject to a ''duty of care'' and a ''duty of loyalty'' under state and common law fiduciary principles,[17] as well as the obligations imposed on them under the Investment Company Act.[18]

A director's duty of care generally requires a fund director to perform his or her oversight responsibilities with the care of an ordinarily prudent person in a like position under similar circumstances.[19] The duty of care thus establishes the degree of attention and consideration required of a director in matters related to the fund he or she oversees. As such, a director's duty of care incorporates a duty to be informed, requiring that a director be reasonably informed about an issue before making a decision relating to that issue.[20] To be reasonably informed about an issue, a director must inform him or herself of all material information regarding that issue reasonably available to him or her.[21] In fulfilling these obligations, a fund director may rely on written and oral reports provided by management, auditors, fund counsel, the fund's chief compliance officer (''CCO''), and other experts and committees of the board when making decisions, so long as the director reasonably believes that the reports are reliable and competent with respect to the relevant matters.[22]

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oversight of all of the operations of a mutual fund.'').

[10] The directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices. *See* 2006 Release at n.6 (citing *Order Approving Proposed Rule Change and Related Interpretation under section 36 of the Investment Company Act,* Investment Company Act Release No. 11662 (Mar. 4, 1981) [46 FR 16012 (Mar. 10, 1981)]). *See also* 2 Tamar Frankel, Regulation of Money Managers 67 (1978) (''The directors should examine the adviser's practices in placing portfolio transactions with broker dealers and the use of the brokerage business for the benefit of the adviser or its affiliates, and ensure that there are no violations [ ] of the law. * * *'') (citing *Lutz* v. *Boas,* 39 Del. Ch. 585, 171 A.2d 381 (1961) *and* William J. Nutt, *A Study of Mutual Fund Independent Directors,* 120 U. Pa. L. Rev. 179, 181 (1971)).

[11] *See Concept Release* at section I.

[12] In connection with these requests for guidance, fund directors have informed us that fund boards are spending increasing amounts of time on trading practices in light of the growing complexity in this area.

[13] At the July 12, 2006 open meeting at which the Commission considered the 2006 Release, several of the Commissioners specifically noted that guidance for fund boards was a critical element in protecting investors against abuses in this area. An electronic link to an archived webcast of the open meeting is available at *http://www.connectlive.com/events/secopenmeetings.*

[14] *See infra* section III. *See also* 2006 Release at section II.A.

[15] In light of the advancements in the market and the continuously evolving technology influencing industry practices, the Commission staff talked with a variety of investment advisers and industry representatives, including independent fund directors and directors' counsel, to help ensure that our proposed guidance today reflects actual market practices and is based on factual industry experience.

[16] *See, e.g.,* A. Joseph Warburton, *Should Mutual Funds Be Corporations: A Legal & Econometric Analysis,* 33 Iowa J. Corp. L. 745, 748–49 (2008).

[17] *See, e.g.,* Md. Code Ann., Corps. and Ass'ns § 2–405.1(a) (2008) (requiring a director to perform his duties: ''(1) In good faith; (2) In a manner he reasonably believes to be in the best interests of the corporation; and (3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.'').

[18] 15 U.S.C. 80a. *See supra* note 4.

[19] *See, e.g.,* Model Bus. Corp. Act Ann. § 8.30(b) (3d ed. 2002); Md. Code Ann., Corps. and Ass'ns § 2–405.1(a)(3) (2008).

[20] *See, e.g., Smith* v. *Van Gorkom,* 488 A.2d 858 (Del. 1985) (explaining that, although directors are assumed to have been informed in making a business decision, when the burden of proving that a board was insufficiently informed is met, the board will have been found to have breached its duty of care).

[21] *See id.* at 872 (discussing the standard for determining whether a director's business judgment is informed).

[22] *See, e.g., Graham* v. *Allis-Chalmers Manufacturing Co.,* 188 A.2d 125, 130 (1963) (explaining that, under general principles of the common law, a director is entitled to rely on corporate summaries, reports, and records so long as he or she has not ''recklessly reposed confidence in an obviously untrustworthy employee, [ ] refused or neglected cavalierly to perform his duty as a director, or [ ] ignored either willfully or through inattention obvious danger signs of employee wrongdoing.''). A director should be satisfied not only that the person providing the report or opinion is doing so about a matter within his or her knowledge or expertise and has an appropriate basis for the opinion, but also that the scope of the

A director's duty of loyalty requires him or her to act in the best interests of the fund and the fund's shareholders.[23] The duty of loyalty encompasses a director's obligations to avoid conflicts of interest with the fund and the fund's shareholders, not to put his or her personal interests before the interests of the fund and the fund's shareholders, and not to profit from his or her position as a fiduciary.[24]

In addition to statutory and common law obligations, fund directors are also subject to specific fiduciary obligations relating to the special nature of funds under the Investment Company Act.[25] Unlike typical operating companies, funds ordinarily do not have any employees that are truly their own, but rather are generally formed and managed by a separately owned and operated sponsor, commonly an investment adviser.[26] This external management structure of most funds may at times create conflicts of interest for investment advisers with clients that are funds. When it enacted the Investment Company Act, Congress recognized the potential for abuse created by the unique structure of funds.[27] To protect fund shareholders, the Act requires that each registered fund be governed by a board of directors with the authority to supervise the fund's operations.[28] The Act further requires that at least 40 percent of a fund's board be independent in order to serve as ''independent watchdogs'' in monitoring the fund's managing organization.[29] A fund board has the responsibility, among other duties, to monitor the conflicts of interest facing the fund's investment adviser and determine how the conflicts should be managed to help ensure that the fund is being operated in the best interest of the fund's shareholders.[30]

III. Board Oversight of Investment Adviser Trading Practices

In overseeing the use of fund assets and in monitoring the conflicts of interest faced by a fund's investment adviser, a fund board must consider the investment adviser's practices when it trades the fund's portfolio securities.[31] A fund's investment adviser is a fiduciary with respect to the fund and therefore must act in the fund's best interest.[32] Lower transaction costs generally are in the mutual interest of a fund's adviser and the fund's investors, and advisers typically seek to minimize transaction costs when trading fund securities so as not to detract from the fund's performance. At times, however, there may be incentives for an investment adviser to compromise its fiduciary obligations to the fund in its trading activities in order to obtain certain benefits that serve its own interests or the interests of other clients. These conflicts of interest may exist, for example, when an adviser executes trades through an affiliate, when it determines the allocation of trades among its clients, and when it trades securities between clients. In addition, the use of fund brokerage commissions to pay for research and brokerage services may give incentives for advisers to disregard their best execution obligations when directing orders to obtain brokerage commission services. It also may give incentives for advisers to trade the fund's securities in order to earn credits for fund brokerage commission services. In accordance with its fiduciary obligations and provisions of the Advisers Act, an adviser must make full and fair disclosure of these conflicts to a client and disclose how the adviser will manage each conflict before the adviser may engage in conduct that constitutes a conflict.[33]

The fund's board, in providing its consent on the fund's behalf, should be sufficiently familiar with the adviser's trading practices to satisfy itself that the adviser is fulfilling its fiduciary obligations and is acting in the best interest of the fund. In some cases where the Commission has adopted

report bears on the matter being decided. *See Van Gorkom,* 488 A.2d at 875. In addition, to fulfill the duty of care, a director needs a well-informed decision-making process. This process may include, among other things, asking for and reviewing regular financial and other reports, questioning managers and outside experts about the meaning and implications of reports, and making inquiries when there are specific causes for concern. *Id.*

[23] *See, e.g., Strougo* v. *Scudder, Stevens and Clark, Inc.,* 964 F. Supp. 783, 801 (S.D.N.Y. 1997) (citing Md. Code Ann., Corps. and Assn's § 2–405.1(a)(1) (requiring corporate directors to perform their duties in ''good faith'') and James J. Hanks, Jr., Maryland Corporation Law § 6.6(b) (1995–1 Supp.) (explaining that a director's duty to act in 'good faith' is generally synonymous with the duty of loyalty or the duty of fair dealing)). *See also Pepper* v. *Litton,* 308 U.S. 295, 310–311 (1939) (stating that a fiduciary ''cannot serve himself first and his *cestuis* second'').

[24] *See, e.g., Guth* v. *Loft, Inc.*, 5 A.2d 503, 510 (Del. Ch. 1939) (''Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests''); *see also Pepper,* 308 U.S. at 310–311 (stating that a fiduciary ''cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements.''). *See also* Fed. Regulation of Sec. Comm., Am. Bar Ass'n, Fund Director's Guidebook 98 (3d ed. 2006) (''Simply put, directors should not use their position for personal profit, gain, or other personal advantage.'').

[25] *See, e.g., Strougo*, 964 F. Supp. at 798 (holding that a fund shareholder has a private right of action under section 36(a) of the Investment Company Act against the independent directors of a fund for breach of fiduciary duty involving personal misconduct). *See also Protecting Investors: A Half Century of Investment Company Regulation,* Division of Investment Management 251 (May 1992) (''Protecting Investors'').

[26] *See* Protecting Investors 251 n.3.

[27] *See* Investment Company Act section 1(b)(2) [15 U.S.C. 80a–1(b)(2)]; U.S. Sec. and Exch. Comm'n, Report on Investment Trusts and Investment Companies, H.R. Doc No. 76–279, Part III (1939). See also Joseph F. Krupsky, *The Role of Investment Company Directors,* 32 BUS. LAW. 1733, 1737–40 (1977); William J. Nutt, *A Study of Mutual Fund Independent Directors*, 120 U. Pa. L. Rev. 179, 181 (1971).

[28] *See* S. Rep. No. 91–184, at 4902–03 (1969) (''The directors of a mutual fund, like directors of any other corporation will continue to have * * * overall fiduciary duties as directors for the supervision of all of the affairs of the fund.'').

[29] 15 U.S.C. 80a–10(a). *See also Burks* v. *Lasker,* 441 U.S. 471, 484–485 (1979) (''Congress' purpose in structuring the Act as it did is clear * * * it 'was designed to place the unaffiliated directors in the role of ''independent watchdogs.'' ' (quoting Tannenbaum v. Zeller, 552 F.2d 402 (2d Cir. 1977)).

[30] *See Tannenbaum,* 552 F.2d at 406 (noting that the independent director requirements under the Investment Company Act, in particular, were designed to ensure that ''mutual funds would operate in the interest of all classes of [funds'] securities holders, rather than for the benefit of investment advisers, directors or other special groups.'').

[31] *See* 2006 Release at n.6 (citing *Order Approving Proposed Rule Change and Related Interpretation under Section 36 of the Investment Company Act,* Investment Company Act Release No. 11662 (Mar. 4, 1981) [46 FR 16012 (Mar. 10, 1981)] (''The directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices.'')). *See also Compliance Programs of Investment Companies and Investment Advisers,* Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Compliance Release''), at Section II.A.2.b (requiring that a fund's board approve the policies and procedures of the fund's service providers, including its investment adviser; the approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal securities laws by the fund's service providers). We have stated that we expect that the adviser's compliance policies and procedures will address, to the extent that they are relevant, the adviser's trading practices. *See* Compliance Release at II.A.1.

[32] Investment advisers are fiduciaries and have an obligation under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'') and state law to act in the best interest of their clients. *See* Restatement (Second) of Trusts § 170(1) (2008) (''The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary''); *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 191 (1963) (''The Investment Advisers Act of 1940 thus reflects a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship. * * * ' '' (quoting 2 LOSS, Securities Regulation 1412 (2d ed. 1961))); *Transamerica Mortgage Advisors, Inc.* v. *Lewis,* 444 U.S. 11, 17 (1979) (noting that the legislative history of the Advisers Act ''leaves no doubt that Congress intended to impose enforceable fiduciary obligations'' on investment advisers).

[33] *See Capital Gains,* 375 U.S. at 191, 196–197 (''The Investment Advisers Act of 1940 reflects * * * a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser, consciously or unconsciously, to render advice which was not disinterested.'').

exemptive rules that permit funds to engage in transactions otherwise prohibited by the Investment Company Act, the Commission has imposed conditions designed to address certain conflicts of interest faced by advisers by mandating that directors take particular action in evaluating those conflicts.[34] In other cases, the Commission has determined that the conflicts relating to a particular practice are unmanageable and has therefore prohibited advisers' activities in that area altogether.[35]

Two specific areas where conflicts may arise when an adviser trades a fund's portfolio securities concern the adviser's obligation to seek best execution and to otherwise use fund assets, including brokerage commissions, in the best interest of the fund. The following sections provide guidance on the types of information a fund board should seek in order to evaluate whether the adviser to its fund has fulfilled its obligations to the fund with respect to these concerns.

A. Board Oversight of an Investment Adviser's Duty To Seek Best Execution and Consideration of Transaction Costs

As a fiduciary to a client that is a fund, an investment adviser has the duty to seek best execution of securities transactions it conducts on the fund's behalf.[36] As we have stated previously, in seeking best execution, an investment adviser must seek to ''execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances.'' [37] In this regard, in seeking to maintain best execution on behalf of a client that is a fund, an adviser should consider factors beyond simply commission rates or spreads,[38] including ''the full range and quality of a broker's services in placing brokerage. * * *'' [39] These might include, among other things, the value of research provided, execution capability, financial responsibility, and responsiveness to the adviser.[40]

When trading portfolio securities of a client that is a fund, an adviser should consider factors related to minimizing the overall transaction costs incurred by the fund.[41] Transaction costs consist of explicit costs that can be measured directly, such as brokerage commissions, fees paid to exchanges, and taxes paid, as well as implicit costs that are more difficult to quantify. Implicit costs, which may include, among other things, bid/ask spreads, the price impact of placing an order for trading in a security, and missed trade opportunity cost, may exceed greatly a transaction's explicit costs.[42] Price impact and opportunity cost can be influenced by a variety of factors—each of which should be considered by an investment adviser—such as the anonymity of the parties to the trade, the willingness of the intermediary to commit capital to facilitate the trade, and the speed and price of the execution. Investment advisers also can take into account the quality and utility of any research provided by the broker-dealer.[43]

An aspect of an adviser's best execution process that directors should also consider is the adviser's decision whether to use an alternative trading system. Newer trading venues, such as ''dark pools,'' [44] and the use of advanced mathematical models or algorithmic trading systems, crossing networks, and other alternative trading systems, are increasingly prevalent.[45] Although the use of such trading venues may provide funds certain benefits (such as potentially lower execution costs),[46] they can also raise challenges to funds in certain situations.[47]

We ask for comment on how changes in the brokerage industry should affect a fund board's oversight of the trading practices of the fund's adviser. Is our discussion of the brokerage industry (as relevant to funds and their advisers) accurate? Are there other considerations with respect to the brokerage industry we should take into account?

We understand that investment advisers with clients that are funds employ a wide range of procedures

[34] *See, e.g.*, Investment Company Act rule 10f–3(c)(10) [17 CFR 270.10f–3(c)(10)] (fund boards must adopt procedures for purchases by the fund of securities from an affiliated underwriter and assess compliance on a quarterly basis); Investment Company Act rule 17a–7(e) [17 CFR 270.17a–7(e)] (fund boards must adopt procedures for purchases from and sales to affiliated funds and assess compliance on a quarterly basis); Investment Company Act rule 17a–8(a) [17 CFR 270.17a–8(a)] (fund boards must make certain determinations in evaluating mergers with affiliated funds); and Investment Company Act rule 17e–1(b) [17 CFR 270.17e–1(b)] (fund boards must adopt procedures for brokerage transactions with affiliates and assess compliance on a quarterly basis).

[35] *See, e.g., Prohibition on the Use of Brokerage Commissions to Finance Distribution*, Investment Company Act Release No. 26591 (Sep. 2, 2004) [69 FR 54728 (Sep. 9, 2004)], at section VII.E (explaining that the Commission's adoption in 2004 of Investment Company Act rule 12b–1(h) [17 CFR 270.12b–1(h)], which, among other things, prohibits a fund from using brokerage commissions to pay for the distribution of the fund's shares, was based on a conclusion that the practice of trading brokerage business for sales of fund shares poses conflicts of interest that the Commission believed to be ''largely unmanageable'').

[36] *See Interpretive Release Concerning the Scope of section 28(e) of the Securities Exchange Act of 1934 and Related Matters*, Exchange Act Release No. 23170 (Apr. 23, 1986) [51 FR 16004, 16011 (Apr. 30, 1986)] (''1986 Release''), at Section V (explaining that an investment adviser has the obligation to seek ''best execution'' of a client's transaction); Delaware Management Company, Inc., 43 S.E.C. 392 (1967); Arleen W. Hughes, 27 S.E.C. 629 (1948), *aff'd sub nom. Hughes* v. *SEC*, 174 F.2d 969 (D.C. Cir. 1949).

[37] 1986 Release at section V.

[38] A fund may incur spread costs rather than commissions when a dealer trades with it on a principal basis. Spread costs are incurred indirectly when a fund either buys a security from a dealer at the ''asked'' price or higher or sells a security to a dealer at the ''bid'' price or lower. The difference between the bid price and the asked price is known as the ''spread.'' Spread costs include both an imputed commission on the trade as well as any market impact cost associated with the trade. Dealer spreads compensate broker-dealers for, among other things, maintaining a market's trading infrastructure (i.e., price discovery and execution services), the broker-dealer's cost of capital, and its assumption of market risk. Spreads may also reflect the impact of large orders on the price of a security. The proportion of these two components varies among different trades. Concept Release at section II.A.2.

[39] 1986 Release at section V.

[40] *Id.*

[41] *See id.*

[42] For a more detailed discussion of explicit and implicit transaction costs, see Concept Release at section II.A.

[43] *See* 1986 Release at section V (''A money manager should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided. * * *''). For further discussion regarding evaluation of broker-dealer research services, see *infra* section III.D.

[44] For purposes of this release, our references to the term ''dark pools'' refer to markets that do not display quotes, but rather execute trades internally without displaying liquidity to other participants. A number of markets combine non-displayed liquidity with display of quotes. A substantial portion of the trading volume of these markets may result from interaction of orders with their non-displayed liquidity. *See, e.g.*, Elizabeth Cripps, *Shedding Light on the Dark Liquidity Pools*, FTMandate, May 2007, available at *http://www.ftmandate.com/news/printpage.php/aid/1442/Shedding_light_on_the_dark_liquidity_pools.html.*

[45] One recent report noted that although dark pools currently make up seven to ten percent of equities' share volume in the U.S., that percentage is steadily increasing. Celent, LLC, Dark Liquidity Pools in Europe, Canada, and Japan: A U.S. Phenomenon Goes Abroad (2007). *See also* David Bogoslaw, *Big Traders Dive Into Dark Pools*, Business Week, Oct. 3, 2007, available at *http://www.businessweek.com/investor/content/oct2007/pi2007102_394204.htm* (noting that the Aite Group predicted in September 2007 that exchanges' market share of U.S. equity trading would continue to decline from the current 75 percent, before stabilizing at around 62 percent by 2011, with alternative trading systems, including dark pools, intensifying fragmentation of the marketplace).

[46] Execution costs may be lower on alternative trading systems. *See, e.g.*, Jennifer Conrad, Kevin Johnson & Sunil Wahal, *Insitutional Trading and Alternative Trading Systems*, 70 J. of Fin. Econ. 99 (2003).

[47] For example, we understand that an adviser managing a fund that invests in companies with smaller capitalizations and more illiquid securities may need an executing broker-dealer to have experience and access to a particular market or one with expertise in a certain geographical area or industry. Advisers to these types of funds have indicated that they must rely on a relatively large number of brokers—especially where markets in niche securities have not developed on newer trading venues—to provide the execution and research they need with respect to a particular asset class.

when selecting broker-dealers for fund securities transactions.[48] In consideration of the wide variety of advisers in terms of size and operations, each adviser should determine what trading intermediary selection process is most appropriate for its circumstances.[49] However, as the Commission has stated previously, in its process for choosing trading intermediaries, an adviser should periodically and systematically evaluate the performance of broker-dealers handling its transactions.[50] In addition, the Commission has stated that an investment adviser should address its best execution obligations in the compliance policies and procedures that advisers are required to adopt and implement under rule 206(4)–7 under the Advisers Act.[51] Rule 38a–1 under the Investment Company Act requires that the policies and procedures of a fund adviser be approved by the fund board based on the board's finding that the policies and procedures are reasonably designed to prevent the adviser's violation of the Federal securities laws.[52]

Fund directors should seek relevant data from the fund's investment adviser to assist them in evaluating the adviser's procedures regarding its best execution obligations. These data should typically include, but not be limited to: (i) The identification of broker-dealers to which the adviser has allocated fund trading and brokerage; (ii) the commission rates or spreads paid; (iii) the total brokerage commissions and value of securities executed that are allocated to each broker-dealer during a particular period; and (iv) the fund's portfolio turnover rates. Fund boards may also discuss related matters with the adviser, which may include the following, where applicable:

- The process for making trading decisions and the factors involved in the selection of execution venues and the selection of broker-dealers;
- The means by which the investment adviser determines best execution and evaluates execution quality as well as how best execution is affected by the use of alternative trading systems;
- Who negotiates commission rates, how that negotiation is carried out, whether the amount of commissions agreed to depends on comparative data with respect to commission rates, and generally how transactions costs are measured;[53]
- How the quality of ''execution-only'' trades—trades that do not include payment for any additional research or services beyond execution—is evaluated compared to that of other trades (for example, whether trades that are executed through channels that include an additional soft dollar component are reviewed in comparison with execution-only trades to discern any discrepancies in the quality of execution);
- How the performance of the adviser's traders is evaluated, as well as the aggregate performance of the firm's traders as a whole, how the performance of each broker-dealer the adviser uses for fund portfolio transactions is evaluated, and how problems or concerns that are identified with a trader or a broker-dealer are addressed;
- If sub-advisers are used, how the adviser provides oversight and monitors each sub-adviser's activities, including the trading intermediary selection process;[54]
- To what extent and under what conditions the adviser conducts portfolio transactions with affiliates;
- The process for trading fixed-income securities and determining the costs of fixed income transactions;
- How the quality of trade execution is evaluated with respect to fixed-income and other instruments traded on a principal basis; and
- If there are international trading activities, how these trades are conducted and monitored.

We acknowledge that not all funds would require an evaluation of each of these factors by their boards. Different factors may be appropriate for different funds, depending on a fund's investment objective, trading practices, and personnel.

We also request comment regarding how boards should approach their obligations to oversee and evaluate the fund adviser's trading practices and procedures. Is there further information fund boards should request that the adviser provide to assist directors in their review?

Once the board receives from the adviser information with respect to the issues outlined above, fund directors should determine whether the adviser's trading practices are being conducted in the best interests of the fund and the fund's shareholders. If these interests are not being best served, the board should direct the adviser accordingly.

In addition, when an investment adviser seeks the fund board's approval of the adviser's compliance policies and procedures, directors should satisfy themselves that the adviser's policies and procedures are reasonably designed, adequate, and being effectively implemented to prevent violations of the Federal securities laws.[55] Directors may evaluate the adviser's compliance policies and procedures through updates from different sources, which may include the fund's or the adviser's CCO or other appropriate sources.[56]

Furthermore, with the rapid development of increased options for trading venues, fund boards need to remain up to date in their familiarity with the evolving market in this area. We understand that fund directors approach educating themselves on

[48] *See infra* note 77 and accompanying text (discussing the ''broker vote'' process employed by many advisers to evaluate broker-dealers' brokerage and research services).

[49] *See* Compliance Release at section I.A.1 (explaining that, in mandating investment adviser compliance policies and procedures, we elected not to impose a single set of universally applicable required elements because advisers are too varied in their operations).

[50] *See* 1986 Release at section V.

[51] *See* Compliance Release at section II.A.1. Rule 206(4)–7 under the Advisers Act [17 CFR 275.206(4)–7] requires an investment adviser to have written compliance policies and procedures in place that are reasonably designed to prevent it from violating the Advisers Act and rules the Commission has adopted under the Act. The rule does not enumerate specific elements that an adviser must include in its policies and procedures. However, the Commission has stated that it expects an adviser, in designing its policies and procedures, to identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular obligations, and then design policies and procedures that address those risks. *See id.*

[52] 17 CFR 270.38a–1. *See also* Compliance Release at section II.A.2.

[53] Although we are not suggesting that firms need to do so, we understand that some firms have employed third-party vendors to assist them in measuring best execution through a transaction cost analysis using comparative data from across the industry. We also have been informed that not all companies use the same methodology to measure trading costs and that there are no commonly accepted standards as to how to measure price impact.

[54] Because sub-advisory arrangements take various forms, directors should have an understanding of the structure of these arrangements and whether the adviser is appropriately overseeing the trading activities of the sub-advisers.

[55] 17 CFR 270.38a–1(a)(2)–(3) (requiring that each fund ''[o]btain the approval of the fund's board of directors * * * of the fund's policies and procedures and those of each investment adviser * * * which approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal Securities Laws by the fund, and by each investment adviser * * *'' and that each fund ''review, no less frequently than annually, the adequacy of the policies and procedures of the fund and of each investment adviser. * * *''). *See also* Compliance Release at section II.A.2. & II.B.2.

[56] 17 CFR 270.38a–1(a)(4)(iii) (requiring that the fund designate a CCO who must, ''no less than annually, provide a written report to the board that, at a minimum, addresses,'' among other things, ''[t]he operation of the policies and procedures of the fund and each investment adviser. * * *''). *See also* Compliance Release at section II.C.2.

industry developments in various ways.[57]

B. Board Oversight of an Investment Adviser's Use of Fund Brokerage Commissions

When trading portfolio securities on behalf of clients that are funds, there are a number of ways in which an investment adviser may use a portion of fund brokerage commissions to benefit the fund beyond execution of the securities transaction. First, a fund adviser may use a portion of fund brokerage commissions to purchase research and/or research-related services in accordance with section 28(e) of the Exchange Act. The research may be ''proprietary'' research, produced by the broker-dealer executing the securities transaction or its affiliates,[58] or it may be ''third-party research,'' produced or provided by someone other than the executing broker-dealer.[59] Investment advisers also may purchase third-party research themselves using cash payments from their own account, or ''hard dollars.'' Furthermore, investment advisers may obtain proprietary and third-party research through a ''client commission arrangement.'' In a client commission arrangement, an investment adviser agrees with a broker-dealer effecting trades for the adviser's client accounts that a portion of the commissions paid by the accounts will be credited to purchase research either from the executing broker or another broker, as directed by the adviser.[60]

In addition to obtaining research and research-related services with fund brokerage commissions,[61] an adviser may use fund brokerage commissions in other ways. For example, an adviser may utilize a commission recapture arrangement, whereby the fund receives a portion, or rebate, of the brokerage commission (or spread) charged by the broker-dealer handling the trade. Additionally, an investment adviser may use fund brokerage to pay certain providers for services utilized by the fund through an expense reimbursement arrangement with a broker-dealer and/or its affiliates.[62]

We specifically request comment on our discussion of the various uses of fund brokerage. Have we described the use of fund brokerage commissions and client commissions by advisers correctly? Are fund brokerage commissions used in ways that we have not addressed but should address in this proposed guidance?

Because fund brokerage commissions are fund assets, investment advisers have a conflict of interest when they use commissions to obtain research and related services that they would otherwise have to pay for themselves. Advisers therefore are subject to certain requirements when using fund brokerage in this manner. First, section 17(e)(1) of the Investment Company Act prohibits investment advisers to registered investment companies from using soft dollars to obtain research or services outside the confines of the safe harbor provided by section 28(e) of the Exchange Act.[63] Second, investment advisers, as fiduciaries, generally are prohibited from receiving any benefit from the use of fund assets,[64] although an investment adviser's use of soft dollars creates opportunities for the adviser to benefit in ways that may not be in the best interest of the fund. These conflicts of interest arise in a number of ways when investment advisers use fund assets in soft dollar programs. For example:

- The use of fund brokerage commissions to buy research may relieve an adviser of having to produce the research itself or having to pay for the research with ''hard dollars'' from its own resources;
- The use of soft dollars may give an adviser an incentive to compromise its fiduciary obligations and to trade the fund's portfolio in order to earn soft dollar credits;
- The availability of soft dollar benefits that an adviser may receive from fund brokerage commissions creates an incentive for an adviser to use broker-dealers on the basis of their research services provided to the adviser rather than the quality of execution provided in connection with fund transactions;
- An adviser may seek to use fund brokerage commissions to obtain

[57] Some ways we have observed that directors educate themselves on developments in this area include: (i) Establishing a committee of the board to specialize in portfolio trading practices; (ii) requiring that the adviser form special committees to consider best execution and the use of client commissions and to provide reports to the board on the adviser's trading activities; (iii) requesting periodic summaries and analyses from officers of the adviser to explain the adviser's portfolio trading practices; (iv) attending trade association events, seminars and/or other education events relating to brokerage practices; (v) subscribing to third-party information providers or retaining experts to ensure that board members remain knowledgeable with respect to market developments; and (vi) periodically meeting with portfolio managers, business unit staff, trading personnel and other employees of the adviser.

[58] *See* Thomas P. Lemke & Gerald T. Lins, Soft Dollars and Other Brokerage Arrangements § 1.04[A] (2005). Proprietary research is often provided to an investment adviser partly as a *quid pro quo* for brokerage business given by the adviser to the broker producing the research. Alternatively, proprietary research may be provided without being expressly requested and considered part of the services obtained in exchange for ''full service,'' or ''bundled,'' commissions that include a sufficient amount of compensation to cover the cost of research. *Id.*

[59] *See id.*

[60] *See* 2006 Release at section III (interpreting section 28(e) to permit the industry flexibility to structure arrangements that are consistent with the statute and best serve investors).

[61] *See infra* note 70 (explaining that only commission-based trades (as opposed to mark-ups or mark-downs or spreads) are covered under the safe harbor in section 28(e) of the Exchange Act).

[62] In expense reimbursement arrangements, also referred to as ''brokerage/service arrangements,'' a broker-dealer typically agrees to pay a fund's service provider fees (such as custodian fees or transfer agency fees) and, in exchange, the fund agrees to direct a minimum amount of brokerage business to the reimbursing broker. The fund adviser usually negotiates the terms of the contract with the service provider, and the fees charged under the contract are paid directly by the broker-dealer. Brokerage/service arrangements may be structurally similar to client commission arrangements. However, unlike client commission arrangements, where the receipt of a benefit by the investment adviser through the use of fund brokerage commissions gives rise to conflicts of interest, brokerage/service arrangements generally do not raise these concerns because they typically involve the use of fund brokerage commissions to obtain services that directly and exclusively benefit the fund. *See Payment for Investment Company Services with Brokerage Commissions*, Securities Act Release No. 7197 (July 21, 1995) [60 FR 38918 (July 28, 1995)] (''1995 Release''), at nn. 1–2 and accompanying text; *see also* 2006 Release at section II.A, n.27.

[63] 15 U.S.C. 80a–17(e)(1). Section 17(e)(1) of the Investment Company Act generally makes it unlawful for any affiliated person of a registered investment company to receive any compensation (other than a regular salary or wages from the company) for the purchase or sale of any property to or for the investment company when that person is acting as an agent other than in the course of that person's business as a broker-dealer. Essentially, section 17(e)(1) may be violated if an affiliated person of a registered investment company, such as an adviser, receives compensation (other than a regular salary or wages from the company) for the purchase or sale of property to or from the investment company. Absent the protection of section 28(e), which provides a safe harbor from liability under other federal and state law, an investment adviser's receipt of compensation—including in the form of brokerage or research services—under a client commission arrangement for the purchase or sale of any property, including securities, for or to the investment company, may constitute a violation of section 17(e)(1). *See U.S.* v. *Deutsch*, 451 F.2d 98, 110–11 (2d Cir. 1971), *cert. denied*, 404 U.S. 1019 (1972). If a fund adviser's client commission arrangement is not consistent with section 28(e), disclosure of the arrangement would not cure any section 17(e)(1) violation. *See* 2006 Release at n.31; 1986 Release at n.55.

[64] An adviser's obligation to act in the best interest of its client imposes a duty on the adviser not to profit at the expense of the client without the client's consent. *See, e.g.,* Restatement (Second) of Trusts § 170 cmt. a, § 216 (1959). Also, section 206 of the Advisers Act establishes federal fiduciary standards governing the conduct of investment advisers. Under sections 206(1) and (2), in particular, an adviser must discharge its duties in the best interest of its clients, and must fully disclose a conflict of interest with a client, before engaging in conduct that constitutes a conflict. *See Transamerica*, 444 U.S. at 17.

research that benefits the adviser's other clients, including clients that do not generate brokerage commissions (such as fixed-income funds), those that are not otherwise paying more than the lowest available commission rate in exchange for soft dollar products or services (i.e., ''paying up'' in commission costs), or those from which the adviser receives the greatest amount of compensation for its advisory services;

- The use of soft dollars may disguise an adviser's true costs and enable an adviser to charge advisory fees that do not fully reflect the costs for providing the portfolio management services; [65]
- The use of fund brokerage commissions to obtain research and other services may cause an adviser to avoid other uses of fund brokerage commissions that may be in the fund's best interest, such as establishing a commission recapture program or fund expense reimbursement arrangement to offset expenses that are paid for with fund assets; [66] and
- In the case of ''mixed-use'' products—for example, research products or services obtained using soft dollars that may serve functions that are not related to the investment decision-making process, such as accounting or marketing—an adviser has a conflict when making an allocation determination between the research and non-research uses of the product as required to fulfill the requirements under section 28(e) of the Exchange Act.[67]

When evaluating an adviser's use of fund brokerage commissions in light of these conflicts, a fund board may determine that such use is in the best interests of the fund.[68]

C. Section 28(e) Under the Securities Exchange Act of 1934

Section 28(e) of the Exchange Act provides a safe harbor that protects investment advisers from liability for a breach of fiduciary duty solely on the basis that the adviser caused an account over which it exercises investment discretion to pay more than the lowest commission rate in order to receive brokerage and research services provided by a broker-dealer, if the adviser determined in good faith that the amount of the commission was reasonable in relation to the value of the brokerage and research services received.[69] As we have stated, section 17(e)(1) of the Investment Company Act prohibits investment advisers to registered investment companies from obtaining brokerage and research services with fund brokerage commissions outside the section 28(e) safe harbor.[70]

The 2006 Release provides guidance with respect to the appropriate framework for analyzing whether a particular service falls within the ''brokerage and research services'' safe harbor of section 28(e).[71] A fund board should request that the fund adviser inform directors of the policies and procedures the adviser uses to ensure that the types of brokerage and research services the adviser obtains using fund brokerage commissions fall within the safe harbor and that the adviser has not engaged in excessive trading in light of the fund's investment objectives. In turn, in approving the policies and procedures, a board should consider whether they are reasonably designed to ensure that the adviser's use of fund brokerage commissions complies with the section 28(e) safe harbor, as well as all the federal securities laws.[72]

In addition, as we stated in the 2006 Release, to rely on the section 28(e) safe harbor, an adviser must: (i) Determine whether the product or service obtained is eligible research or brokerage under section 28(e); (ii) determine whether the eligible product actually provides lawful and appropriate assistance in the performance of his investment decision-making responsibilities; and (iii) make a good faith determination that the amount of client commissions paid is reasonable in light of the value of products or services provided by the broker-dealer.[73] We also reaffirmed an investment adviser's essential obligation under section 28(e) to make this good faith determination and that the burden in demonstrating this determination rests on the investment adviser.[74] An adviser should demonstrate to the board that it has met this burden.[75] We specifically request comment on our proposed guidance in this regard. We also request examples of effective practices fund boards employ when evaluating whether an adviser has made

[65] *See infra* section III.E (discussing the obligations of fund advisers and fund boards under section 15(c) of the Investment Company Act).

[66] Although these types of arrangements do not involve the conflicts posed by soft dollars, they do raise issues related to how a fund's assets are being expended and other issues, such as disclosure. *See* Concept Release at section VI.

[67] For a discussion of ''mixed-use'' items, see 1986 Release at section II.B and 2006 Release at section III.F. These releases stated, as an example of a product that may have a mixed use, management information services (which may integrate trading, execution, accounting, recordkeeping, and other administrative matters such as measuring the performance of accounts). In the 1986 Release, the Commission indicated that where a product has a mixed use, an investment adviser should make a reasonable allocation of the cost of the product according to its use, and should keep adequate books and records concerning the allocations. The Commission also stated: (i) That the allocation decision itself poses a conflict of interest for the investment adviser that should be disclosed to the client; and (ii) that an investment adviser may use client commissions pursuant to section 28(e) of the Exchange Act to pay for the portion of a service or specific component that assists the adviser in the investment decision-making process, but cannot use soft dollars to pay for that portion of a service that provides the adviser with administrative assistance. 1986 Release at Section II.B. The 2006 Release made clear that ''brokerage'' products and services, as defined in the release, may also require a mixed-use allocation. 2006 Release at nn.72–73. For a discussion of section 28(e) of the Exchange Act, see *infra* section III.C.

[68] Fund boards are not required to approve brokerage and research services simply because they fall within the section 28(e) safe harbor. Rather, board determinations regarding the purchase of brokerage and research services with fund brokerage commissions should be made in accordance with the fund's best interest. In this regard, section 28(e) contemplates that funds could enter into contracts to reduce or eliminate an adviser's ability to rely on the safe harbor. *See* Thomas P. Lemke & Gerald T. Lins, Soft Dollars and Other Brokerage Arrangements § 4.09 (2005) (''[T]he language of the safe harbor itself recognizes that the parties to an investment management relationship may by contract opt *out* of Section 28(e).''); *see also* Section 28(e) of the Exchange Act [15 U.S.C. 78bb(e)(1)] (stating that the safe harbor does not apply where ''expressly provided by contract'').

[69] 15 U.S.C. 78bb(e)(1). When fixed commission rates were abolished in 1975, investment advisers and broker-dealers expressed concern that, if an investment adviser were to cause a client account to pay more than the lowest commission rate available for a particular transaction, then the adviser would be exposed to charges that it had breached its fiduciary duty owed to its client. Congress addressed this concern by enacting section 28(e). *See* 2006 Release at section II.A.

[70] *See supra* note 63. It should be noted that section 28(e) of the Exchange Act does not encompass trades that are not executed on an agency basis, principal trades (with the exception of certain riskless principal transactions as described below), or other instruments traded net with no explicit commissions. *See* 2006 Release at n.27. However, the Commission has interpreted the term ''commission'' in section 28(e) as encompassing fees on certain riskless principal transactions that are reported under the trade reporting rules of the Financial Industry Regulatory Authority, or FINRA (as successor to the National Association of Securities Dealers, or NASD). *See Commission Guidance on the Scope of section 28(e) of the Exchange Act*, Exchange Act Release No. 45194 (Dec. 27, 2001) [67 FR 6 (Jan. 2, 2002)], at Section II.

[71] *See* 2006 Release at section III.

[72] *See supra* note 52 and accompanying text (discussing a fund board's obligation to approve an adviser's compliance policies and procedures).

[73] *See* 2006 Release at Section III.B.

[74] *See id*.

[75] *See* 2006 Release at n.150 and accompanying text (citing House Comm. on Interstate and Foreign Commerce, *Securities Reform Act of 1975 (H.R. 4111)*, H.R. Rep. No. 94–123, at 95 (1975) (''It is, of course, expected that money managers paying brokers an amount [of commissions] which is based upon the quality and reliability of the broker's services including the availability and value of research, would stand ready and be required to demonstrate that such expenditures were bona fide.'')); *see also* 1986 Release at Section IV.B.3 (explaining that, among the responsibilities of the disinterested directors of a fund may be to monitor the adviser's soft dollar arrangements).

the good faith determination required under section 28(e).

D. An Investment Adviser's General Fiduciary Obligations to Clients that Are Funds When Using Soft Dollars

As we have stated, although a fund adviser may satisfy the requirements for using client commissions to pay for brokerage and research services under the section 28(e) safe harbor, a fund's directors still should evaluate the adviser's use of fund brokerage commissions to purchase research and services in order to determine whether the adviser is acting in the best interest of the fund. If a fund board determines that the adviser's use of brokerage commissions is not in the best interest of the fund, the board should prohibit or limit the use of fund brokerage commissions and direct the adviser accordingly.[76]

In this regard, directors need to understand the procedures that the fund's investment adviser employs to address any potential conflicts of interest and ensure that fund commissions are being used appropriately. For example, to try to address concerns that a broker-dealer may be chosen by an adviser for reasons other than the quality of the broker-dealer's execution (including the brokerage and research services it provides), some advisers, particularly larger ones, may use an internal process referred to as a ''broker vote'' or ''broker tolls,'' whereby the adviser's investment professionals, typically the portfolio managers and investment analysts, assess the value of the research and services different broker-dealers provide to determine which broker-dealer's research and other services the adviser should purchase.[77]

To assist the board in understanding the adviser's policies and procedures regarding the use of fund brokerage commissions to obtain brokerage and research services, the board should request that the adviser inform the directors as to such matters as the following:

- How does the adviser determine the total amount of research to be obtained and how will the research actually be obtained? In particular:
- How does the adviser determine the amount to be spent using hard versus soft dollars?
- How does the adviser determine amounts to be spent on proprietary versus third-party research arrangements?
- What types of research products and services will the adviser seek to obtain and how will this research be beneficial to the fund?
- How does the adviser determine amounts to be used in commission recapture programs and expense reimbursement programs?
- What is the process for establishing a soft dollar research budget and determining brokerage allocations in the soft dollar program? Is a broker vote process or some other mechanism used?
- Do any alternative trading venues that are used produce soft dollar credits? If so, how much?
- How does the adviser determine that the use of soft dollars is within the section 28(e) safe harbor? In particular:
- Is the product or service obtained eligible brokerage or research, as defined under section 28(e)?
- Does the product or service provide lawful and appropriate assistance to the adviser in carrying out its investment decision-making responsibilities?
- Is the amount of commissions paid reasonable (based upon a good faith determination) in light of the value of brokerage and research services provided by the broker-dealer?
- How does soft dollar usage compare to the adviser's total commission budget?
- How are soft dollar products and services allocated among the adviser's clients? Are the commissions paid for certain trades in fund portfolio securities similar to commissions paid for transactions in similar securities, or of similar sizes, by the fund and the adviser's other clients (including clients that are not funds)? Are other clients paying lower commissions that do not include a soft dollar component? If so, does the adviser adequately explain the discrepancy in commission rates and provide the board data sufficient to satisfy the board that the fund is not subsidizing the research needs of the adviser's other client? To what extent are the products and services purchased through soft dollar arrangements used for the benefit of fixed-income or other funds that generally do not pay brokerage commissions?
- What is the process for assessing the value of the products or services purchased with soft dollars?
- What is the process used to evaluate the portion of a mixed use product or service that can be paid for under section 28(e)?[78]
- To what extent does the adviser use client commission arrangements? What effect do these arrangements have on how the adviser selects a broker-dealer to complete a particular transaction? How does the adviser explain that the use of client commission arrangements benefits the fund?[79]

We request comment on the information boards should receive to facilitate their review of an adviser's use of soft dollars.[80] Should boards request any further information from advisers in this regard? Should boards employ any specific alternative approaches or analyses when reviewing an adviser's soft dollar usage? Is further guidance needed with respect to how a board should approach reviewing an adviser's soft dollar usage?

As with the adviser's trading practices, after receiving appropriate input and information from the adviser, if the board believes that the fund's brokerage commissions could be used differently so as to provide greater benefits to the fund, the board should direct the adviser accordingly. For example, the adviser should explain to the board that the value the fund receives from the brokerage and research services purchased with fund brokerage commissions is appropriate,

[76] *See supra* note 68 and accompanying text.

[77] Advisers have informed us that, although many employ a broker vote, the actual process of determining which brokers to use varies among firms, as do the factors upon which each firm's voting system is based. Often a system of rating or allocating points is used to set targets for each broker, with the better-rated brokers receiving additional orders. Other firms have substantially less formal broker-selection processes.

[78] As we stated in the 2006 Release, in allocating costs for a particular product or service, a money manager should make a good faith, fact-based analysis of how it and its employees use the product or service. It may be reasonable for an investment adviser to infer relative costs from relative benefits to the firm or its clients. Relevant factors might include, for example, the amount of time the product or service is used for eligible purposes versus non-eligible purposes, the relative utility (measured by objective metrics) to the firm of the eligible versus non-eligible uses, and the extent to which the product is redundant with other products employed by the firm for the same purpose. *See* 2006 Release at section III.F, n.148.

[79] We believe that the availability of electronic methods to order, track, and analyze securities trading may make it easier to determine whether client commission arrangements benefit a fund. With electronic trading, advisers and fund boards may be able to determine the costs associated with trade execution, as well as the expense of research paid for with fund brokerage commissions, with greater certainty. Also, to the extent that they incorporate transparency mechanisms such as the invoicing of costs for particular research products and services, the use of certain client commission arrangements may enable fund boards to more clearly determine the actual amount of commission dollars used to pay for research and those used to pay for execution.

[80] The staff has outlined some of the specific information fund boards have reviewed with respect to soft dollar arrangements. *See Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds*, Office of Compliance, Inspections and Examinations (Sept. 1998), available at *http://www.sec.gov/news/studies/softdolr.htm* (''1998 Staff Report''), at Appendix G.

and whether the services are inappropriately benefiting another of the adviser's clients at the fund's expense. In directing the adviser, the board also should consider such matters as: (i) Whether it is appropriate for the adviser to refrain from purchasing research services in connection with certain types of trades, depending on market conditions; (ii) whether it is appropriate for the adviser to use fund brokerage commissions to receive brokerage and research services on some or all trades; (iii) whether fund brokerage commissions should be used only in connection with a commission recapture or expense reimbursement program; and (iv) whether some combination of these alternatives may be in the best interest of the fund.

In addition, fund boards should inquire as to how the adviser's compliance policies and procedures with respect to soft dollars are determined and monitored.[81] In deciding whether to approve these policies and procedures, directors should consider, and the investment adviser should explain, how the policies and procedures eliminate or otherwise mitigate the conflicts of interest that exist when an adviser trades portfolio securities on the fund's behalf.[82] Furthermore, the value of research obtained through the use of soft dollars is a factor a fund board should consider when determining whether an investment adviser has fulfilled its best execution obligations.[83] The conflicts of interest inherent in soft dollar arrangements require boards to pay particular attention to investment advisers' activities in this regard to ensure that fund assets are being used appropriately on behalf of the fund.[84]

We request comment on our proposed guidance in regard to how a fund board should approach its review of an adviser's use of soft dollars and the adviser's applicable policies and procedures to ensure that the conflicts of interest inherent in these transactions are being managed.

E. Section 15(c) Under the Investment Company Act

In addition to their oversight and monitoring responsibilities with respect to portfolio trading and the conflicts of interest associated with soft dollar programs, fund directors have an obligation to review the adviser's compensation. This requirement stems from the requirement in section 15(c) of the Investment Company Act that the independent members of the board review the fund's investment advisory contract on an annual basis.[85] A fund board's review of the adviser's compensation under section 15(c) should incorporate consideration of soft dollar benefits that the adviser receives from fund brokerage.[86] In considering the advisory contract for approval, fund boards are required under section 15(c) to request and evaluate such information as may reasonably be necessary to evaluate the terms of the contract, and the adviser to the fund has the obligation to furnish to the board the information necessary to review the contract.[87]

Although fund boards typically review the use of fund brokerage by the adviser (including the adviser's use of soft dollars) during the contract review process, Commission examinations show wide variations in board practices in this area.[88] In many cases, fund boards are provided with Part II of the adviser's Form ADV. While Form ADV provides important information regarding the investment adviser, the Form ADV disclosure requirement was not designed for the purpose of providing fund directors with all of the information needed to help them satisfy board obligations under section 15(c) of the Investment Company Act. In order to fulfill their obligations in connection with the section 15(c) review process, fund boards often seek additional information on soft dollars. However, the types of additional information a board may require may vary depending on factors such as: (i) The scope and nature of the soft dollar program; (ii) the level of clarity and utility of the materials provided; (iii) the board's confidence in the adviser's relevant policies and procedures; and (iv) the adviser's compliance record. For example, information directors seek may range from simple reports on the cost of third-party soft dollar services to detailed reports on all fund portfolio securities transactions, including transaction volumes, soft dollar credits, services provided, and broker reviews.

To assist fund boards in carrying out their responsibilities under section 15(c), we believe it is appropriate for fund boards to request certain information regarding the adviser's use of fund brokerage, including soft dollar arrangements. Specifically, fund directors should require investment advisers, at a minimum, to provide them with information regarding the adviser's brokerage policies, and how a fund's brokerage commissions, and, in particular, the adviser's use of soft dollar commissions, were allocated, at least on an annual basis. Fund directors, in turn, should consider this information when they evaluate the terms of the advisory contract for the fund. Fund directors should, for example, consider whether the adviser properly accounts for use of fund brokerage commissions to purchase

[81] The Commission has stated that, in addition to an adviser's general best execution obligations, the compliance policies and procedures advisers are required to adopt and implement under rule 206(4)–7 of the Advisers Act should address the adviser's uses of client brokerage to obtain research and other services. *See* Compliance Release at Section II.

[82] In this regard, fund boards may look to, among other sources, the fund's CCO to provide assistance with evaluating any potential conflicts of interest with respect to the adviser's brokerage practices and determining how those conflicts should be addressed. *See* Compliance Release at section II.A.2.b.

[83] *See* 1986 Release at section V. An adviser should consider the full range and quality of the broker's services, including the value of research provided, in assessing whether a broker will provide best execution.

[84] As suggested above, failure by an investment adviser to disclose material conflicts of interest to its clients may constitute fraud within the meaning of sections 206(1) and (2) of the Advisers Act. *See supra* note 64. *See also Capital Gains*, 375 U.S. at 191–193, 200–01 (noting that ''suppression of information material to an evaluation of the disinterestedness of an investment adviser'' may operate ''as a deceit on purchasers.'').

[85] 15 U.S.C. 80a–15(c). Section 15(c) makes it unlawful for an investment company to enter into or renew an investment advisory contract unless it is approved by a majority of the company's disinterested directors.

[86] *See* 2006 Release; 1986 Release. In connection with the board's section 15(c) review of the advisory contract, section 36(b) of the Investment Company Act imposes a fiduciary duty on fund advisers with respect to their receipt of compensation for services or payments of a material nature from the fund or its shareholders. 15 U.S.C. 80a–36(b). In determining whether an adviser has breached its obligations under section 36(b), the seminal case of *Gartenberg* v. *Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923 (2d Cir. 1982), suggests that all of the facts and circumstances surrounding the adviser's relationship with the fund are appropriate for director consideration in approving the advisory contract. To the extent an adviser receives benefits from the use of soft dollars that are of ''sufficient substance,'' these benefits should be disclosed and considered by the fund's board of directors. *Id.* at 932–933 (stating that ''estimates of * * * 'fall-out' and 'float benefits' which, while not precise, could be a factor of sufficient substance to give the Funds' trustees a sound basis for negotiating a lower Manager's fee.'').

[87] Section 15(a)(1) of the Investment Company Act, which makes it unlawful for any person to serve as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by a majority vote of shareholders and which ''precisely describes all compensation'' to be paid under that contract, also should be considered with regard to soft dollar arrangements. 15 U.S.C. 80a–15(a)(1). *See* 1986 Release at n.40.

[88] *See* 1998 Staff Report at 36. Examinations conducted since the 1998 Staff Report continue to document wide variations in the fund board review process. For example, our inspection staff has observed that, in certain cases, a fund board has not obtained the information necessary to evaluate soft dollar arrangements in the context of the board's section 15(c) review.

research that primarily or solely benefits another client of the adviser. We specifically ask for comment on the information that boards should request and that the adviser should provide in connection with the board's review of the advisory contract under section 15(c).

IV. Disclosure to Other Advisory Clients and Fund Investors

Our proposed guidance is designed to provide fund directors with information that will help them fulfill their oversight obligations with respect to the trading practices of the fund's investment adviser, including the adviser's use of soft dollars. The fact that the guidance is focused on fund boards should not be interpreted as an indication that the current level of soft dollar disclosure that is provided to other advisory clients and fund investors cannot be improved.[89] Accordingly, we solicit comment on whether we should propose additional disclosure requirements.

Currently, Part II of Form ADV, the adviser's firm brochure, must address the adviser's soft dollar practices. However, a 1998 report from our Office of Compliance Inspections and Examinations (''OCIE'') observed that advisers' disclosure often failed to provide sufficient information for clients or prospective clients to understand the advisers' soft dollar practices and the conflicts those practices present.[90] In its report, OCIE stated that most advisers' descriptions of soft dollar practices were boilerplate, and urged that we consider amending Form ADV to require better disclosure.[91] We sought to address this concern in our proposed amendments to Part 2 of Form ADV.[92] As currently proposed, Form ADV would require advisers to discuss the conflicts of interest inherent in an adviser's soft dollar practices and to describe the products and services acquired with soft dollars with enough specificity to permit clients to evaluate the conflicts of interest involved.[93]

The guidance we are proposing today reflects the Commission's view of the critical role fund boards play in managing the adviser's conflicts of interest. We request general comment on our proposed guidance. In addition, we specifically request comment on whether: (i) Further disclosure to fund investors of the information we suggest fund boards should consider would be helpful; (ii) any specific disclosure should be mandated to better assist investors in making informed investment decisions; and (iii) the public dissemination of particular information regarding a fund adviser's portfolio trading practices would have an adverse impact on the fund adviser's relationships with the broker-dealers that execute fund portfolio transactions.

We also request comment on whether we should again consider proposing to require investment advisers to provide their clients with customized information about how their individual brokerage is being used. If so, what types of information would be useful and in what detail? Should the information provided be different for institutional and non-institutional clients? Do institutional clients already require their advisers to provide information to them about soft dollars on a regular basis, and if so, what kind of information do they receive? What are the cost implications of requiring individual client reports?

V. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to fund board oversight of advisers' portfolio trading practices. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: July 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18035 Filed 8–5–08; 8:45 am]

BILLING CODE 8010–01–P

[89] We have considered enhancing soft dollar disclosure requirements in the past. For example, the Commission proposed a rule in 1995 that would have required an adviser to provide its clients with an annual report setting forth certain information about the adviser's use of client brokerage and the soft dollar services received by the adviser. The report would have included certain quantitative information about brokerage allocation and commissions paid. *See Disclosure by Investment Advisers Regarding Soft Dollar Practices*, Investment Advisers Act Release No. 1469 (Feb. 14, 1995) [60 FR 9750 (Feb. 21, 1995)].

[90] *See* 1998 Staff Report.

[91] *Id.*

[92] *See Amendments to Form ADV,* Investment Advisers Act Release No. 2711 (March 3, 2008) [73 FR 13958 (March 14, 2008)]. As proposed, Item 12 of Part 2 would require an adviser that receives soft dollar products and services to disclose its practices and to discuss the conflicts of interest they create. Specifically, Part 2 would require an adviser to disclose to clients: (i) That it receives a benefit because it does not have to produce or pay for the products and services; (ii) that it has an incentive to select broker-dealers based on its interests instead of clients' interests in receiving best execution; (iii) whether or not it pays-up for soft dollar benefits; (iv) whether soft dollar benefits are used to service all of its accounts or just the accounts that paid for the benefits; and (v) the products and services it receives, describing them with enough specificity for clients to understand and evaluate possible conflicts of interest.

[93] *Id.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102822–08]

RIN 1545–BH54

Section 108 Reduction of Tax Attributes for S Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on the manner in which an S corporation reduces its tax attributes under section 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under section 108(a). In particular, the regulations address situations in which the aggregate amount of the shareholders' disallowed section 1366(d) losses and deductions that are treated as a net operating loss tax attribute of the S corporation exceeds the amount of the S corporation's excluded discharge of indebtedness income. The proposed regulations will affect S corporations and their shareholders. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by November 4, 2008. Outlines of topics to be discussed at the public hearing scheduled for December 8, 2008, must be received by November 4, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–102822–08), 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–102822–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov/* (IRS REG–102822–08). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer N. Keeney, (202) 622–3060; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Funmi Taylor, (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:SP, Washington, DC 20224. Comments on the collection of information should be received by November 4, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, 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 collections 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 service to provide information.

The collection of information in these proposed regulations is in § 1.108–7(d)(4). This information must be provided by both the S corporations that exclude discharge of indebtedness income from gross income under section 108(a) and the shareholders of those S corporations. The information will be used by the S corporation to properly reduce its tax attributes under section 108(b), and the information will be used by the shareholders of S corporations to calculate their taxable income in succeeding taxable years. The respondents will be S corporations and their shareholders.

Estimated total annual reporting burden: 1,000 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: On occasion.

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 return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 108 of the Internal Revenue Code (Code). Section 61(a) provides that *gross income* means all income from whatever source derived, including (but not limited to) income from discharge of indebtedness, also known as cancellation of debt (COD income). Section 108(a) provides an exclusion from gross income for COD income if the discharge occurs while the taxpayer is bankrupt or insolvent, or if the indebtedness discharged is qualified farm indebtedness, certain qualified real property business indebtedness, or certain qualified principal residence indebtedness. In the case of a discharge of indebtedness during insolvency, the exclusion from income is limited to the amount by which the taxpayer is insolvent. Section 108(b) provides that the taxpayer must reduce certain specified tax attributes to the extent COD income is excluded under section 108(a)(1)(A), (B), or (C). Section 108(b) also provides the order in which these tax attributes must be reduced. Unless the taxpayer makes an election under section 108(b)(5) to first reduce the basis of depreciable property, section 108(b)(2)(A) provides that the first tax attribute to be reduced is any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

Explanation of Provisions

A. Allocation of Excess Losses and Deductions After Section 108(b) Tax Attribute Reduction

Section 108 provides special rules for an S corporation that has COD income. Section 108(d)(7)(A), as amended by the Job Creation and Worker Assistance Act of 2002, Public Law 107–147, provides, in part, that the rules under section 108(a) for the exclusion of COD income and under section 108(b) for the reduction of tax attributes are applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under section 108(a). Therefore, if an S corporation excludes COD income from its gross income under section 108(a), the amount excluded is applied to reduce the S corporation's tax attributes under section 108(b)(2). Under section 108(b)(4)(A), the reduction of tax attributes occurs after the S corporation's items of income, loss, deduction and credit for the taxable year of the discharge pass through to its shareholders under section 1366(a). Under section 1366(d)(1), the aggregate amount of losses and deductions a shareholder can take into account under section 1366(a) cannot exceed the shareholder's adjusted basis in the shareholder's stock in the S corporation and the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder. For purposes of the tax attribute reduction rule under section 108(b)(2), any loss or deduction that is disallowed for the taxable year of the discharge under section 1366(d)(1) is treated as a net operating loss of the S corporation under section 108(d)(7)(B) (deemed NOL). The proposed regulations clarify that the S corporation's deemed NOL includes all losses and deductions disallowed under section 1366(d)(1) for the taxable year of the discharge, including disallowed losses and deductions of a shareholder that had transferred all of the shareholder's stock in the S corporation during such year.

If the amount of the S corporation's deemed NOL exceeds the amount of excluded COD income, the proposed regulations provide that the S corporation's excess deemed NOL is allocated to the shareholder or shareholders of the S corporation as losses and deductions disallowed under section 1366(d)(1) for the taxable year of the discharge. If an S corporation has more than one shareholder during the taxable year of the discharge, the proposed regulations provide a rule for determining the amount of excess deemed NOL allocated to each shareholder. The allocation rule in the proposed regulations takes into account the amount of each shareholder's disallowed losses or deductions under section 1366(d)(1) (before the tax attribute reduction under section 108(b)(2)) and the amount of excluded

COD income that would have been taken into account by each shareholder under section 1366(a) had the COD income not been excluded under section 108(a). This allocation method alleviates, within the parameters of section 108(d)(7)(B), the disparate treatment that could occur where the shareholders' respective disallowed losses or deductions under section 1366(d)(1) that are treated as the S corporation's deemed NOL are disproportionate to the shareholders' respective ownership interests. The IRS and the Treasury Department recognize that shareholders may be disproportionately impacted where the shareholders' respective disallowed losses or deductions are disproportionate to their respective ownership interests. The IRS and the Treasury Department request comments on alternative mechanisms that could address such disproportionate economic effects and on the collateral consequences of such mechanisms.

The proposed regulations also provide that any amount of the S corporation's excess deemed NOL that is allocated under this allocation method to a shareholder that had transferred all of the shareholder's stock in the S corporation during the year of the discharge is treated as a disallowed loss or deduction that is permanently disallowed under § 1.1366–2(a)(5) of the Income Tax Regulations, unless the transfer is described in section 1041(a).

B. Character of Excess Deemed NOL Allocated to a Shareholder

A shareholder's losses or deductions disallowed under section 1366(d)(1) consist of a pro rata share of the total losses and deductions allocated to the shareholder under section 1366(a) during the corporation's taxable year (including losses and deductions disallowed under section 1366(d)(1) for prior years that are treated as current year losses and deductions with respect to the shareholder under section 1366(d)(2)). The character of any item included in a shareholder's pro rata share under section 1366(a) is determined as if such item were realized directly from the source from which it was realized by the S corporation, or incurred in the same manner as incurred by the corporation. The items of income, loss, or deduction that pass through to a shareholder, and that comprise a shareholder's suspended loss or deduction under section 1366(d)(1), retain their character (for example, ordinary deduction, long-term capital loss).

Section 108(d)(7)(B) does not address potential character differences that may exist in a shareholder's disallowed losses or deductions under section 1366(d)(1) that are included in the S corporation's deemed NOL. Under the general rules of section 108(b)(2), a taxpayer's net operating loss is reduced before any other tax attributes, such as capital loss carryovers. Therefore, to be consistent with the ordering rule in section 108(b)(2), the proposed regulations provide that in determining the character of the amount of the S corporation's excess deemed NOL that is allocated to a shareholder, any ordinary loss or deduction that was disallowed under section 1366(d)(1) and that was included in the S corporation's deemed NOL is treated as reduced before any capital loss that was disallowed under section 1366(d)(1) and that was included in the S corporation's deemed NOL. With respect to section 1231 losses, where it is uncertain whether the loss ultimately will be characterized as ordinary or capital, the proposed regulations provide that any section 1231 loss or deduction that was disallowed under section 1366(d)(1) and that was included in the S corporation's deemed NOL is treated as reduced after any ordinary loss and before any capital loss.

C. Information Sharing Requirements

An S corporation shareholder determines the amount of any suspended loss or deduction under section 1366(d)(1) for a taxable year. If the shareholder has a suspended loss or deduction under section 1366(d)(1), the shareholder maintains a record of the carryover loss or deduction amount. Because any suspended loss or deduction under section 1366(d)(1) is treated as a net operating loss of the S corporation for purposes of the tax attribute reduction rule under section 108(b)(2), the S corporation will need to know the amount of each shareholder's suspended loss or deduction under section 1366(d)(1). The proposed regulations require shareholders of an S corporation that excludes COD income from its gross income in a taxable year to provide this information to the S corporation. In addition, because each shareholder will need to know the amount of the shareholder's disallowed losses or deductions remaining after the tax attribute reduction, the proposed regulations require the S corporation to provide to its shareholders the amount of any excess deemed NOL that is allocated to a shareholder after the tax attribute reduction, even if such amount is zero. The IRS and the Treasury Department request comments on whether the information sharing requirements in the proposed regulations are necessary or overly burdensome and on whether special rules are needed if shareholders fail to provide the required information to the S corporation.

Proposed Effective Date

These regulations are proposed to apply to discharges of indebtedness occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

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. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection burden imposed on S corporations and their shareholders is minimal in that it requires S corporations and their shareholder(s) to share information that shareholders already maintain to determine their respective tax liability. Moreover, it should take an S corporation or a shareholder no more than one hour to satisfy the information sharing requirements in these regulations. Finally, the collection burden imposed applies only to S corporations that are required to reduce their tax attributes under section 108(b) of the Code—a group estimated to be less than 1 percent of all existing S corporations. 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 (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 rules 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 8, 2008, beginning at 10 a.m. in the auditorium of the 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 Internal Revenue Building lobby 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 November 4, 2008 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 4, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of 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 Jennifer N. Keeney, Office of the Associate Chief Counsel (Passthroughs and Special Industries). 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 1.108–7 is amended by:

1. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.
2. Adding new paragraph (d).
3. Adding paragraph (e) *Example 5* and *Example 6* to newly-redesignated paragraph (e).
4. Revising newly-redesignated paragraph (f).

The additions and revision read as follows:

§ 1.108–7 Reduction of attributes.

* * * * *

(d) *Special rules for S corporations*—(1) *In general*. If an S corporation excludes COD income from gross income under section 108(a)(1)(A), (B), or (C), the amount excluded shall be applied to reduce the S corporation's tax attributes under paragraph (a)(1) of this section. For purposes of paragraph (a)(1)(i) of this section, the aggregate amount of the shareholders' losses or deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1), including disallowed losses or deductions of a shareholder that transfers all of the shareholder's stock in the S corporation during the taxable year of the discharge, is treated as the net operating loss tax attribute (deemed NOL) of the S corporation for the taxable year of the discharge.

(2) *Allocation of excess losses or deductions*—(i) *In general*. If the amount of an S corporation's deemed NOL exceeds the amount of the S corporation's COD income that is excluded from gross income under section 108(a)(1)(A), (B), or (C), the excess deemed NOL shall be allocated to the shareholder or shareholders of the S corporation as a loss or deduction that is disallowed under section 1366(d) for the taxable year of the discharge.

(ii) *Multiple shareholders*—(A) *In general*. If an S corporation has multiple shareholders, to determine the amount of the S corporation's excess deemed NOL to be allocated to each shareholder under paragraph (d)(2)(i) of this section, calculate with respect to each shareholder the shareholder's excess amount. The shareholder's excess amount is the amount (if any) by which the shareholder's losses or deductions disallowed under section 1366(d)(1) (before any reduction under paragraph (a)(1) of this section) exceed the amount of COD income that would have been taken into account by that shareholder under section 1366(a) had the COD income not been excluded under section 108(a).

(B) *Shareholders with a shareholder's excess amount*. Each shareholder that has a shareholder's excess amount, as determined under paragraph (d)(2)(ii)(A) of this section, is allocated an amount equal to the S corporation's excess deemed NOL multiplied by a fraction, the numerator of which is the shareholder's excess amount and the denominator of which is the sum of all shareholders' excess amounts.

(C) *Shareholders with no shareholder's excess amount*. If a shareholder does not have a shareholder's excess amount as determined in paragraph (d)(2)(ii)(A) of this section, none of the S corporation's excess deemed NOL shall be allocated to that shareholder.

(iii) *Terminating shareholder*. Any amount of the S corporation's excess deemed NOL allocated under paragraph (d)(2) of this section to a shareholder that had transferred all of the shareholder's stock in the corporation during the taxable year of the discharge is permanently disallowed under § 1.1366–2(a)(5), unless the transfer of stock is described in section 1041(a). If the transfer of stock is described in section 1041(a), the amount of the S corporation's excess deemed NOL allocated to the transferor under paragraph (d)(2) of this section shall be treated as a loss or deduction incurred by the corporation in the succeeding taxable year with respect to the transferee. See section 1366(d)(2)(B).

(3) *Character of excess losses or deductions allocated to a shareholder*. In determining the character of the amount of the S corporation's excess deemed NOL allocated to a shareholder under paragraph (d)(2) of this section, any ordinary loss or deduction that was included in the shareholder's aggregate amount of disallowed losses or deductions under section 1366(d)(1) is treated as reduced under section 108(b) before any section 1231 loss that was included in the shareholder's aggregate amount of disallowed losses or deductions under section 1366(d)(1), and any section 1231 loss is treated as reduced under section 108(b) before any capital loss that was included in the shareholder's aggregate amount of disallowed losses or deductions under section 1366(d)(1).

(4) *Information requirements*. If an S corporation excludes COD income from gross income under section 108(a) for a taxable year, each shareholder of the S corporation during the taxable year of the discharge must provide to the S corporation the amount of the shareholder's losses and deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1). The S corporation must provide to each shareholder the amount of any of the S corporation's excess deemed NOL that is allocated to that shareholder under paragraph (d)(2) of this section, even if that amount is zero.

(e) * * *

Example 5. (i) *Facts*. During the entire calendar year 2008, A, B, and C each own equal shares of stock in X, a calendar year S corporation. As of December 31, 2008, A, B,

and C each have a zero stock basis and X does not have any indebtedness to A, B, or C. For the 2008 taxable year, X excludes from gross income $30,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated $10,000 to A, $10,000 to B, and $10,000 to C under section 1366(a). For the 2008 taxable year, X has $30,000 of losses and deductions that X passes through pro-rata to A, B, and C in the amount of $10,000 each. The losses and deductions that pass through to A, B, and C are disallowed under section 1366(d)(1). In addition, B has $10,000 of section 1366(d) losses from prior years and C has $20,000 from prior years. A's ($10,000), B's ($20,000) and C's ($30,000) combined $60,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute for X under section 108(d)(7)(B) (deemed NOL) for purposes of the section 108(b) reduction of tax attributes.

(ii) *Allocation*. Under section 108(b)(2)(A), X's $30,000 of excluded COD income reduces this $60,000 deemed NOL to $30,000. Therefore, X has a $30,000 excess net operating loss (excess deemed NOL) to allocate to the shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $30,000 excess deemed NOL is allocated to A because A's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($10,000) do not exceed A's share of the excluded COD income for 2008 ($10,000). Thus, A has no shareholder's excess amount. Each of B's and C's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of B's and C's respective shares of the excluded COD income for 2008. B's excess amount is $10,000 ($20,000 − $10,000) and C's excess amount is $20,000 ($30,000 − $10,000). Therefore, the total of all shareholders' excess amounts is $30,000. Under paragraph (d)(2) of this section, X will allocate $10,000 of the $30,000 excess deemed NOL to B ($30,000 × $10,000/$30,000) and $20,000 of the $30,000 excess deemed NOL to C ($30,000 × $20,000/$30,000). These amounts are treated as losses and deductions disallowed under section 1366(d)(1) for the taxable year of the discharge. Accordingly, at the beginning of 2009, A has no section 1366(d)(2) carryovers, B has $10,000 of carryovers, and C has $20,000 of carryovers.

(iii) *Character*. Immediately prior to the section 108(b)(2)(A) reduction, B's $20,000 of section 1366(d) losses and deductions consisted of $8,000 of long-term capital losses, $7,000 of section 1231 losses, and $5,000 of ordinary losses. After the section 108(b)(2)(A) tax attribute reduction, X will allocate $10,000 of the excess deemed NOL to B. Under paragraph (d)(3) of this section, the $5,000 of ordinary losses are treated as reduced first, followed by $5,000 of section 1231 losses. Accordingly, the $10,000 of losses allocated to B consist of the remaining $2,000 of section 1231 losses and $8,000 of long-term capital losses. As a result, at the beginning of 2009, B's $10,000 of section 1366(d)(2) carryovers include $2,000 of section 1231 losses and $8,000 of long-term capital losses.

Example 6. (i) A and B each own 50 percent of the shares of stock in X, a calendar year S corporation. On June 30, 2008, A sells all of her shares of stock in X to C in a transfer not described in section 1041(a). For the 2008 taxable year, X excludes from gross income $12,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated $3,000 to A, $6,000 to B, and $3,000 to C under section 1366(a). Prior to the section 108(b)(2)(A) reduction, for the taxable year of the discharge the shareholders have disallowed losses and deductions under section 1366(d) (including disallowed losses carried over to the current year under section 1366(d)(2)) in the following amounts: A—$9,000, B—$9,000, and C—$2,000. These combined $20,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute for X under section 108(d)(7)(B) (deemed NOL).

(ii) Under section 108(b)(2)(A), X's $12,000 of excluded COD income reduces the $20,000 deemed NOL to $8,000. Therefore, X has an $8,000 excess net operating loss (excess deemed NOL) to allocate to the shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $8,000 excess deemed NOL is allocated to C because C's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($2,000) do not exceed C's share of the excluded COD income for 2008 ($3,000). However, each of A's and B's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of A's and B's respective shares of the excluded COD income for 2008. A's excess amount is $6,000 ($9,000 − $3,000) and B's excess amount is $3,000 ($9,000 − $6,000). Therefore, the total of all shareholders' excess amounts is $9,000. Under paragraph (d)(2) of this section, X will allocate $5,333 of the $8,000 excess deemed NOL to A ($8,000 × $6,000/$9,000) and $2,667 of the $8,000 excess deemed NOL to B ($8,000 × $3,000/$9,000). However, because A transferred all of her shares of stock in X in a transaction not described in section 1041(a), A's $5,333 of section 1366(d) losses and deductions are permanently disallowed under paragraph (d)(2)(iii) of this section. Accordingly, at the beginning of 2009, B has $2,667 of section 1366(d)(2) carryovers and C has no section 1366(d)(2) carryovers.

(f) *Effective/applicability date*—(1) Paragraphs (a), (b), (c), and *Examples 1, 2, 3*, and *4* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after May 10, 2004.

(2) Paragraph (d) and *Examples 5* and *6* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after the date that these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–17952 Filed 8–5–08; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076–AA12

Arbitration Services

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules relating to arbitrators' inactive status, removal, appointment, referral and obligation to provide FMCS with information. The proposed rules also address the appointment of arbitrators where a party has failed to pay fees in previous cases. In addition, the proposed rules raise the annual listing fee for arbitrators on the FMCS Roster. The changes will promote more efficient and effective procedures involving arbitrator retention and arbitration services. The increased cost of listing arbitrator biographical data more accurately reflects FMCS' costs of maintaining and administering this information.

DATES: Comments must be submitted to the office listed in the address section below on or before October 6, 2008.

ADDRESSES: Submit written comments, identified by RIN number, by mail to Vella M. Traynham, Director, Office of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted by fax to (202) 606–3749. Comments may also be submitted electronically to *vtraynham@fmcs.gov*. All comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, Director, Office of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 606–5111.

SUPPLEMENTARY INFORMATION: Pursuant to 29 U.S.C. 171(b) and 29 CFR Part 1404, FMCS maintains a Roster of qualified labor arbitrators to hear disputes arising from collective bargaining agreements and to provide fact finding and interest arbitration. FMCS proposes to amend its rules pertaining to arbitration services by revising: the arbitrator complaint process; circumstances applicable to inactive arbitrator status; procedures for the request of arbitration panels; the obligation of arbitrators to provide FMCS with designated information; and

methods for selecting an arbitrator panel. These changes are intended to make FMCS arbitration procedures more efficient and effective.

FMCS also proposes in the Appendix to Part 1404 to increase the listing fee for an arbitrator's first business address from $100 to $150. Increasingly, parties are requesting more individualized panels based on their requirements and arbitrator experience. The increased listing fee reflects the additional FMCS staff time and effort necessary to be responsive to these requests as well as that associated with updating arbitrator biographies.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism or tribal implications.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

For the reasons stated in the preamble, FMCS proposes to amend 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. In § 1404.5, revise paragraph (d) to read as follows:

§ 1404.5 Listing on the roster; criteria for listing and retention.

* * * * *

(d) *Listing on roster, removal.* Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster for violation of this Part or of the Code of Professional Responsibility. FMCS will provide to the affected arbitrator written notice of removal from the Roster. Complaints about arbitrators should be in writing and sent to the Director of OAS. The complaint should cite the specific section of the Code or the FMCS rule the arbitrator has allegedly violated. The following criteria shall be a basis for the Board to recommend and/or the Director to initiate a member's removal from the Roster:

* * * * *

3. Revise § 1404.6 to read as follows:

§ 1404.6 Inactive status.

(a) A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule or other reasons.

(b) Arbitrators whose schedules do not permit cases to be heard within six months of assignment are encouraged to make themselves inactive temporarily until their caseload permits the earlier scheduling of cases.

(c) An arbitrator can remain on inactive status without paying any annual listing fee for a period of two (2) years. If an arbitrator is on inactive status for longer than two (2) years, the arbitrator will be removed from the Roster unless he or she pays the annual listing fee.

4. Amend § 1404.9 by revising paragraphs (b) and (d) to read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

* * * * *

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. FMCS will abide by language in the parties' collective bargaining agreement specifying the conditions under which a panel of arbitrators will be referred. If the parties' collective bargaining agreement requires that the request for a panel of arbitrators be jointly submitted, FMCS will not proceed with an arbitrator selection if one party communicates to FMCS that it does not concur in the request. In the event, however, that the request is made by only one party without objection, the OAS will submit a panel of arbitrators. The issuance of a panel—pursuant to either a joint or a unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by the FMCS regarding the arbitrability of any dispute or a ruling that an agreement to arbitrate exists.

* * * * *

(d) The OAS reserves the right to decline to submit a panel or to make an appointment of an arbitrator if the request submitted is overly burdensome or otherwise impracticable. The OAS, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative solution. The OAS may also decline to service any request from a party based on the party's non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process.

* * * * *

5. Revise § 1404.12 to read as follows:

§ 1404.12 Selection by parties and appointment of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify the OAS of the selection and of his or her willingness to serve. The arbitrator must provide the OAS with the FMCS case number and other pertinent information for the OAS to make an appointment. A pattern of failure by an arbitrator to notify FMCS of a selection in an FMCS case may result in suspension or removal from the Roster. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the OAS. Consistent failure to follow these procedures may lead to a denial of future OAS services.

(b) If the parties request a list of names and biographical sketches rather than a panel, the parties may choose to contact and select an arbitrator directly from that list. In this situation, neither the parties nor the arbitrator is required to furnish any additional information to FMCS and no case number will be assigned.

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, FMCS will accept one of the following methods for selection from a panel:

(1) A selection by mutual agreement;

(2) A selection in which each party alternately strikes a name from the submitted panel until one remains;

(3) A selection in which each party advises OAS of its order of preference by numbering each name on the panel and submitting the numbered list in writing to OAS. If the parties separately notify OAS of their preferred selections, OAS, upon receiving the preferred selection of the first party, will notify the other party that it has fourteen (14) days in which to submit its selections. Where both parties respond, the name that has the lowest combined number will be appointed. If the other party fails to respond, the first party's choice will be honored.

(d) Where the parties' collective bargaining agreement permits each party to separately notify OAS of its preferred

selection, OAS will proceed with the selection process as follows. When the OAS receives the preferred selection from one party, it will notify the other party that it has fourteen (14) days in which to submit its selections. If that party fails to respond within the deadline, the first party's choice will be honored unless prohibited by the collective bargaining agreement. Where both parties respond, the name that has the lowest combined number will be appointed. If, within fourteen (14) days, a second panel is requested, and is permitted by the collective bargaining agreement, the requesting party must pay a fee for the second panel.

(e) The OAS will make a direct appointment of an arbitrator only upon joint request or as provided by paragraphs (c)(3) or (d) of this section.

(f) A direct appointment in no way signifies a determination of arbitrability or a ruling that an agreement to arbitrate exists. The resolution of disputes over these issues rests solely with the parties.

6. Amend the Appendix to 29 CFR Part 1404 by removing ''$100'' and adding ''$150'' in its place.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. E8–17674 Filed 8–5–08; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. PTO–P–2008–0022]

RIN 0651–AC27

Changes to Practice for Documents Submitted to the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice to limit the types of correspondence that may be submitted to the Office by facsimile. The Office is also proposing an increased minimum font size for use on papers submitted to the Office for a patent application, patent or reexamination proceeding. The proposed changes will improve the legibility of documents in the Office's files of patent applications and reexamination proceedings.

DATES: Written comments must be received on or before October 6, 2008. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to *AC27.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration (OPLA). Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site *(http://www.regulations.gov)* for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, currently located at Room 7D74 of Madison West, 600 Dulany Street, Alexandria, Virginia and will also be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or a telephone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((571) 272–7707), Senior Legal Advisor, or Raul Tamayo, Legal Advisor, ((571) 272–7728), Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, directly by telephone, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of the Office of Patent Legal Administration.

For information regarding reexamination issues, contact Stephen Marcus ((571) 272–7743) or Kenneth Schor ((571) 272–7710), Senior Legal Advisors, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Office is proposing to revise the rules of practice in title 37 of the Code of Federal Regulations (CFR) for facsimile transmissions of correspondence, and the minimum font size required to be used. The Office is specifically proposing revising §§ 1.6, 1.52, 1.366, 2.195, 3.24, and 3.25.

I. Background

The number of patent applications and patent-related correspondence received by the Office has increased substantially over the last few years, and submissions are expected to continue to increase in the next few years. Processing paper is extremely labor-intensive and subject to error and misfiling, particularly as the Office must sort through several thousand pieces of patent correspondence that are received on a daily basis. Although the Office has made substantial changes in an attempt to accurately and efficiently process the increased number of correspondence received, the Office believes that it should make further changes in its business practices to improve its handling of patent correspondence.

II. Facsimile Transmission

In 1988, the Office, due to widespread use of facsimile transmission and the resulting time saved in correspondence between applicants and the Office, established a trial program to accept facsimile transmission of certain correspondence. In light of the success of the trial program, a policy on acceptance of facsimile transmissions was incorporated into the rules of practice. *See Changes in Signature and Filing Requirements for Correspondence Files in the Patent and Trademark Office,* 58 FR 54494 (October 22, 1993). Facsimile transmission of correspondence has grown to over 240,000 pieces of patent correspondence per year sent to the Office's central facsimile number. While the number of facsimile transmissions in any one application may be small, the overall number of facsimile transmissions represents a significant processing burden on the Office.

The advantage of facsimile transmitting patent and assignment correspondence has been the quick submission of such correspondence to the particular area of the Office concerned with promptly acting on them. The advantage, however, is not exclusive to facsimile transmissions. EFS–Web offers this advantage as well as others not available with facsimile transmission. For example, EFS–Web submissions are ''soft scanned'' (*i.e.,* electronically uploaded) directly into the official application file, so multiple Office employees can simultaneously view the document(s). Furthermore, when documents are submitted via EFS–Web, the Office's electronic system sends an auto-generated message notifying the appropriate area which treats the type of documents submitted. Additionally, EFS–Web offers

applicants the opportunity to review the content of their submissions after the ''soft scanning'' process is complete.

It should be recognized that correspondence received by the Office via facsimile are often of low image quality when printed and viewed. The low image quality is not so much dependent upon the type of printer used by the Office when receiving and printing the transmitted correspondence, but rather is dependent upon the quality of the machine used by an applicant in generating the facsimile transmission. When the Office scans these low image quality correspondence into the Office's official application file called the Image File Wrapper (IFW), the image quality can be further compromised.

In addition to low image quality, a number of other adverse consequences, from the Office's perspective, exist when applicant submits patent and assignment documents via facsimile. For example, a number of applicants are not meticulous in determining the specific facsimile transmission number to which a correspondence should be sent. Under the current rules, receipt by the Office via any facsimile transmission number may suffice to represent a completed, effective transmission. However, the area of the Office needing to act on the errant transmission would not be aware of its receipt, and the area receiving it may not immediately recognize what type of correspondence has been received, or where the correspondence should be forwarded for prompt action. Such circumstances cause unnecessary delays and add unnecessary costs to the processing of errant correspondence. In some instances, routing errant correspondence to the correct area of the Office is not possible or is not done in a timely manner (*e.g.*, the paper copy becomes misplaced before the proper forwarding area can be determined, or the proper forwarding area is not readily identifiable by the receiving area), thereby forcing the applicant to rely on a transmission receipt via a petition alleging that the correspondence was timely submitted. Additionally, even where the facsimile transmission is sent to the designated transmission number, the Office must print the transmitted correspondence, process the paper, scan the possibly low-quality image, and update the IFW. All of these steps are additionally time-consuming and costly.

Accordingly, the Office believes that given: (1) The costs and quality concerns regarding facsimile transmitted correspondence; and (2) the newly upgraded EFS–Web electronic filing system, which offers the same benefit of quick submission to the particular area of the Office that needs to act on the correspondence, it is now appropriate to terminate the use of facsimile transmissions as a method for filing most correspondence intended to become part of the file record of a patent application, patent or reexamination proceeding. Specifically, correspondence that can be submitted via EFS–Web would no longer be accepted via facsimile transmission. For example, a petition to withdraw a patent application from issue per 37 CFR 1.313 would no longer be accepted via facsimile transmission and would need to be submitted via EFS–Web.

Similarly, it is also appropriate to eliminate facsimile transmission of other types of correspondence that can be submitted via certain other electronic systems of the Office. Specifically, any type of patent or trademark correspondence that can be submitted via the Office's Electronic Patent Assignment System (EPAS) (discussed in Manual of Patent Examining Procedure (MPEP) § 302.10), and Electronic Trademark Assignment System (ETAS) (discussed in Trademark Manual of Examination Procedure (TMEP) § 503.03(a)), such as assignment documents submitted for recording in Assignment Services Division, would no longer be permitted to be submitted via facsimile transmission. While such documents are intended to become part of the official assignment records, they are not intended to become part of the official patent or trademark file to which they relate.

Additional aspects of the proposed rule making would require applicants, third party requesters, and patent owners: (1) To utilize a facsimile transmission number identified by the Office for a particular type of correspondence, *i.e.*, the submission must be transmitted directly to the area of the Office appropriate to receive the transmission at its identified transmission number (as opposed to transmission to any other facsimile transmission number, such as a facsimile transmission number identified for a different type of correspondence), or otherwise the transmission would not be effective (see § 1.6(d)(3)); and (2) to limit each submission made via facsimile transmission to one application or other matter before the Office, except for a single submission of multiple patent maintenance fee payments or requests for refunds thereof. The submission for a single application or other matter may address more than one issue with more than one piece or type of correspondence in regard to the single application or matter if each correspondence can be properly submitted via facsimile.

While this Notice proposes to restrict facsimile transmissions of correspondence directed to the Office, nothing in the proposed rule making is intended to curtail the ability of the Office to utilize facsimile transmissions for its outgoing correspondence as it deems appropriate, such as replies to certain inquiries from applicants.

III. EFS–Web

The Office's Web-based electronic filing system (EFS–Web) went into full operation on March 17, 2006, and is supported by the LEGAL FRAMEWORK FOR EFS–WEB (*http://www.uspto.gov/ebc/portal/efs/legal.htm*), which identifies what documents may be submitted via EFS–Web. The rules of practice were amended so that EFS–Web submissions would be treated analogously to submissions filed via First-Class Mail or facsimile transmissions with a certificate of mailing or transmission. *See Changes to Facilitate Electronic Filing of Patent Correspondence*, 72 FR 2770 (January 23, 2007); 1315 *Off. Gaz. Pat. Office* 57 (February 13, 2007) (final rule). EFS–Web is easy to use as correspondence can be submitted to the Office at the click of a button, and EFS–Web is available twenty-four hours a day, seven days a week. An increasing amount of patent-related correspondence has been filed via EFS–Web. In particular, the percentage of utility, plant, reissue, national stage applications, and requests for continued examination (RCE) filed via EFS–Web has dramatically increased from approximately 28% in the first week in October 2006 to approximately 70% in the second week in January 2008.

As discussed above in item II, ''Facsimile transmission,'' increased use of EFS–Web would increase efficiency and improve the quality of the images in the IFW used for prosecution and publication purposes. Additionally, system delays caused by paper processing and scanning would be much reduced.

With EFS–Web being available for the submission of patent correspondence twenty-four hours a day, seven days a week, patent applicants, owners, and third party requesters in reexamination proceedings (both *ex parte* and *inter partes*) are provided easy and convenient access to a system for submitting their patent correspondence. Shortly after patent correspondence is officially submitted to the Office via EFS–Web, the Office receives the correspondence and issues an

acknowledgment receipt. The acknowledgment receipt contains the ''receipt date,'' the time the correspondence was received at the Office (not the local time at the submitter's location), and a full listing of the correspondence received. Accordingly, an acknowledgment receipt is the legal equivalent of a post card receipt described in MPEP § 503, with the added convenience of being automatically generated. In contrast, a return receipt for correspondence transmitted to the Office's central facsimile number is only automatically generated when (1) the sender's facsimile number is properly programmed in the sending facsimile machine and (2) the sender's facsimile machine is capable of receiving a return facsimile transmission immediately following receipt of the original transmission.

For the filing of patent applications, the official filing date will continue to be stated on the filing receipt under § 1.54(b), which is sent to applicants after the submitted application parts are reviewed for compliance with the filing date requirements. Under § 1.6(a)(4), patent correspondence filed via EFS–Web is considered to have been filed on the date the Office receives the submission (regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia). Thus, by using EFS–Web, applicants and other EFS–Web users (*e.g.*, practitioners) can, in a short period of time, ensure that they have received a ''date certain'' for any submission made via EFS–Web.

Correspondence submitted by facsimile transmission is received in paper form and is considered paper correspondence (although it has an electronic transmission component), while EFS–Web transmissions are electronic transmissions that remain in electronic form after receipt. Critical data concerning patent correspondence submitted via EFS–Web is entered into the automated systems much sooner than if the correspondence was received in paper in that the electronic document of an EFS–Web submission is directly available in the IFW system (by ''soft scanning''), while the printed paper for a facsimile submission requires manual handling and scanning of the paper in order to make such documents available in the IFW system.

Continued increases in the amount of patent correspondence encourage the Office to change its business approach for serving its users. With EFS–Web, users are provided with better quality, as well as improved accuracy of the information submitted to and processed by the Office, while using fewer resources, thus reducing the time required for processing and handling. Users have greater assurance that the content of the IFW is accurate. Submitting correspondence via EFS–Web provides a level of consistency, accuracy, quality and predictability that a paper-based facsimile transmission cannot provide. EFS–Web users have repeatedly stated that they are satisfied with the ease of access and use of EFS–Web, and appreciate the automatic generation of the acknowledgment receipt after they officially submit their correspondence to the Office. Accordingly, the need for the submission of patent correspondence to a central facsimile number or a facsimile number for a particular type of correspondence is greatly reduced.

The Legal Framework for EFS–WEB permits submission of all types of correspondence that are not specifically excepted. *See* Item XXXIII. Documents Policy, in the legal framework document at *http://www.uspto.gov/ebc/portal/efs/legal.htm*. The following is a non-exclusive list of correspondence types that are identified in the legal framework document as currently not permitted:

1. Correspondence concerning Registration to Practice submitted under § 1.4(e).
2. Certified copies submitted under § 1.4(f).
3. Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1 through 5.5 of this chapter.
4. Submissions in contested cases before the Board of Patent Appeals and Interferences, except as the Board may expressly authorize.
5. Papers filed in contested cases before the Board of Patent Appeals and Interferences, which are governed by § 41.106(f).
6. Correspondence filed in connection with a disciplinary proceeding pursuant to 37 CFR part 10.
7. Submissions that are not associated with an application or a reexamination proceeding.
8. Third party papers under § 1.99.
9. Protests under § 1.291.
10. Public use hearing papers under § 1.292.
11. Maintenance fees submitted under § 1.366.

Although a main purpose of the proposed changes to the facsimile transmission rules is to prohibit submission by facsimile transmission of those types of correspondence that can be submitted via EFS–Web, the Office is proposing to also terminate the ability of third parties to submit correspondence via facsimile transmission that cannot be submitted via EFS–Web, as third party submissions under § 1.99, protests under § 1.291, and public use hearing papers under § 1.292 are all ill-suited for facsimile transmission.

Assignment documents submitted for recording under 35 U.S.C. 261 are also barred from submission via EFS–Web by item 7 (even though related to an application or a patent), but they may be electronically filed using the Electronic Patent Assignment System (EPAS) or the Electronic Trademark Assignment System (ETAS). Hence, there is no continued need to submit assignments for recording via facsimile transmission. Information regarding EPAS is available by sending an e-mail to *epas@uspto.gov*. Information regarding ETAS is available by sending an e-mail to *etas@uspto.gov*.

EFS–Web permits registered users to file both new submissions and follow-on documents. Some examples of papers that may be submitted via EFS–Web and therefore would no longer be able to be submitted by facsimile transmission are: (1) Amendments; (2) information disclosure statements; (3) petitions, including petitions to withdraw an application from issue, petitions for express abandonment to avoid publication, and maintenance fee related petitions; (4) requests for continued examination; (5) papers in *ex parte* or *inter partes* reexamination proceedings; (6) Design continued prosecution application (CPA) filings; (7) refund requests related to an application or a reexamination proceeding; (8) papers submitted to the U.S. Receiving Office; (9) papers submitted in regard to a pre-appeal or an appeal conference or an appeal to the Board of Patent Appeals and Interferences; and (10) status inquiries related to the issuance of the next Office action on the merits or the issuance of a decision on petition.

Correspondence submitted via EFS–Web should be intended to become part of the official file record. Generally, EFS–Web submissions are automatically made part of the official file record, except for pre-grant publication submissions (*i.e.*, amended republications, amended first publications, voluntary publications), which must be submitted via EFS–Web but are not made part of the official file record if submitted properly. Maintenance fee payments, refunds of such payments, and related papers would continue to be able to be submitted via facsimile transmission. *See* the preamble discussion in regard to § 1.6(d)(2)(i). Related papers would include a petition to transfer a maintenance fee payment from the

''wrong'' patent where the fee had not previously been paid (and therefore payment could be applied thereto) to the right patent (where the maintenance fee had not already been paid). Where a maintenance fee has already been paid, payment of an additional maintenance fee will result in an automatic refund. Maintenance fee payers should consult *https://ramps.uspto.gov/eram/patentMaintFees.do.*

Types of reexamination proceeding correspondence that may be submitted via EFS–Web when the correspondence is intended to become part of the official file in a reexamination proceeding are: (1) An original request for *ex parte* or *inter partes* reexamination; (2) any corrected request for *ex parte* or *inter partes* reexamination submitted in response to either a Notice of Failure to Comply with Reexamination Request Filing Requirements or a Decision vacating the filing date that was accorded to a previously-submitted request for reexamination; (3) all follow-on prosecution papers (including appeal papers) filed by either the patent owner or a third party requester in any reexamination proceeding (including papers that are submitted together with a petition to expunge the papers from the record); (4) notices of prior or concurrent proceedings and decisions pursuant to MPEP sections 2282 and 2686; and (5) petition papers filed by the patent owner or third party requester that are directed to any reexamination proceeding.

Types of application correspondence not intended to become part of the official file record and currently not permitted to be submitted via EFS–Web would be able to continue to be submitted via facsimile transmission, unless specifically excepted, until such time that the Legal Framework for EFS–WEB is amended to permit such type of correspondence to be submitted via EFS–Web. Some examples of correspondence that are not intended to be part of the official application or patent file record and therefore are not permitted to be submitted via EFS–Web and would be able to continue to be submitted via facsimile transmission are:

(1) Proposed amendments for examiner review, such as in regard to an upcoming interview;

(2) an inquiry as to whether a 35 U.S.C. 371 national stage application, or a 35 U.S.C. 111(a) continuing application of a PCT application has been filed for a particular PCT application (which inquiry is obviously not intended to become part of an application file but only seeks to ascertain whether an application has been filed); and

(3) orders for copies of application, patent, and reexamination files.

Any proposed amendment submitted by facsimile transmission would not be part of the official file record, but must be made part of the official file record, when such amendment is referred to in another correspondence (*e.g.*, interview summary) that is part of the official file record (whether referred to by applicant or the examiner).

Correspondence directed to a reexamination proceeding that is not intended for entry into the record of the reexamination proceeding is considered to be an ''unofficial paper,'' and must not be submitted via EFS–Web. A patent owner or third party requester who desires to submit correspondence to be treated as an ''unofficial paper'' in an *ex parte* reexamination proceeding may expedite consideration of the correspondence by contacting the Central Reexamination Unit (CRU) ((571) 272–7705) for instructions on how to submit the ''unofficial paper'' via transmission to a facsimile machine designated for such purpose in the CRU.

Examples of an ''unofficial paper'' that a party to an *ex parte* reexamination proceeding may submit via facsimile transmission are: (1) A courtesy paper identifying issues to be discussed that is submitted prior to a permitted interview with the examiner; (2) a paper submitted for review by Office personnel (in rare instances where such is permitted, and the Office has been contacted for permission to submit the paper for review) to determine the formal sufficiency of the paper; and (3) a paper submitted to obtain examiner review of a proposed amendment intended to overcome an examiner rejection. Any such proposed amendment that is submitted unofficially, and as such is not part of the official file record, must be made part of the official file record, when such proposed amendment is referred to in a paper that is part of the official file record (whether referred to by a party to the reexamination proceeding or by the examiner or other Office official). Where there are two parties to the *ex parte* reexamination proceeding, an ''unofficial paper'' submitted to the Office by one party need not be served on the other party to the reexamination proceeding, since such a paper is not considered to have been ''filed'' in the reexamination proceeding within the meaning of the rules (*e.g.*, §§ 1.510(a), 1.550(f), 1.903 or 1.913) because an ''unofficial paper'' is a paper not intended to become part of the official record.

It is to be noted that an ''unofficial paper'' (*i.e.*, an *ex parte* communication) directed to an *inter partes* reexamination is strictly prohibited. Interviews are not permitted in *inter partes* reexamination, and the submission of a proposed amendment would constitute an impermissible interview. It is also noted that no correspondence is to be submitted directly to any examiner in *inter partes* reexamination irrespective of the delivery method.

The Office will presume that application correspondence submitted via EFS–Web is intended to be an ''official paper'' whereas correspondence that could be submitted via EFS–Web but is instead submitted via facsimile transmission will be presumed an ''unofficial paper'' (*i.e.*, a paper not to be made part of the official file record). For example, an amendment to the application proposed by applicant and facsimile transmitted to an examiner for discussion during a scheduled interview would be considered an ''unofficial paper.'' Conversely, for an amendment submitted by EFS–Web, the Office will presume that the amendment should be part of the application file record, and the amendment will automatically become part of the application file record.

A status inquiry regarding the issuance of an Office action on the merits, unlike an inquiry regarding the presence of a PCT filing (above), will be made part of the file record. *See* MPEP § 203.08. Accordingly, use of facsimile transmission would not be permitted for status inquiries regarding the issuance of Office actions. Rather, a status inquiry submitted via EFS–Web, which is directed to the Technology Center where the application is docketed and not to the examiner, would be appropriate.

In view of the linkage of what would be permitted as a facsimile transmission to what would not be permitted to be submitted via EFS–Web, applicants and other parties, prior to determining whether to submit documents via facsimile transmission, would need to review the current version of the Legal Framework for EFS–WEB, *http://www.uspto.gov/ebc/portal/efs/legal.htm*, to determine what is permitted to be submitted via EFS–Web or some other Office electronic system and thus not permitted to be facsimile transmitted.

As it is noted in the Legal Framework for EFS–WEB, except for the initial filing of an application, use of a public key infrastructure (PKI) certificate for follow-on submissions is required. *See*

Item X of the legal framework. The process for obtaining a PKI certificate requires the completion of some paperwork, though the Office believes that the process is not unduly burdensome. However, should an applicant not wish to obtain a PKI certificate, the types of correspondence that would no longer be allowed to be submitted to the Office by facsimile transmission would still be able to be submitted by hand-carry, U.S. Postal Service first class mail using a § 1.8 certificate of mailing, or the U.S. Postal Service ''Express Mail Post Office to Addressee'' service as set forth in § 1.10 along with the benefits and protections currently contained therein.

The Legal Framework for EFS–WEB does not permit a simple text file larger than 25 megabytes. *See* Item XV of the legal framework. However, a text file of more than 25 megabytes may be broken up into multiple text files that can be submitted together. There is a limitation of 60 files that can be submitted in one submission. Where there are more than 60 files to be submitted, additional submissions may be made on the same day. *See* Item XVI of the legal framework. These types of very large submissions would probably not be appropriate for a facsimile transmission due to the quantity of sheets that must be handled at both the transmitting and receiving machines.

Similarly, where filing sequence listings, tables related to sequence listings, or both are submitted for international applications in the U.S. Receiving Office, the applicant may partition an oversized file into multiple files, each of which is smaller or equal to 25 megabytes. *See* Item XIX. C. of the legal framework.

Electronic forms of transmission, such as EFS–Web, EPAS, ETAS, and facsimile transmission have historically been subject to disturbances in service (''down time'') from time to time. However, providing notice as to down time is far faster in the EFS–Web environment than with an isolated and infrequently attended facsimile machine. The Office is continuing to address the need for fast notification of any disruption in the EFS–Web system. (*See* Item XXVIII. of the Legal Framework for EFS–WEB.)

Applicants and other users are reminded to always check the availability of EFS–Web at the time a transmission is to be attempted. If EFS–Web is unavailable, recourse is to use first class mail with a certificate of mailing pursuant to § 1.8, or Express Mail pursuant to § 1.10, depending on the type of correspondence being submitted and based on the actual receipt date desired. The unavailability of EFS–Web (*e.g.*, due to an EFS–Web system failure, or an interruption in a user's internet service provider) will not permit use of facsimile transmission based on an argument that the correspondence was not permitted to be submitted via EFS–Web.

IV. Font Size

The Office needs to receive application specifications and other papers that are legible and can be easily read by examiners and other Office personnel. In addition, the public will benefit when applications that have been published or otherwise opened to public inspection are legible. A key attribute of legible text is an appropriate font size of the text. Previously, the Office was neither able to define the preferred font size as the mandatory minimum font size of text in view of limitations imposed by Patent Cooperation Treaty (PCT) obligations and implementing regulations, nor had the Office believed that mandatory rules would be needed in order that all correspondence received by the Office be readily legible. Some practitioners and applicants, however, have adopted a continuing practice of submitting documents that are not readily legible, *e.g.*, entire specifications with a font size as small as 6 point.

Font size as small as 6 point does not have sufficient clarity to permit electronic capture by use of digital imaging and optical character recognition (OCR) in accordance with § 1.52(a)(1)(v). Accordingly, the results of the Office's electronic capture of the unusually small font by OCR are often unsatisfactory. The accuracy of OCR conversion is inversely proportional to the size of the text being electronically captured and it has been found that electronic capture by use of OCR of applications with smaller font sizes contain more errors, which must then be corrected, thus wasting time and resources on the part of both the Office and the applicant. The Office experiences significant difficulties when trying to publish applications and patents with specifications having unusually small text. Some applications are not even capable of being electronically captured by OCR as the text is too small. Errors in electronic capture may not be caught immediately and may delay issuance of a patent or, if not identified by the Office, represent problems with enforcement of any patent that should issue.

The practice of using an unusually small font size has expanded to other papers, such as remarks, amendments, and maintenance fee payments. When requested to resubmit the paper with a larger font, some strong resistance has been encountered based on the lack of a regulatory requirement defining the minimum font needed by the Office to process and read the paper. The Office anticipates moving forward with a plan to OCR all amendments and remarks submitted by applicants. This plan would be adversely impacted by the continued submission of such papers with unusually small font size.

Some practitioners argue that the Office should be capable of adjusting the font size to produce any text size that it desires. The Office, however, cannot automatically resize the document. Attempts to change the parameters of the document received may introduce substantive errors in the document, particularly where tables, charts, formulas, and drawings are concerned.

In view of the significant problems facing the Office by applicants' use of unusually small font size, and the recent amendment of PCT regulations (effective April 1, 2007, PCT Rule 11.9(d) was revised from ''all text matter shall be in characters the capital letters of which are not less than 0.21 cm high'' to ''all text matter shall be in characters the capital letters of which are not less than 0.28 cm high''), the Office needs to and can now eliminate such practice.

Accordingly, it is proposed to: (1) Increase the mandatory minimum font size where the font must have capital letters no smaller than 0.28 cm (0.11 inch) high (*e.g.*, a font size of 12 point in Times New Roman); (2) establish that the newly proposed font size requirement applies to prosecution papers (specification, including the claims and abstract, drawings, and oath or declaration, reexamination request, any amendments or correction(s)) and any remarks, petitions, requests, affidavits or other papers submitted during prosecution of an application or a reexamination proceeding; (3) clarify that the proposed font size requirement does not apply to pre-printed information on paper forms provided by the Office or the copy of the patent submitted on paper in double column format as the specification in a reissue application or request for reexamination; and (4) clarify that papers submitted electronically that are to become part of the patent application or reexamination file must be readily legible.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1, 2, and 3, are proposed to be amended as follows:

Section 1.6(a)(1) is proposed to be amended to add a descriptive title, and to update the reference to facsimile transmissions to paragraph (d)(1) of § 1.6 from the current reference to § 1.6(a)(3).

Section 1.6(a)(2) is proposed to be amended to add a descriptive title.

Section 1.6(a)(3) is proposed to be amended to add a descriptive title, and to add a reference to paragraph (d)(1) of § 1.6 and the correspondence permitted by that section to be submitted via facsimile transmission.

Section 1.6(a)(4) is proposed to be amended to add a descriptive title.

Section 1.6(a)(5) is proposed to be newly added to set forth current practice that non-facsimile electronic transmission of patent-related correspondence other than correspondence filed via the Office's patent-related electronic systems (*e.g.*, EFS–Web, and EPAS) may not be used for submission of correspondence to the Office intended to become part of the official file record (*e.g.*, Image File Wrapper) for an application, patent, or reexamination proceeding, or other matter before the Office, except as expressly authorized by the Board of Patent Appeals and Interferences (BPAI) in cases before the BPAI, or applicant when consistent with the Office's express policy on internet usage. *See* Internet Usage Policy, 64 FR 33056 (June 21, 1999).

The prohibition includes e-mail, and additional forms of Internet-based transmission other than the Office patent electronic systems, *i.e.*, EFS–Web, and EPAS. E-mail may continue to be used for inquiries, such as questions regarding patent practice and procedure directed to *PatentPractice@uspto.gov.* Communications by the Office via the Internet are governed by the published Internet Usage Policy. *See* MPEP § 502.03. As it is recognized that Internet e-mail communications are not secure, the Office will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122 without a written authorization by the applicant. Current internet (e-mail) policy covers both incoming correspondence to the Office from applicant and outgoing correspondence to applicant from the Office. A copy of the e-mail correspondence is required to be made of record in the file, even though such correspondence can only be directed towards communications other than those under 35 U.S.C. 132 or which otherwise require a signature.

Section 1.6(d) is proposed to be amended by deleting material duplicative of material in current § 1.6(a)(3), relating to the receipt date accorded facsimile transmissions. Additional material present in § 1.6(d) would be placed in amended paragraphs (d)(1)–(3), leaving § 1.6(d) with only the introductory title.

Additionally, § 1.6(d) and paragraphs (d)(1)–(9) are proposed to be amended to change facsimile transmission practice from the existing practice that facsimile transmission is generally accepted but for some limited exceptions set forth in current paragraphs (d)(1)–(9), to the proposed practice that facsimile transmission would generally not be accepted for most types of correspondence in view of the availability of EFS–Web for submission of most types of correspondence. Accordingly, new paragraphs (d)(1)(i)–(vi) would continue to prohibit the specific types of correspondence that are currently prohibited in current paragraphs (d)(1)–(6) (paragraphs (d)(7) and (8) are currently reserved and do not recite prohibitions). The prohibition set forth in proposed (d)(1)(iii) would not contain the exception in current § 1.6(d)(3) and thus would result in the prohibition of the facsimile transmission of continued prosecution applications. While the prohibition proposed in (d)(1)(vi) only prohibits facsimile transmissions of correspondence in secrecy order applications that are directly related to the secrecy order, § 1.6(d)(viii) would also prohibit facsimile transmission of correspondence that is not directly related to the secrecy order but can be submitted pursuant to § 1.6(a)(4) (EFS–Web).

Newly proposed § 1.6(d)(1)(vii) would prohibit facsimile transmission of correspondence for cases before the Board of Patent Appeals and Interferences (BPAI), except as the BPAI may expressly authorize. This would expand the current facsimile transmission prohibition now limited to contested cases before the BPAI of current § 1.6(d)(9).

Newly proposed § 1.6(d)(1)(viii) would prohibit facsimile transmission of the type of correspondence that could be submitted via EFS–Web, as would be set forth in the Legal Framework for EFS–WEB. This would include most types of patent correspondence for applications (including reissue and provisional applications), patents (including Certificates of Correction pursuant to §§ 1.322 and 1.323, and inventorship correction pursuant to § 1.324), and reexamination proceedings (both ex *parte* and *inter partes*).

Newly proposed paragraph (d)(1)(ix) would prohibit facsimile transmission of the type of correspondence permitted to be submitted via the Office's patent-related electronic system for assignments to be recorded, EPAS.

Newly proposed paragraphs (d)(1)(x)–(xii) would prohibit the facsimile transmission of third party papers under § 1.99, protests under § 1.291, and public use hearing papers under § 1.292 even though such papers may not currently be submitted via EPS–Web. The exclusions of third party papers and protests from EPS–Web submission, even though these papers are intended to become part of the Official file, was based on the need to use a PKI certificate for follow-on submissions, which a third party filing a paper under §§ 1.99 or 1.291 would not generally either have access to or would be given access to by the applicant. The Office is committed to working on a solution that would permit the filing of such papers via EPS–Web. As such papers can be massive or frequently have detailed drawings, it would not be in the interest of the parties submitting such papers to continue to use facsimile transmission.

Section 1.6(d)(2) would be directed at setting forth the requirements for facsimile transmission for the types of correspondence not prohibited in § 1.6(d)(1).

Section 1.6(d)(2)(i) would make mandatory that a facsimile transmission be limited to a single application or other matters before the Office (*e.g.*, patents and reexamination proceedings), except for the payment of maintenance fees pursuant to § 1.366 and requests for refunds thereof. For example, while an applicant may need to submit the same type of document for more than one application file, such as proposed amendments to claims in related applications that are to be discussed in the same upcoming interview, the proposed amendments for each application must be separately transmitted. The payment of maintenance fees in multiple patents would be exempt from this proposed requirement. Maintenance fee payments would continue to qualify for facsimile transmission as they may not be submitted via EPS–Web.

Where a small entity assertion pursuant to § 1.27 is required to support payment of a small entity maintenance fee or a request for a maintenance fee refund, the payment or request for refund with the accompanying small entity assertion may be facsimile transmitted. Similarly, where, for example, the assignee is separately submitting a small entity assertion to support payment of a maintenance fee,

and an annuity company is the party making the small entity payment, the assignee may facsimile transmit the § 1.27 small entity assertion. It should be noted, however, that small entity assertions can be submitted via EPS–Web and the Office recommends that EPS–Web be used to ensure that the assertion becomes part of the patent file. For small entity fees other than maintenance fees, such as an issue fee in an application, which can be submitted via EPS–Web (as well as the small entity assertion), the fee and the supporting small entity assertion cannot be facsimile transmitted. It is only in situations where the fee payment, *i.e.*, a maintenance fee payment, cannot be submitted via EPS–Web, that the small entity assertion for the payment (which would not otherwise be permitted to be facsimile transmitted) can also be facsimile transmitted. The facsimile transmission must be made to a facsimile number identified by the Office as appropriate for maintenance fee payments and refunds thereof.

Section 1.6(d)(2)(ii) would set forth requirements set forth in current § 1.6(d) for identifying the application or matter before the Office for which the transmitted correspondence is intended. Section 1.6(d)(2)(ii) continues to advise the use of sufficient information to identify the application or matter before the Office for which the correspondence is intended as part of the sender's identification on the required cover sheet. The inability to be able to readily ascertain the appropriate application or other matter for the transmission may result in: A delay in acting on the paper, or discarding of the paper without notice to the sender if the Office cannot reasonably determine to which application or other matter the paper is directed.

Section 1.6(d)(2)(iii) would require that permitted facsimile transmissions must be sent to the specific facsimile transmission number identified by the Office for that type of correspondence. In the case of reexamination proceedings, contacting the CRU for the transmission number would be required. For applications, the Office would provide a Web page that would contain the usable transmission numbers and identification of types of correspondence that can be facsimile transmitted, as well as a link to EPS–Web for the submission of types of correspondence that cannot be facsimile transmitted but can be transmitted via EPS–Web. Therefore, the central facsimile number would no longer be usable since the rules as proposed to be amended would require that the transmission for any remaining use must be sent directly to the area of the Office needing to receive the transmission at its identified transmission number. Office forms for which facsimile transmission would no longer be appropriate, such as the express abandonment forms PTO/SB/24, PTO/SB/24a, and the PTO/SB/24b, and the issue fee payment form PTOL–85, Part B, would have the facsimile transmission information removed.

Section 1.6(d)(2)(iv) would require that each unofficial correspondence transmitted by facsimile include a conspicuous marking that identifies it as an ''unofficial paper'' (correspondence that could be submitted via EPS–Web but is instead submitted via facsimile transmission). Unofficial papers, regardless of whether they are properly marked as such, will not be entered into the record of the application or reexamination proceeding unless expressly permitted by rule or Office policy. Further, any of these unofficial papers submitted via facsimile without the required conspicuous marking may be *discarded without consideration of the paper and without notification to the sender that the paper has been discarded without consideration.* This requirement for conspicuous marking of facsimile transmitted papers and the discarding of unmarked or mis-marked papers would act to discourage applicants, patent owners, and third party requesters from attempting to file official papers via facsimile, instead of via EPS–Web.

Section 1.6(d)(3) would set forth the consequences resulting from: (1) Transmitting correspondence to a number other than the specific facsimile transmission number identified by the Office for that type of correspondence; (2) facsimile transmission of correspondence not permitted to be submitted by facsimile transmission; or (3) facsimile transmission of an ''unofficial paper'' without the conspicuous marking required in (d)(2)(iv). The consequences would be equally applicable to any copy of such correspondence created by the Office (*e.g.*, paper copies made directly from the facsimile transmission or copies made from scanning the paper copy of the transmission). The consequences would be that such correspondence: (1) Would not be given a receipt date; (2) would not operate to be an effective paper (*e.g.*, will not be considered a reply to the Office action, or a request for action by the Office); and (3) could be discarded by the Office without notification to the sender. When the Office discards submitted material it is without notification to the submitter, unless such notification is specifically provided for by rule or Office policy. The specific provision in the rule of lack of notification to the sender would be added merely to reinforce the concept of lack of notification.

For example, an otherwise timely reply submitted by facsimile transmission to an outstanding first Office action would not be effective to toll the time period for reply as this type of correspondence would no longer (after implementation of the rule revision) be permitted to be submitted by facsimile transmission. Additionally, applicant could not simply later affirm the prior submission of the reply within the period for reply and rely on the previously submitted facsimile transmission of the reply. A new reply would need to be timely submitted to avoid abandonment.

Current § 1.6(f), relating to a petition remedy where the facsimile transmission of a continued prosecution application (CPA) was not received by the Office, would be canceled and reserved.

Section 1.52(a) is proposed to be amended to remove the italics. Sections 1.52(a), (a)(1) and (a)(2) are proposed to be amended to remove ''United States Patent and Trademark'' for conformity with the use of ''Office'' in the remaining sections of § 1.52.

Section 1.52(a)(5) is proposed to be amended to contain only a descriptive title.

Section 1.52(a)(5)(i) would contain the language of current 1.52(a)(5).

Sections 1.52(a)(5)(ii) would be an added paragraph intended to clarify that submissions must be presented in a form that is readily legible to the Office after receipt thereof by the Office.

Section 1.52(b) would be amended to address a problem involving the font size used for specifications and prosecution papers.

Section 1.52(b) is proposed to be amended by removing the italics and simplifying the recitation of the papers that are subject to the rule. Sections 1.52(b)(1) and (b)(2) would be expanded to cover application and reexamination papers other than just the specification and amendments or corrections. These sections would be applicable to cover sheets, remarks, petitions, requests, affidavits, or other papers submitted in support of prosecution of the application or the reexamination proceeding. These sections would also be applicable to IDS listings and any other IDS requirements such as a concise explanation or a translation of a non-English language document (but not the actual non-English language document). ''Amendment'' covers all types of amendments, including

amendments to the claims, specification and the drawings. ''Amendment'' covers amendments made at any time during prosecution of the patent application or reexamination proceeding (*e.g.*, amendments under §§ 1.111, 1.115, 1.116, 1.312, 1.530, 1.941, etc.).

Section 1.52(b)(2)(ii) is proposed to be amended to correspond to the amendment of PCT Rule 11.9(d) by requiring a text lettering style having capital letters, which capital letters must be no smaller than 0.28 cm. (0.11 inch) high (*e.g.*, a font size of 12 point in Times New Roman). The requirement for a nonscript font lettering style means utilization of a commercially available nonscript font in its commercially available form. Altering the font from its commercially available form (*e.g.*, by changing the look of the characters or the automatic spacing between the characters) may not be in compliance with the rule. Compliance with the proposed font size and style requirements should not impose much difficulty as the Office has suggested their use for a number of years. The recitation of font size in terms relative to a type font having capital letters of a minimum size permits the normal and expected deviation for non-capital letters and numbers that a commercially available font complying with the required font size would utilize. It should be noted that utilizing capital letters that meet the 0.28 cm. requirement and then reducing the font size of the non-capital letters and numbers would not present a text lettering style within the rule. Further, by altering the line height to fit more characters per page, one runs the risk of presenting correspondence that is unreadable by Office personnel or presents a problem for optical character recognition in the electronic capture operation, which would require re-submission of the correspondence in compliant form. Specialized usage of the type font in a word processing program, such as ''2nd'', super and subscripts, etc., must comply also with the minimum font size requirements. In other words, the normal font size produced by the program for these specialized characters when the program is set to comply with the capital letter requirement must be maintained. Additionally, applicants also need to be aware that as a word processing program may normally set a footnote numeral and the text of a footnote to be smaller than the required 0.28 cm. capital letter height to be used in the main text, applicants must adjust the font size of the footnote accordingly to meet the requirements of the rule.

Forms: Sections 1.52(a) and (b) do not apply to applicant's use of the Office's pre-printed forms (that may contain smaller font size). Section 1.52(a)(3), which is reproduced in the rules section to provide context, is not proposed to be changed. Office forms have been exempt and continue to be exempt from font size requirements as: (1) The information in lower font size is standardized information, such as required of the Office by statute under the Paperwork Reduction Act, form number, etc., but is not required information that applicant must supply; (2) it is common practice for agencies to place this standardized information in a smaller font size, and doing so keeps the forms from being too long and makes them more usable by the public; and (3) the Office does not need to process such information when an Office form is submitted. Commercial forms that are subject to § 1.52(b), *e.g.*, an application data sheet pursuant to § 1.76, must comply with the font size requirement. An Office form that has been altered in any way is considered a commercial form and must comply with the requirements of § 1.52. Such form must also have its OMB approval removed. Therefore, an applicant desiring to use a compact form (*e.g.*, cover or transmittal sheet) that meets the requirements of § 1.52 should consider using an Office form in its original, unaltered state. Office-generated fillable forms containing the font size built into the form by the Office would comply with font size requirements.

The strictness of the proposed rule and its application by the Office results from the Office's need to efficiently process, read, and publish the text. It is emphasized that should the Office encounter difficulty in reading or electronically capturing the font for any portion of text, a substitute paper will be required.

As the Office intends to strictly enforce the font size requirement, in a rare instance where applicant believes some variation should be permitted, a petition under § 1.183 would be required.

Section 1.366 is proposed to be amended to add paragraph (h) that would require maintenance fee payments, when submitted in paper, by mail or facsimile transmission (which would continue as such type of correspondence may not be submitted via EFS–Web), to comply with §§ 1.52(a) and (b). Failure to comply with the format requirements of § 1.52 would not jeopardize the date of payment but would require a new submission in a compliant format.

Section 2.195(d) is proposed to be amended to prohibit facsimile transmission of the type of correspondence that can be submitted via the Office's electronic trademark system for assignments to be recorded, ETAS.

Section 3.24(a) is proposed to be amended by inserting a reference in the title to EPAS as the electronic form of submission of patent assignment documents to be recorded.

Section 3.24(b) is proposed to be amended as a conforming amendment to § 1.6(d)(1)(ix), which would only permit patent-related assignments to be submitted via EPAS and no longer via facsimile transmission. Accordingly, the reference to facsimile transmissions in the title would be deleted. Material relating to return of recorded documents would be transferred to newly added paragraph (c).

Section 3.24(c) is proposed to be added to highlight current material related to the non-return of patent documents submitted for recording, so that original documents would not be submitted. The rule is also proposed to be amended to delete ''recorded'' to clarify that any document submitted for recording will not be returned whether or not it is recorded.

Section 3.25 is proposed to be amended by inserting a reference in the title to ETAS as the electronic form of submission of trademark assignment documents to be recorded.

Section 3.25(c) is proposed to be amended as a conforming amendment to § 2.195(d), which would only permit trademark-related assignments to be submitted via ETAS and on paper and no longer via facsimile transmission. Accordingly, the reference to facsimile transmissions in the title would be deleted. The phrasing of the rule is also proposed to be amended so that it is consistent with the analogous rule for patent assignment documents.

Material relating to return of recorded documents would be transferred to newly added paragraph (c)(3). Section 3.24(c)(3) is proposed to be added to highlight current material related to the non-return of trademark documents submitted for recording, so that original documents would not be submitted. The rule is also proposed to be amended to delete ''recorded'' to clarify that any document submitted for recording will not be returned whether or not it is recorded.

Rule Making Considerations

A. Administrative Procedure Act

This notice proposes changes to the rules of practice to limit the submission

of correspondence by facsimile transmission in patent prosecution matters, and assignments to be recorded. The notice also proposes changes to the rules of practice to increase the size of the minimum font used on papers submitted to the Office for patent applications, patents or reexamination proceedings. The changes being proposed in this notice do not change the substantive criteria of patentability and do not effectively foreclose the applicant's opportunity to make a case on the merits. Applicants, when no longer able to submit most types of patent prosecution or assignments to be recorded by facsimile transmission, may still rely on mail delivery in all instances and may almost always utilize an electronic system provided by the Office for filing submissions. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure. *See Bachow Communs., Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement); *see also Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''It is extremely doubtful whether any of the rules formulated to govern patent or trademark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and opportunity for comment is not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). Nevertheless, the Office is seeking public comment on changes contemplated to these rules of practice to obtain the benefit of such input prior to adopting changes to the rules of practice.

B. Regulatory Flexibility Analysis

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603. Nevertheless, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The primary impact of the changes proposed in this notice are that: (1) Certain documents may no longer be submitted to the Office via facsimile transmission; and (2) certain documents submitted to the Office must have a minimum font size, namely a font that has capital letters no smaller than 0.28 cm (0.11 inch) high (*e.g.*, a font size of 12 point in Times New Roman). The elimination of the availability of facsimile transmission will not have a significant economic impact because these documents may be submitted to the Office via EFS-Web or via the USPS by first class mail. The requirement that documents submitted to the Office must have a minimum font size will not have a significant economic impact because the current rules of practice require that such documents be ''[p]resented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic capture by use of digital imaging and optical character recognition'' (37 CFR 1.52(a)(1)(v)), and set forth that font size below the proposed minimum font size generally does not comply with this pre-existing requirement of the rules of practice. In addition, the overwhelming majority of the documents to which this provision applies are created using word processors, and it will not have a significant economic impact to change the font size on a word processor. Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

D. Executive Order 12866 (Regulatory Planning and Review)

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

E. Executive Order 13175 (Tribal Consultation)

This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. Executive Order 13211 (Energy Effects)

This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. Executive Order 12988 (Civil Justice Reform)

This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. Executive Order 13045 (Protection of Children)

This rule making is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. Executive Order 12630 (Taking of Private Property)

This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes proposed in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule making is not likely to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. Unfunded Mandates Reform Act of 1995

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. National Environmental Policy Act

This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rule making does not contain provisions which involve the use of technical standards.

N. Paperwork Reduction Act

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0031, 0651–0032, and 0651–0059. The United States Patent and Trademark Office is not resubmitting the other information collections listed above to OMB for its review and approval because the changes proposed in this notice do not affect the information collection requirements associated with the information collections under these OMB control numbers. The principal changes proposed in this notice are to provide that: (1) Certain documents may no longer be submitted to the Office via facsimile transmission; and (2) certain documents submitted to the Office must have a minimum font size, namely a font that has capital letters no smaller than 0.28 cm (0.11 inch) high (*e.g.*, a font size of 12 point in Times New Roman).

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert A. Clarke, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1, 2, and 3 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.6 is amended by removing and reserving paragraph (f) and revising paragraphs (a) and (d) to read as follows:

§ 1.6 Receipt of correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Correspondence received in the United States Patent and Trademark Office is stamped with the date of receipt except as follows:

(1) *Open for receipt of correspondence.* The United States Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile under paragraph (d)(1) of this section, or filed electronically under (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

(2) *''Express Mail'' stamp date.* Correspondence filed in accordance with § 1.10 will be stamped with the date of deposit as ''Express Mail'' with the United States Postal Service.

(3) *Receipt date of facsimile transmission.* Correspondence permitted by paragraph (d)(1) of this section to be filed by facsimile transmission to the United States Patent and Trademark Office will be stamped with the date on which the complete transmission is received in the United States Patent and Trademark Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(4) *Office electronic filing system (EFS–Web).* Correspondence may be submitted using the Office electronic filing system only in accordance with the Office's electronic filing system requirements. Correspondence submitted to the Office by way of the Office's electronic filing system will be accorded a receipt date, which is the date the correspondence is received at the correspondence address for the Office set forth in § 1.1 when it was officially submitted.

(5) *Non-facsimile electronic transmission of patent-related correspondence other than correspondence filed via the Office's patent-related electronic systems (e.g., EFS–Web, and Electronic Patent Assignment System (EPAS)).* Non-facsimile electronic transmission of patent-related correspondence other than correspondence filed via the Office's patent-related electronic systems may not be used for submission of correspondence to the Office intended to become part of the official file record for an application, patent, reexamination proceeding, or other matter before the Office, except as expressly authorized by:

(i) The Board of Patent Appeal and Interferences in cases before the Board of Patent Appeals and Interferences, or

(ii) Applicant pursuant to the Office's express policy for internet usage.

* * * * *

(d) *Facsimile transmission.* (1) Facsimile transmission of correspondence to the Office is not permitted for:

(i) Correspondence as specified in § 1.4(e);

(ii) Certified documents as specified in § 1.4(f);

(iii) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in §§ 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A);

(iv) Color drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.173, or 1.437;

(v) A request for reexamination under § 1.510 or 1.913;

(vi) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1 through 5.5 of this chapter and directly related to the secrecy order content of the application;

(vii) Cases before the Board of Patent Appeals and Interferences, except as the Board may expressly authorize;

(viii) Correspondence permitted to be submitted pursuant to paragraph (a)(4) of this section;

(ix) Correspondence permitted to be submitted via the Office's patent-related electronic system for recording assignments (*e.g.*, Electronic Patent Assignment System (EPAS));

(x) Third party papers under § 1.99;

(xi) Protests under § 1.291; and

(xii) Public use hearing papers under § 1.292.

(2) A facsimile transmission of correspondence when not prohibited pursuant to paragraph (d)(1) of this section must:

(i) Be limited to a single application or other matter before the Office, except for payments of maintenance fees pursuant to § 1.366 or requests for refunds thereof;

(ii) Include a facsimile cover sheet with the sender's identification, which should contain sufficient identifying information of the application or other matter to which the transmission is intended, such as:

(A) The application number of a patent application;

(B) The control number of a reexamination proceeding;

(C) The interference number of an interference proceeding; or

(D) The patent number of a patent;

(iii) Be transmitted to the specific facsimile transmission number identified by the Office for that type of correspondence; and

(iv) Include a conspicuous marking on each correspondence intended to be unofficial that identifies such correspondence as an unofficial paper.

(3) Transmission to a facsimile number other than that identified by the Office for the type of correspondence transmitted, facsimile transmission of a type of correspondence that is not permitted to be facsimile transmitted, or facsimile transmission of correspondence without the conspicuous marking pursuant to paragraph (d)(2)(iv) of this section, and any copy of such correspondence created by the Office:

(i) Will not be given a receipt date;

(ii) Will not operate to be an effective paper; and

(iii) May be discarded by the Office without notification to the sender.

* * * * *

3. Section 1.52 is amended by revising the introductory text of paragraph (a)(1), paragraphs (a)(2), (a)(3), (a)(5), the introductory text of paragraph (b), (b)(1), and (b)(2) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

(a) *Papers that are to become a part of the permanent Office records in the file of a patent application or a reexamination proceeding.* (1) All papers, other than drawings, that are submitted on paper or by facsimile transmission, and are to become a part of the permanent Office records in the file of a patent application or reexamination proceeding, must be on sheets of paper that are the same size, not permanently bound together, and:

* * * * *

(2) All papers that are submitted on paper or by facsimile transmission, and are to become a part of the permanent records of the Office should have no holes in the sheets as submitted.

(3) The provisions of this paragraph and paragraph (b) of this section do not apply to the pre-printed information on paper forms provided by the Office, or to the copy of the patent submitted on paper in double column format as the specification in a reissue application or request for reexamination.

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(5) All papers submitted electronically to the Office must be:

(i) Formatted and transmitted in compliance with the Office's electronic filing system requirements; and

(ii) Readily legible to the Office after receipt thereof.

(b) The application (specification, including the claims and abstract, drawings, and oath or declaration) or a reexamination request, any amendments or correction(s) to an application or patent undergoing reexamination, and any remarks, petitions, requests, affidavits or other papers submitted during prosecution of an application or a reexamination proceeding:

(1) Except as provided for in § 1.69 and paragraph (d) of this section, must:

(i) Comply with the requirements of paragraph (a) of this section; and

(ii) Be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate; and

(2) Except for the specifications of reissue applications (but not amendments thereto made by a separate paper pursuant to § 1.173(b)) and specifications for patents for which reexamination has been requested (but not amendments thereto pursuant to § 1.530) and as provided for in §§ 1.821 through 1.825, must have:

(i) Lines that are 1½ or double spaced;

(ii) Text written in a nonscript font (*e.g.*, Arial, Times New Roman, or Courier) lettering style having capital letters which must be no smaller than 0.28 cm (0.11 inch) high (*e.g.*, a font size of 12 point in Times New Roman); and

(iii) Only a single column of text.

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4. Section 1.366 is amended by adding paragraph (h) to read as follows:

§ 1.366 Submission of maintenance fees.

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(h) Paper submissions of maintenance fee-related payments must comply with § 1.52(a) and (b).

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

5. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

6. Section 2.195 is amended by adding a new paragraph (d)(6) to read as follows:

§ 2.195 Receipt of trademark correspondence.

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(d) * * *

(6) Correspondence permitted to be submitted via the Office's electronic system for recording assignments (*e.g.*, Electronic Trademark Assignment System (ETAS)).

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PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

7. Section 3.24 is revised to read as follows:

§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.

(a) *For electronic submissions (e.g., Electronic Patent Assignment System (EPAS)):* Either a copy of the original document or an extract of the original document may be submitted for recording. All documents must be submitted as digitized images in Tagged Image File Format (TIFF) or another form as prescribed by the Director. When printed to a paper size of either 21.6 by 27.9 cm (8½ inches by 11 inches) or 21.0 by 29.7 cm (DIN size A4), the document must be legible and a 2.5 cm (one inch) margin must be present on all sides.

(b) *For paper:* Either a copy of the original document or an extract of the original document must be submitted for recording. Only one side of each page may be used. The paper size must be either 21.6 by 27.9 cm (8½ inches by 11 inches) or 21.0 by 29.7 cm (DIN size A4), and in either case, a 2.5 cm (one inch) margin must be present on all sides. The paper used should be flexible, strong, white, non-shiny, and durable.

(c) *Non-return of submissions:* The Office will not return documents submitted for recording. Therefore, original documents must not be submitted for recording.

8. Section 3.25 is amended by revising paragraph (c) as follows:

§ 3.25 Recording requirements for trademark applications and registrations.

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(c) *All documents.* (1) *For electronic submissions (e.g., Electronic Trademark Assignment System (ETAS)):* All documents must be submitted as digitized images in Tagged Image File Format (TIFF) or another form as prescribed by the Director. When printed to a paper size of either 21.6 by 27.9 cm (8½ inches by 11 inches) or 21.0 by 29.7 cm (DIN size A4), the document must be legible and a 2.5 cm (one inch) margin must be present on all sides.

(2) *For paper:* Only one side of each page may be used. The paper size must be either 21.6 by 27.9 cm (8½ inches by 11 inches) or 21.0 by 29.7 cm (DIN size A4), and in either case, a 2.5 cm (one inch) margin must be present on all sides. The paper used should be flexible, strong, white, non-shiny, and durable.

(3) *Non-return of submissions:* The Office will not return documents submitted for recording. Therefore, original documents must not be submitted for recording.

Dated: July 31, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–18025 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0121; FRL–8701–8]

RIN 2060–AO07

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater; and National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On November 10, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. The rule is referred to as the miscellaneous organic NESHAP or the MON. The MON incorporates by reference the wastewater tank requirements in the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, which EPA promulgated on April 24, 1994, and which is referred to as the hazardous organic NESHAP or the HON. In this action EPA proposes to amend the HON, and thereby, the MON, by adding an equivalent means of emission limitation for wastewater tanks. This action also clarifies and corrects technical inconsistencies that have been discovered in the MON.

DATES: *Comments.* Comments must be received on or before September 22, 2008.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 18, 2008, a public hearing will be held on August 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0121, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket and Information Center, EPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver your comments to: Air and Radiation Docket, EPA, Room 3334, 1301 Constitution Avenue, NW. Washington, DC 20004. Please include a total of two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0121. 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. 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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If you are interested in attending the public hearing, contact Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by August 18, 2008 this hearing will be cancelled without further notice.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS *	Examples of regulated entities
Industry	3251, 3252, 3253, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2435. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network. Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this preamble is organized as follows:

I. What amendments are we proposing for the HON, 40 CFR part 63, subpart G?
II. What technical corrections are we proposing for the MON, 40 CFR part 63, subpart FFFF?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. What amendments are we proposing for the HON, 40 CFR part 63, subpart G?

The EPA has received a request from Dow Chemical Company for approval of an equivalent means emission limitation for wastewater tanks subject to the MON. The MON incorporates by reference the wastewater tank requirements of the HON in § 63.2485(d) and Table 7 by requiring compliance with §§ 63.132 through 63.148 of the HON. With one exception, the standards for wastewater tanks in § 63.133(a) of the HON require the owner or operator of an affected wastewater tank to operate and maintain a fixed roof, an internal floating roof, or an external floating roof. Under certain circumstances or as an alternative to these requirements, the owner or operator may operate and maintain a fixed roof with a closed-vent system and control device. If a fixed roof with a closed vent system and control device is used, § 63.133(b) requires that each opening in the roof be closed. The request and evaluation submitted by Dow Chemicals is to use a fixed roof with openings under negative pressure and vapors routed through a closed vent system to a control device as an equivalent means of emission limitation to the fixed roof vented to control device.

An owner or operator of an affected source covered by the HON may request approval to use an equivalent means of emission limitation in accordance with § 63.133(a)(2)(iv). The determination of equivalency to the reduction in emissions achieved by the requirements in § 63.133(a)(2)(i) is based on actual emission tests or engineering evaluation and evaluated according to § 63.102(b). Under § 63.102(b), if, in the judgment of the Administrator, an equivalent means of emission limitation will achieve a reduction in organic hazardous air pollutant (HAP) emissions at least equivalent to the reduction in organic HAP emissions from that source achieved under any design, equipment,

work practice, or operational standards in 40 CFR part 63, subpart G, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. Any such notice shall be published only after public notice and an opportunity for a hearing.

Moreover, the proposed work practice is an appropriate standard under section 112(h) of the Clean Air Act (CAA). Specifically, CAA section 112(h)(2)(B) provides that a work practice standard can be issued in lieu of an emission standard where it is ''not feasible to prescribe or enforce an emission standard.'' CAA section 112(h)(2)(B) defines the phrase ''not feasible to prescribe or enforce an emission standard,'' to mean a situation where the Administrator determines that ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' The proposed work practice is consistent with CAA section 112(h)(2)(B) since applying a measurement methodology to this class of sources is not technologically feasible due to the number of openings and possible emissions points. Emissions from fixed roof tanks are evaporative losses that result from barometric pressure and ambient temperature changes, as well as filling and emptying operations. The flow rate of vent emissions from a tank is very low, except during filling. The concentration of HAP in the vent stream varies with the degree of saturation of HAP in the tank vapor space. The degree of saturation depends on such factors as HAP vapor pressure, tank size, and liquid throughput. Low flow rate and varying concentration make emission measurement impractical.

We discussed work practice standards for wastewater tanks in the preamble to the proposed HON rule (57 FR 62641). We stated:

> Although considered first, it was determined that a numerical standard would not be feasible because it would be difficult to capture and measure emissions from this equipment for the purpose of evaluating compliance.

We are considering the Dow Chemical Company's request for a determination of equivalency under §§ 63.102(b) and 63.133(a)(2)(iv) since standards for tanks are work practice standards. Design features of Dow's wastewater tank include a negative pressure generated from the thermal oxidizer blower to draw the clarifier vent stream to the thermal oxidizer, an air sweep across the headspace to minimize accumulation of flammables, and a low pressure water seal system for the rotating raker arm structure. Dow developed the patented design to address safety and operational issues inherent in wastewater treatment tanks. The tank has uniform air inlets around the circumference of the tank at the roof for evenly distributed air flow into the clarifier.

When a fixed roof with a closed vent system and control device is used to comply with the requirements for wastewater tanks, the owner or operator must meet the requirements in § 63.133(b). Paragraphs § 63.133(b)(1), (2), and (3) contain requirements for the fixed roof, the control device, and the closed vent system, respectively. Paragraph § 63.133(b)(1)(i) requires the fixed roof and all openings be maintained in accordance with the no detectable emissions requirements in § 63.148 and paragraph § 63.133(b)(1)(ii) requires each opening in the fixed roof be maintained in a closed position. The request and evaluation submitted by Dow Chemicals is to use a fixed roof with openings under negative pressure and vapors routed through a closed vent system to a control device as an equivalent means of emission limitation to the fixed roof vented to control device. Since the performance of the closed vent system and control device would be equivalent, Dow's application for equivalency must demonstrate that the fixed roof with openings under negative pressure performs at least as well as the fixed roof.

To show equivalency under §§ 63.102(b) and 63.133(a)(2)(iv), Dow tested for detectable emissions at the openings of the fixed roof under negative pressure. Dow obtained flame ionization detection (FID) readings at these openings and found meter readings of less than 500 parts per million by volume (ppmv) above background. These results indicate no detectable emissions according to § 63.148(d).

Moreover, Dow correctly states that an enclosure with openings under negative pressure has previously been considered by EPA and is an accepted control alternative under the NESHAP for the pulp and paper industry (40 CFR part 63, subpart S) as well as a control requirement under the Benzene Waste NESHAP (40 CFR part 61, subpart FF).

The Pulp and Paper NESHAP requires pulping equipment systems be enclosed and vapors be vented to a closed vent system and routed to a control device. Each enclosure must maintain negative pressure at each opening. The owner or operator is required to demonstrate initially and annually that each enclosure opening is maintained at a negative pressure using an anemometer, smoke tubes, or other acceptable test method to demonstrate flow into the enclosure opening.

The Benzene Waste NESHAP has provisions for tanks maintained at a pressure less than atmospheric pressure. The standard requires a fixed-roof and closed-vent system that routes all vapors from a tank to a control device. In lieu of maintaining all openings in a closed and sealed position, the owner or operator may choose to maintain the tank at a pressure less than atmospheric pressure.

After considering the information in Dow's request and reviewing prior EPA judgments, we have concluded that Dow has demonstrated that maintaining a fixed roof with openings under negative pressure achieves an equivalent emissions reduction compared to maintaining a fixed roof with no openings as required by §§ 63.102(b) and 63.133(a)(2)(iv).

Therefore, we are proposing to amend § 63.133(b) to allow a fixed roof with openings maintained at negative pressure for owners or operators complying with § 63.133(a)(2)(i) for a fixed roof and closed vent system that routes vapors to a control device.

We are also proposing monitoring requirements to accompany the proposed equivalent means of emission limitation, which demonstrate that the openings in the enclosure are maintained under negative pressure throughout the full range of operating conditions, including periods of startup, shutdown, and malfunction.

II. What technical corrections are we proposing for the MON, 40 CFR part 63, subpart FFFF?

We are proposing to edit several provisions to clarify our intent. These proposed changes are described in Table 1 of this preamble.

TABLE 1—TECHNICAL CLARIFICATIONS AND CORRECTIONS TO THE MON, 40 CFR PART 63, SUBPART FFFF

Subpart FFFF	Description of proposed correction
§ 63.2450(o)	We are adding language to clarify that, if hydrogen halide and halogen HAP in a vent stream must be controlled to meet the emission limits in Table 3 to subpart FFFF of 40 CFR part 63, then that vent stream may not be vented to a flare. This clarifies our intent that all other vent streams that contain hydrogen halide and halogen HAP may be vented to a flare.
§ 63.2460(a)	We are proposing language to clarify that any combination of emission limits for batch process vents (items 1.a, 1.b, and/or 1.c in Table 2) may be applied to batch process vents.
§ 63.2460(c)(2)(v)	We are proposing to add language to clarify that the requirement to demonstrate that a process condenser is properly operated applies only in the case where a HAP is heated above its boiling point. This requirement only applies to HAP in batch process vents and does not apply to HAP as an impurity.
§ 63.2465(b)	We are proposing to apply the outlet concentration limit to controlled and uncontrolled process vents.
§ 63.2470(c)	For storage tanks we are proposing to incorporate by reference the monitoring requirements in § 63.1258(b)(1)(v) for nonregenerative carbon adsorbers.
§ 63.2485(n)(1)	We are adding neutralization units to the requirement that wastewater must be hard-piped between wastewater treatment tanks and the activated sludge unit.
§ 63.2520(c)(2)	We are correcting the reference to paragraph § 63.2460(c)(5), the referenced paragraph is § 63.2450(k)(6).
§ 63.2550(i)	1. We are proposing to add a definition for the term "bench-scale process." The term will mean the same as "bench-scale batch process," as defined in § 63.161. 2. We are proposing to correct the definition for the term "miscellaneous organic chemical manufacturing process" by removing extruder as an endpoint for processes without an extruder.
Table 6 to 40 CFR part 63, subpart FFFF.	We are deleting entry 2 as intended (see 70 FR 73121, December 8, 2005). An entry for new sources is not necessary.
Table 7 to 40 CFR part 63, subpart FFF.	We are proposing certain wastewater requirements as an alternative for liquid streams in open systems.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

The action does not impose any new information collection burden. The proposed amendments would give owners and operators another compliance option. Since these changes have the potential to result in minor reductions in the information collection burden, the Information Collection Request has not been revised. However, OMB has previously approved the information collection requirements contained in the existing regulation at 40 CFR part 63, subpart FFFF under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0533. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business ranging from up to 500 employees to up to 1,000 employees, depending on the NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The maximum number of employees to be considered a small business for each NAICS code is shown in the preamble to the proposed rule (67 FR 16178).

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The proposed amendments include an additional compliance option for wastewater tanks that provide small entities with greater flexibility to comply with the standards. We have therefore concluded that this proposed rule amendments will relieve regulatory burden for all affected small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome

alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action clarifies and corrects technical inconsistencies that have been discovered. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These rule amendments clarify and correct technical inconsistencies, thus, should not affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule amendments provide an owner or operator with an additional option for complying with the emission limits and other requirements in the rule. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law No. 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.* , materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. The proposed rule amendments do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 31, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart G—[Amended]

2. Section 63.133 is amended by adding paragraph (b)(1)(iii) to read as follows:

§ 63.133 Process wastewater provisions—Wastewater tanks.

* * * * *

(b) * * *

(1) * * *

(iii) If the fixed-roof and closed-vent system is operated such that a negative pressure is maintained at each opening in the fixed roof, then paragraph (b)(1)(ii) of this section does not apply. Under representative conditions, demonstrate initially and annually that each opening is maintained at negative pressure as specified in § 63.457(e). For a range of operating conditions, the owner or operator shall comply with § 63.145(a)(4)(i).

* * * * *

Subpart FFFF—[Amended]

3. Section 63.2450 is amended by revising paragraph (o) to read as follows:

§ 63.2450 What are my general requirements for complying with this subpart?

* * * * *

(o) You may not use a flare to control halogenated vent streams or hydrogen halide and halogen HAP emissions to comply with Table 3.

* * * * *

4. Section 63.2460 is amended by revising paragraph (a) and the first sentence in paragraph (c)(2)(v) to read as follows:

§ 63.2460 What requirements must I meet for batch process vents?

(a) You must meet each emission limit, or combination thereof, in Table 2 to this subpart that applies to you, and you must meet each applicable requirement specified in paragraphs (b) and (c) of this section.

* * * * *

(c) * * *

(2) * * *

(v) If a process condenser is used for boiling operations in which a HAP (not as an impurity) is heated to the boiling point, you must demonstrate that it is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(4) and (d)(3)(iii)(B), and the demonstration must occur only during the boiling operation.* * *

* * * * *

5. Section 63.2465 is amended by revising paragraph (b) to read as follows:

§ 63.2465 What requirements must I meet for process vents that emit hydrogen halide and halogen HAP or HAP metals?

* * * * *

(b) If any process vents within the process contain greater than 20 parts per million by volume (ppmv) hydrogen halide or halogen HAP, you must determine and sum the uncontrolled hydrogen halide and halogen HAP emissions from each of the process vents within the process using procedures specified in § 63.1257(d)(2)(i) and (ii).

* * * * *

6. Section 63.2470 is amended by adding new paragraph (c)(3) to read as follows:

§ 63.2470 What requirements must I meet for storage tanks?

* * * * *

(c) * * *

(3) For nonregenerative carbon adsorbers, you may choose to comply with the monitoring requirements in § 63.1258(b)(v) in lieu of § 63.995(c).

* * * * *

7. Section 63.2485 is amended by revising the first sentence in paragraph (n)(1) to read as follows:

§ 63.2485 What requirements must I meet for wastewater streams and liquid streams in open systems within an MCPU?

* * * * *

(n) * * *

(1) Wastewater must be hard-piped between the equalization unit, neutralization unit, clarifier, and activated sludge unit.* * *

* * * * *

8. Section 63.2520 is amended by revising paragraph (c)(2) to read as follows:

§ 63.2520 What reports must I submit and when?

* * * * *

(c) * * *

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to § 63.2450(k)(6) are operated as designed.

* * * * *

9. Section 63.2550 is amended in paragraph (i) as follows:

a. Adding a new definition for the term ''Bench-scale process'' in alphabetical order;

b. Revising paragraph (6) to the definition for ''Miscellaneous organic chemical manufacturing process''.

§ 63.2550 What definitions apply to this subpart?

* * * * *

(i) * * *

Bench-scale process means a batch process (other than a research and development facility) that is operated on a small scale, such as one capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

* * * * *

Miscellaneous organic chemical manufacturing process

* * * * *

(6) The end of a process that produces a solid material is either up to and including the dryer or extruder, or for a polymer production process without a dryer or extruder, it is up to and including the die plate or solid-state reactor, except in two cases. If the dryer, extruder, die plate, or solid-state reactor is followed by an operation that is designed and operated to remove HAP solvent or residual HAP monomer from the solid, then the solvent removal operation is the last step in the process. If the dried solid is diluted or mixed with a HAP-based solvent, then the solvent removal operation is the last step in the process.

* * * * *

Table 6 to Subpart FFFF of Part 63—[Amended]

10. Table 6 to subpart FFFF of part 63 is amended by removing entry 2.

Table 7 to Subpart FFFF of Part 63—[Amended]

11. Table 7 to subpart FFFF of part 63 is amended by revising entry 3 to read as follows:

* * * * *

TABLE 7—TO SUBPART FFFF OF PART 63—REQUIREMENTS FOR WASTEWATER STREAMS AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU

* * * * * * *

For each . . .	You must . . .

TABLE 7—TO SUBPART FFFF OF PART 63—REQUIREMENTS FOR WASTEWATER STREAMS AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU—Continued

For each . . .	You must . . .
* * *	* * *
3. Liquid streams in an open system within an MCPU	Comply with the requirements in § 63.149 and the requirements referenced therein, except as specified in § 63.2485. You may comply with the requirements in § 63.133(b)(1)(ii) for tanks.

[FR Doc. E8–18142 Filed 8–5–08; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

RIN 2700–AD38

Personal Identity Verification of Contractors

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA proposes to revise the NASA FAR Supplement (NFS) to update procedures for compliance with Federal Acquisition Regulation (FAR) Subpart 4.13, Personal Identity Verification of Contractor Personnel. FAR 4.13 requires that agencies include their implementing guidance of FIPS 201 and OMB guidance M–05–24 in solicitations and contracts that require the contractor to have routine physical access to Federally-controlled facilities and/or access to Federally-controlled information systems. NASA further proposes to designate The Assistant Administrator, Office of Security and Program Protection as the official with overall responsibility for verifying contractor employee personal identity.

DATES: Comments should be submitted on or before October 6, 2008 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD38, via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio, NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to *Leigh.Pomponio-1@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, Contract Management Division (Room 5K75); (202) 358–4773; e-mail: *Leigh.Pomponio-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC 2005–14) implemented a final rule amending the FAR by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' and Federal Information Processing Standards Publication (FIPS PUB) Number 201, ''Personal Identity Verification (PIV) of Federal Employees and Contractors.'' Section 304(A) of the National Aeronautics and Space Act of 1958, 42 U.S.C., Section 2455, provides that the NASA Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary, and he may arrange for such personnel investigations of contractor and subcontractor employees as he deems appropriate. NASA's implementing guidance, to be used in conjunction with FAR clause 52.204–9, Personal Identity Verification of Contractor Personnel, is set forth in NASA Interim Directive (NID) Personal Identity Verification (PIV) Policy and Procedures, dated May 24, 2007, to NASA Policy Regulation (NPR)–1600.1, NASA Security Program Procedural Requirements w/Change 1. The purpose of this proposed rule is to establish a new NFS Subpart 1804.13 to address NASA PIV requirements.

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely implements the FAR Common Identification Standard for Contractors and does not impose an economic impact beyond that addressed in the FAC 2005–14 publication of the FAR final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

William P. McNally,
Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1804 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.13 is added to read as follows:

Subpart 1804.13—Personal Identity Verification of Contractor Personnel

Sec.
1804.1303 Contract clause.
1804.1303–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.204–77, NASA Procedures for Personal Identity Verification of Contractor Personnel, in solicitations and contracts when the Center Chief of Security has determined that a contractor will require routine access to Federally-controlled facilities or access to Federally-controlled information systems. The Center Chief shall make such a determination, on a case-by-case basis, as part of acquisition planning. Section 1807.104(a) requires the contracting officer to coordinate new requirements with the security office and cites NASA NPR 1600.1, NASA Security Program Procedural Requirements, as the procedural document for identifying and processing

contractor employees requiring personal identity verification. Clause 1852.204–77 will be used in conjunction with the clause at FAR 52.204–9 Personal Identity Verification of Contractor Personnel.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.204–77 is added to read as follows:

1852.204–77 NASA Procedures for Personal Identity Verification of Contractor Personnel.

As prescribed in 1804.1303–70, insert the following clause:

NASA PROCEDURES FOR PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (XX/XX)

(a) Performance of this contract requires physical access to Federally-controlled facilities and/or access to Federally-controlled information systems, as determined by NASA. In accordance with FAR 52.204–9, Personal Identity Verification of Contractor Personnel, the Contractor shall comply with NASA Policy Regulation 1600.1, NASA Security Program Procedural Requirements, including all associated changes and interim directives (referred to hereafter as ''the NPR''). Electronic copies are available at *http://nodis.hq.nasa.gov* or from the Contracting Officer. NPR 1600.1 implements Homeland Security Presidential Directive 12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.

(b) The Contractor must apply for NASA badges for all employees and subcontractor employees at any tier requiring physical access to NASA facilities and/or access to Federally-controlled information systems, following the procedures set forth in the NPR. The Contractor is responsible for collecting and submitting all requests for subcontractor badges, regardless of subcontract tier. If approved by the Center Chief of Security, badges will be issued for no longer than the contract period of performance inclusive of options, but not to exceed 5 years. Badge renewal will be required for additional periods. All personnel issued badges must conspicuously display the badge above the waistline on the outermost garment, and must comply with all requirements applicable to badges in effect at the Center.

(c) NASA will make suitability/access determinations and the Center Chief of Security or the PIV Authorizer, in accordance with NPR 1600.1, Section 6.2, will approve the issuance of badges based upon a background investigation. Criteria for access will be per 5 CFR part 731. At a minimum, a National Agency Check with Written Inquiries (NACI) will be required. The NPR also specifies higher level reinvestigation requirements which may be applicable, for example due to position risk level changes or time since last investigation.

(d) Other employees who may require access on a non-routine or infrequent basis are to be identified by the Contractor for approval and registered on an access list under the control of the Center security office, as set forth in Center procedures.

(e) Prior to the initiation of contract performance, the Contractor must designate a person responsible for determining that an employee (or an employee of a subcontractor at any tier) requires physical access to NASA-controlled facilities and/or access to federally-controlled information systems in order to perform work under the contract. This designated person acts as the Contractor's ''Requestor.'' The Contractor's Requestor will also be responsible for providing updated information as changes occur during the period of contract performance (*e.g.*, additions, deletions, and position risk changes), and for managing all subcontractor requests. The Contractor's Requestor shall provide a list of names, along with their position titles and position description summaries to the following Center point of contact to initiate the personal identity verification credential process. This information shall be submitted in sufficient time to allow badge issuance before the employee requires access to the NASA-controlled facility or access to the federally-controlled information system. Additional information will be required subsequent to the initial list, as directed by the Center Chief of Security.

(Insert Center point of contact)

(f) The Contractor shall include the terms of this clause (except for paragraph (e)), suitably modified to identify the parties, in all subcontracts when the subcontractor is required to have routine physical access to Federally-controlled facilities and/or access to federally-controlled information systems. The clause shall not be used when contractors require only intermittent access to federally-controlled facilities.

(End of clause)

[FR Doc. E8–17951 Filed 8–5–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0024; 92220–1113–0000–C6]

RIN 1018–AU96

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Reclassification of the Hawaiian Hawk or Io (Buteo solitarius) From Endangered to Threatened; Proposed Rule To Remove the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule; proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), withdraw our 1993 proposed reclassification of the Hawaiian hawk or io (*Buteo solitarius*) from endangered to threatened, and propose to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife (List). These actions are based on a thorough review of the best available scientific data, which indicates that range-wide population estimates have been stable for at least 20 years, and the species has recovered and is not likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. The proposed rule, if made final, would remove the Hawaiian hawk from the List, thereby removing all protections provided by the Act.

DATES: Comments on the proposed delisting rule must be received by October 6, 2008. Public hearing requests must be received by September 22, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AU96; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, P.O. Box 50088, Honolulu, HI 96850; (telephone 808/792–9400). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Comments or suggestions from the public, other concerned

governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to delist the Hawaiian hawk are hereby solicited. Comments particularly are sought concerning:

(1) Data on any threats (or lack thereof) to the Hawaiian hawk;

(2) Additional information concerning the range, distribution, and population size of the Hawaiian hawk, including the locations of any additional populations;

(3) Current or planned activities in the areas occupied by the Hawaiian hawk and possible impacts of these activities on this species; and

(4) Data on Hawaiian hawk population trends.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96813 (808/792–9400).

Background

The Hawaiian hawk or io (*Buteo solitarius*) is a small, broad-winged hawk endemic to the Hawaiian Islands, and is the only extant member of the family Accipitridae native to the Hawaiian Islands (Berger 1981, p. 83; Olson and James 1982, p. 35). The Hawaiian hawk's breeding distribution is restricted to the island of Hawaii, but there have been at least eight observations of vagrant individuals on the islands of Kauai, Oahu, and Maui since 1778 (Banko 1980, pp. 1–9), and fossil remains have been found on the islands of Molokai (Olson and James 1982, p. 35) and Kauai (Olson and James 1996, pp. 65–69; Burney *et al.* 2001, pp. 628–629). The Hawaiian hawk occurs in light and dark color morphs, with intermediate plumages and much individual variation (Griffin 1985, p. 46). The light morph is dark brown above and white below, with brown flecks on the upper breast. The dark morph is dark brown above and below. The legs, feet, and cere (fleshy area between the eye and bill) are yellow in adults and bluish-green in juveniles (Griffin 1985, pp. 58–63).

The Hawaiian hawk occurs over much of the island of Hawaii, from approximately 1,000 to 8,530 feet (ft) (300 to 2,600 meters (m)) above sea-level, and occupies a variety of habitat types, including native forest, secondary forest consisting primarily of non-native plant species, agricultural areas, and pastures (Banko 1980, pp. 2–9, 15–16; Scott *et al.* 1986, pp. 78–79; Hall *et al.* 1997, p. 14; Griffin *et al.* 1998, p. 661; Klavitter 2000, pp. 2, 38, 42–45; Klavitter *et al.* 2003, pp. 169–170, 172, 173). It is adaptable and versatile in its feeding habits and preys on a variety of rodents, birds, and large insects (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 5; Griffin *et al.* 1998, p. 659). Hawaiian hawks are monogamous and defend their territories year-round (Griffin 1985, pp. 119–121; Griffin *et al.* 1998, p. 660; Clarkson and Laniawe 2000, pp. 6–7; Klavitter 2006), although more aggressively during the breeding season (Klavitter 2006). Egg-laying generally occurs from March to June, hatching from May to July, and fledging from July to September (Griffin 1985, p. 110; Griffin *et al.* 1998, p. 656). Clutch size is usually one egg (Griffin 1985, p. 76; Griffin *et al.* 1998, p. 657; Klavitter *et al.* 2003, p. 170), but there are records of two or three young per nest (Griffin 1985, pp. 75, 80, Appendix 1).

The Hawaiian hawk was listed as endangered on March 11, 1967 (32 FR 4001). At that time, the best available data indicated that the number of Hawaiian hawks was in the low hundreds (Berger 1981, p. 83) and that extensive destruction of native forests had reduced the quality of available habitat (USFWS 1984, pp. 10–11).

The first detailed study of the ecology and life history of the Hawaiian hawk was conducted from 1980 to 1982, the results of which were described in a PhD dissertation (Griffin 1985) and in a 1998 manuscript published in *The Condor,* an international peer-reviewed scientific journal (Griffin *et al.* 1998). During this study, researchers found no significant difference in nest success between habitats dominated by native versus non-native vegetation, with 10 of 13 nests successful in native habitats (77 percent) versus 11 of 17 (65 percent) in non-native habitats (Griffin 1985, pp. 102–103; Griffin *et al.* 1998, p. 658). They also found no evidence that the Hawaiian hawk's population was adversely affected by avian diseases, such as avian malaria or avian pox, nor was there evidence that it was affected by introduced mammalian predators, such as cats (*Felis catus*), rats (*Rattus* spp.), or mongoose (*Herpestes auropunctatus*), or environmental contaminants such as DDT (Griffin 1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661).

A preliminary population estimate of 1,400 to 2,500 birds was noted in Griffin's (1985, p. 25) dissertation, based on home range size from radio telemetry data and distribution data from island-wide bird surveys. The dissertation cited ''Griffin *et al.* in prep'' for this estimate, but no details were provided on how it was derived, and Griffin *et al.* (in prep.) was never published. Scott *et al.* (1986, p. 79) later stated that use of the island-wide forest bird surveys to estimate the population size of Hawaiian hawks was not appropriate because ''the Hawaiian hawk, like many other raptors, failed to meet many of the assumptions that underlie our density estimates.''

A final recovery plan for the Hawaiian hawk was produced in 1984, which established a primary recovery objective to ''ensure a self-sustaining 'io population in the range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat'' (USFWS 1984, p. 25). The plan also stated that ''for the purposes of tracking the progress of recovery, 2,000 will be used as a target to reclassify to threatened status,'' and that ''criteria for complete delisting will be further developed'' (USFWS 1984, p. 25). No explanation for the recovery goal of 1,500 to 2,500 birds was provided, but these numbers were presumably based on Griffin's (1985, p. 25) preliminary population estimate of 1,400 to 2,500 birds. The recovery plan also stated that ''considering the current size and distribution of the 'io population, the species' high breeding success, the relatively low levels of predation and human disturbance, and the absence of environmental contaminants affecting the 'io, the population appears to be in a more secure condition than previously thought. This information, based on completed research, indicates that reclassification to threatened status may be warranted. Continued monitoring and the other items of this plan need to be pursued before complete delisting should be considered'' (USFWS 1984, p. 38). Thus, the species was considered for downlisting at the time the recovery

plan was produced, but no criteria for delisting were developed at that time.

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that the threats have been minimized sufficiently, and the species is robust enough to reclassify from endangered to threatened, or to delist. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Service published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened on August 5, 1993 (58 FR 41684), based on Griffin's (1985, p. 25) preliminary population estimate of 1,400 to 2,500 adult birds and because it was discovered that the species occupied, and nested in, non-native forests and exploited non-native prey species as a food resource. However, the proposal was not finalized; during the public comment period, several commenters expressed concerns that the population data used in the proposal were not current and there was not enough known about the hawk's breeding success to warrant downlisting. Based on these comments, we funded an island-wide survey to provide a contemporary range-wide assessment of the distribution and population status of the hawk. The surveys were conducted from December 1993 to February 1994. The researchers found the Hawaiian hawk widely distributed in both native and non-native habitats and provided a population estimate of 1,600 birds, made up of 1,120 adults, or 560 pairs (Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14). The researchers also questioned the recovery objective published in the Hawaiian Hawk Recovery Plan (USFWS 1984, p. 25), stating: ''the Recovery Plan set a target that was unlikely to ever be met, given that Griffin's estimate assumed total saturation of hawks on forested land on the island. Reevaluation of the Recovery target is thus indicated, and should be based on more reasonable estimates of the distribution and abundance of 'io on the island'' (Morrison *et al.* 1994, p. 21).

In 1997, the Service formed the Io Recovery Working Group (IRWG), the mission of which was to provide oversight and advice on aspects of the recovery of the Hawaiian hawk. Specifically, the IRWG was asked to: (1) Evaluate existing recovery goals for the Hawaiian hawk in light of current knowledge, and formulate new goals if warranted; (2) recommend strategies for minimizing negative interactions between the Hawaiian hawk and the endangered Hawaiian crow or alala (*Corvus hawaiiensis*); (3) identify research and management priorities; and, (4) write and revise a report summarizing their findings and recommendations. Following its first meeting in December 1997, the IRWG forwarded a report to the Service, in which it recommended that, rather than focusing primarily on population numbers to assess the Hawaiian hawk's overall status, field studies should look at population numbers in combination with trends to be consistent with the guidelines published by the International Union for Conservation of Nature (IUCN) Species Survival Commission for identification of species at three levels of risk: critically endangered, endangered, and vulnerable (IUCN 1996, p. 21, Annex 8–10; IRWG 1998, p. 4).

In keeping with the IRWG's recommendations, we funded a detailed ecological and demographic study of the Hawaiian hawk from 1998 to 1999 to obtain more comprehensive information about population size, amount of suitable habitat, survival of adult and juvenile birds in native and non-native-dominated habitats, fecundity (average number of female offspring produced per individual breeding-aged female per year) in different habitats, and the rate of population change in different habitats (Klavitter 2000; Klavitter *et al.* 2003). During this study, researchers found that Hawaiian hawks were broadly distributed throughout the island of Hawaii, and that 58.7 percent of the island (2,372 square miles (sq mi) (6,143 square kilometers (sq km)) contained habitat for the hawk. State and Federal forests, parks, and refuges, totaled 754 sq mi (1,954 sq km), supported 469 hawks, and made up 32 percent of its habitat (Klavitter *et al.* 2003, p. 170).

The total Hawaiian hawk population was estimated to be 1,457 (± 176.3 birds), with an average density of 0.24 (± 0.08) birds per square kilometer (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170). Population density varied among habitats, from 0.01 to 0.57 birds per square kilometer. The highest densities were within native forest with grass, fallow sugarcane fields, and orchards; the lowest were within native mamane-naio (*Sophora chrysophylla-Myoporum sandwicense*) forest, urban, and lava areas (Klavitter 2000, p. 38; Klavitter *et al.* 2003, p. 169). In all successful nests monitored, only one young fledged per nest. Annual survival of juveniles and adults was high (0.50 (± 0.10) and 0.94 (± 0.04), respectively), and fecundity was 0.23 (± 0.04) female young/breeding female in all habitats combined. Nest success in native habitat tended to be slightly higher than in exotic habitats, but juvenile survival was higher in exotic habitats than in native forest (Klavitter *et al.* 2003, p. 170). There was no significant difference in fecundity or population growth rate between native and mixed, native and exotic, or mixed and exotic habitats (Klavitter 2000, pp. 39, 56; Klavitter *et al.* 2003, pp. 170–171). The overall rate of population growth based on data from all habitat areas was 1.03 (± 0.04), which is not significantly different than 1.0, indicating that there was no detectable change in population size across habitat types from 1998 to 1999 (Klavitter 2000, pp. 40, 56; Klavitter *et al.* 2003, pp. 170–171).

Most recently, we funded an island-wide survey that was completed in the summer of 2007. The researchers used updated vegetation maps and methods to calculate population and density estimates for the 1998–1999 survey data and the 2007 survey data. Using consistent maps and methods they were then able to compare population size and density over time to see if there had been significant changes. They found that, according to Klavitter's data, the Hawaiian hawk population numbered 3,239 (95% CI = 2,610 to 3,868) in 1998, more than double Klavitter's original estimate of 1,457 (± 176.3 birds) (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170). In 2007, they estimated the population to number 3,085 hawks (95% CI = 2,496 to 3,680). There was no significant difference in densities found in 1998 and 2007 and no evidence that the hawk's spatial distribution had changed (Gorresen *et al.* 2008, p. 6).

The primary objective stated in the 1984 recovery plan was to ''ensure a self-sustaining 'io population in the

range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat.'' Although the plan did not include specific delisting criteria, the population and distribution targets have been met (see Factor A below, for a discussion of habitat).

Because of the short duration of their study (2 years), the relatively low population size (compared to mainland species), the possibility of environmental fluctuations (e.g., volcanic eruptions), and uncertainties regarding future anthropogenic changes to the island, Klavitter *et al.* (2003, p. 173) recommended either downlisting the hawk to threatened status or consideration of a ''near threatened'' status rather than delisting.

Upon review of the Klavitter (2000) study results, the IRWG recommended that the Hawaiian hawk be delisted due to: (1) The lack of evidence of current declines in population numbers, survival rates, or productivity and, (2) the lack of evidence of current substantial loss or degradation of preferred nesting or foraging habitats (IRWG 2001, p. 3). The IRWG also recommended that regular monitoring take place to assess factors that may produce future population declines (IRWG 2001, pp. 3–4).

In light of these differing viewpoints, we consider existing or perceived threats to the Hawaiian hawk in more detail below (see Summary of Factors Affecting the Species).

Previous Federal Actions

The Hawaiian hawk was added to the U.S. Department of the Interior's list of endangered species on March 11, 1967 (32 FR 4001) in accordance with section 1(c) of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)), and its status as an endangered species was retained under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). A recovery plan for the Hawaiian hawk was published on May 9, 1984 (USFWS 1984).

On August 5, 1993, we published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened (58 FR 41684). In response to concerns regarding the proposed downlisting, as expressed in public comments, the proposed downlisting was not finalized. Instead, a population status assessment and further ecological studies were conducted to ascertain the population size and trends of the Hawaiian hawk.

On February 3, 1997, we received a petition from the National Wilderness Institute to delist the Hawaiian hawk. We responded to that petition in a letter dated June 19, 1998, indicating that we could not immediately work on the petition due to higher priority listing and delisting actions. This proposed rule constitutes our 90-day finding and 12-month finding on the February 3, 1997, petition.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' is used here to refer to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated.

In this proposed rule, we consider the foreseeable future for the Hawaiian hawk to be the next 20 years. Hawaiian hawks take about 3 years to obtain adult plumage (Clarkson and Laniawe 2000, p. 13); however, there are few data available on the age at which Hawaiian hawks first breed. Although one researcher documented a 3-year-old female pairing with a male of unknown age and building a nest, no eggs were laid. Another researcher documented the formation of a pair bond between a 3-year-old male and a female with immature plumage. In this case, no nesting attempts were documented (Clarkson and Laniawe 2000, p. 10). Based on this information, we believe that the Hawaiian hawk likely first breeds at age 3 or 4. We used 5 Hawaiian hawk generations, about 20 years, as a reasonable biological timeframe to determine if threats could depress the population size and therefore would be significant. Also, the best available data indicate that the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years. Based on these data, our knowledge of Hawaiian hawk biology, and our understanding of the threats of the greatest potential consequence to the Hawaiian hawk (habitat modification and the possible introduction of novel avian diseases, such as West Nile virus), we conclude that 20 years is a reasonable timeframe over which we can extrapolate the likely extent of the threats and their impacts on the species. We note that we have no information suggesting these threats will increase in intensity more than 20 years in the future.

Following this threats analysis we evaluate whether the Hawaiian hawk is threatened or endangered in any significant portion(s) of its range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian hawk reproduces and forages in native and non-native habitats on the island of Hawaii (Griffin 1985, pp. 102–103; Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14; Griffin *et al.* 1998, p. 658; Klavitter 2000, pp. 38–39, 56; Klavitter *et al.* 2003, pp. 169–171) and appears to be adaptable in its ability to exploit non-native species as prey (Munro 1944, p. 48; Griffin 1985, pp. 142–145; Griffin *et al.* 1998, p. 659).

The 1993 proposed rule to reclassify the Hawaiian hawk (58 FR 41684), the 2001 IRWG report (IRWG 2001, p. 3), Klavitter *et al.* (2003, p. 173), and

Gorresen *et al.* (2008, pp. 9–11) all identified loss of preferred nesting and foraging habitats as a potential threat to the Hawaiian hawk. Although their specific concerns were variously stated, they all fit into one of the following categories: (1) Urbanization/lack of secure habitat; (2) conversion of sugarcane fields to unsuitable habitat; (3) increase in fire frequency; (4) invasion of plant species in the understory that degrade foraging habitat by concealing prey; and (5) environmental fluctuations. Below, we address the first four of these specific threats to Hawaiian hawk habitat. We discuss environmental fluctuations under Factor E.

Urbanization/Lack of Secure Habitat

The Hawaiian hawk is broadly distributed on the island of Hawaii, and 58.7 percent of the island (2,372 sq mi (6,144 sq km)) contains habitat for the hawk. Of this habitat, 55 percent is zoned for agriculture and 44.7 percent is zoned for conservation. Approximately 754 sq mi (1,953 sq km), or 32 percent, of the hawk's habitat is located on protected lands in the form of State and Federal forests, parks, and refuges and less than 1 percent is rural or urban-zoned land that has the potential to be impacted by or subjected to future development (Klavitter 2000, p. 38; Klavitter *et al.* 2003, p. 170; State of Hawaii 2007).

The amount of urban land or land subject to potential future urbanization is generally localized in areas surrounding existing cities (County of Hawaii 2005, pp. 14–2, 14–9, Land Use Pattern Allocation Guide Map (LUPAG) 1–25), and represents less than 1 percent of Hawaiian hawk habitat on the island. Changes in zoning from one category to another (e.g. agricultural to urban) are made through petitions to the State Land Use Commission. There are currently no pending petitions that would change current agriculture, conservation, or rural zones to urban on the island of Hawaii (State of Hawaii Land Use Commission 2007). Similarly, there are no amendments currently proposed to the County of Hawaii General Plan (2005) that would reflect projected future urban growth beyond that which was projected in the 2005 plan. The latest amendments were in 2006 and did not project changes in urban growth on the island of Hawaii (County of Hawaii 2006). Because the hawk is broadly distributed on the island and can use a variety of habitats, the potential future conversion of a relatively small amount of its habitat (less than 1 percent) surrounding existing urban uses is not a threat to the viability of the species.

Since the time of listing, protection of native forests on the Island of Hawaii has also resulted in increased protection for the Hawaiian hawk. One example of a significant recovery action that was completed with regard to conservation of habitat for multiple native species, including the Hawaiian hawk, was the establishment of the 32,733 acre Hakalau Forest National Wildlife Refuge in 1985. The Refuge was established with the primary purpose of promoting the recovery of endangered forest birds and their habitat. There have also been several other projects undertaken at Hawaii Volcanoes National Park and on private lands on the Island of Hawaii aimed at native forest conservation that have likely benefited the hawk. While the exact benefit of these actions specifically for hawk populations can not be reasonably calculated because the actions benefit multiple species, these actions highlight just a few examples of efforts that have been undertaken that have likely had a significant contribution to conservation of the Hawaiian hawk.

Conversion of Sugarcane Fields to Unsuitable Habitat

Sugarcane was historically an important crop on the island of Hawaii, and Hawaiian hawks had adapted to use these croplands for foraging where nest trees and perching structures were available. With the demise of the sugarcane industry on the island in the 1990s, sugarcane plantations were converted to a diversity of agricultural uses (County of Hawaii 2005, pp. 1–8, 1–11), some of which (e.g., large, patchily distributed monocultures of eucalyptus or macadamia nut trees with little edge) are not compatible with Hawaiian hawk nesting or foraging (Klavitter *et al.* 2003, p. 172). We anticipate that in these localized, patchily distributed areas where eucalyptus plantations are established, Hawaiian hawks will not be able to effectively forage or nest. It remains unclear if hawks will use these areas immediately following a harvest or at the time of initial planting. However, given the short-rotation times planned for these plantations (5–8 years) and the rapid growth-rate of eucalyptus on Hawaii (Whitesell *et al.* 1992, pp. ii, 2) these areas might only briefly be suitable for hawk foraging.

Conversion of agricultural lands to eucalyptus forests is an ongoing threat to the Hawaiian hawk, but the scope of this threat is limited primarily to the Hamakua coastline—the best potential forest lands in the County (County of Hawaii 2005, p. 14–20)—and these monocultures are patchily distributed, with mixed agricultural and residential uses in the surrounding areas. Approximately 24,000 acres (9,712 hectares (ha)) (6.5 percent of the Hamakua District, or less than 2 percent of Hawaiian hawk habitat) of former sugarcane fields were being cultivated for eucalyptus production and ''thousands of additional acres'' were being planned as of 2005, but the exact timing of these future plantings is not currently available (County of Hawaii 2005, pp. 2–4, 2–20). Therefore, it appears possible that at least 'thousands of additional acres' will be converted in the future. However, even if all 80,000 acres (32,375 ha) of the best potential lands for cultivating forests on the island were converted to eucalyptus trees (County of Hawaii 2005, p. 14–20) in the future, that would represent only 22 percent of the Hamakua District and less than 5 percent of Hawaiian hawk habitat. For comparison, the Hamakua District contains 235,212 acres (95,187 ha) (59 percent) of lands designated for conservation thus far and into the foreseeable future (County of Hawaii 2005, p. 14–11).

At a regional scale we do not anticipate significant changes in hawk densities in response to this threat because many of the plantations are patchily distributed among areas with suitable habitat for foraging, perching, and nesting (e.g., small agricultural operations, fallow sugarcane fields, riparian areas, and native and non-native forest). Furthermore, the total amount of habitat converted (24,000 acres (9,712 ha)) represents less than 2 percent of all available habitat (Klavitter *et al.* 2003, p. 167). Therefore, while conversion of sugarcane fields has reduced the total amount of suitable habitat along the Hamakua coast, we believe that the scope and extent of this conversion is not likely to significantly impact the distribution or density of the Hawaiian hawk in such a way that would affect its viability.

Another potential threat is the conversion of current agricultural lands to crops for biodiesel fuel production (Gorresen *et al.* 2008, p. 10). A report prepared in 2006 for the State of Hawaii Department of Agriculture identifies up to 185,000 ac (74,000 ha) of agricultural lands on the island of Hawaii that would be suitable for such crop production (Poteet 2006, pp. 27–28), which represents up to 13 percent of the Hawaiian hawk's breeding range (Gorresen *et al.* 2008, p. 10). Because the proposed crops vary in terms of their feasibility and potential impacts to the Hawaiian hawk—some are likely to

continue to provide suitable foraging areas while others may not—it is not possible to provide an accurate estimate of the amount of habitat likely to be converted. However, all of the areas identified as potential sites for biofuel production are either fallow sugarcane fields or are currently being used for crop production, grazing, or forestry production (e.g., eucalyptus) (Poteet 2006, pp. 27–28). Thus, the extent of conversion from suitable hawk habitat to unsuitable hawk habitat is likely to be limited and well below 13 percent of the hawk's range.

Invasive Plant Species and Increase in Fire Frequency

Historically, fires on the island of Hawaii were likely infrequent occurrences (Smith and Tunison 1992, pp. 395–397). In some areas, primarily mesic and dry habitats, the fire regime has changed dramatically with an accumulation of fine fuels, primarily alien grasses, which spread in the 1960s and 1970s (Smith and Tunison 1992, pp. 397–398). Increased fire frequency facilitates the spread of alien grass, which increases fine fuel loads, further increasing the likelihood of more frequent and larger fires (Smith and Tunison 1992, pp. 398–399). This positive feedback loop can inhibit the establishment of tree species if fires are too frequent (Smith and Tunison 1992, p. 399).

Because Hawaiian hawks rely on forests for nesting and perching, loss of these structural components could result in the loss of habitat. Approximately 26 percent (370,658 ac (150,000 ha)) of the Hawaiian hawk's breeding range is within mesic to dry forest habitat areas that are particularly susceptible to fire (Gorresen *et al.* 2008, p. 11). Smith and Tunison (1992, p. 398) reported that the average size of the 58 fires that burned in Volcanoes National Park from 1968 to 1991 was 507 acres (205 ha). This is roughly the size of the average home range of the Hawaiian hawk (mean = 456 acres (185 ha); n = 10) reported by Griffin (1985, p. 173). Therefore, large fires could remove habitat in one or a few hawk territories at one time, but we expect that hawks would maintain their territory if sufficient prey and forest structure remained such that they could still nest and perch. At a regional scale we do not anticipate significant changes in hawk densities in response to this threat because most fires are expected to have a patchy distribution on the landscape such that some forest structure will continue to be present around or within these burned areas. Only if large-scale changes to dry forests occurred, eliminating nesting and perching areas across vast swaths of the leeward portion of the island, would the viability of the species potentially be at risk. The available information on hawk distribution and habitat does not suggest that this is currently occurring or is likely to occur in the foreseeable future. Therefore, while an increase in fire frequency due to alien plants is a threat and may reduce the amount of available habitat for nesting and perching, we believe that the maximum scope and extent of this conversion that we can reasonably anticipate is not likely to have a significant impact on the distribution or density of the Hawaiian hawk in such a way that would affect its viability.

Invasive Species (Concealing Prey)

Vegetative cover can be more important than prey abundance in the selection of hunting sites by raptors (Bechard 1982, p. 158). Klavitter *et al.* (2003, p. 169) found that exotic tree, shrub, and grass habitats had similar hawk densities to some native habitats (*e.g.*, mature native forest), but were lower than densities recorded in native forests with an understory of grass. The relationship between cover and demographic variables is likely to be complex given that a hawk's home-range may span several habitat types and that the effect of various invasive species on total vegetation cover has not been well studied. However, the best available data indicate that, despite the introduction of a variety of invasive plant species on the island of Hawaii, the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years, and no reliable extrapolation from current information suggests that this circumstance will change in the future.

Summary of Factor A: Based on the best available scientific and commercial data, we believe that destruction, modification, or curtailment of the Hawaiian hawk's habitat or range is not currently putting the Hawaiian hawk in danger of extinction and is not likely to result in the endangerment or extinction of the Hawaiian hawk in the foreseeable future. Comparison of island-wide survey data in 2007 with similar data from 1998–1999 suggests that the population numbers, densities, and spatial distribution of Hawaiian hawks on the island of Hawaii have not significantly changed in the past decade. Also, the best available data indicate that the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years (Service 1984; Griffin 1985, p. 25; Scott *et al.* 1986, p. 79; Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14; Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170; Gorresen *et al.* 2008, p. 6). Although some habitat loss is expected in the future, this loss is likely to be a small percentage of the hawk's habitat and is likely to be patchily distributed such that hawks are expected to continue to be widely distributed on Hawaii.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, some Hawaiian hawks were taken for scientific collection (e.g., Henshaw 1902, pp. 197–198; Banko 1980, p. 2) and may also have been taken by the early Hawaiians for either food or feathers (Clarkson and Laniawe 2000, p. 12). Neither of these factors is known to currently threaten the Hawaiian hawk.

Berger (1981, p. 79) stated that shooting was among the primary factors contributing to a suspected population decline of the Hawaiian hawk, but provided no data supporting his statement regarding shooting as a threat or his statement regarding a suspected population decline. He speculates that people shot Hawaiian hawks because they mistakenly believed that the hawks were ''chicken hawks'' (note: Banko (1980, p. 6) reported a dead Hawaiian hawk (cause of death unknown) being used as a ''scarecrow'' to discourage predation on domestic poultry flocks sometime in the late 1960's or early 1970's). Griffin (1985, p. 108) also speculated that illegal shooting of Hawaiian hawks was a significant threat factor, but provided no data to support this assertion.

While there is at least one anecdotal account of a Hawaiian hawk being treated for suspected gunshot wounds in the recent past (Lucas 2006), there is little other evidence that shooting is a current threat to the Hawaiian hawk at a regional scale. With increased community outreach regarding the hawk's status on the island of Hawaii, there no longer appears to be a substantive threat to the species from shooting (Mello 2007) and there is no reason to suspect that this threat is likely to increase in the future. Therefore, overutilization for commercial, recreational, scientific, or educational purposes is not likely to result in the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

C. Disease or Predation

Neither disease nor predation is currently known to substantively affect the Hawaiian hawk population (Griffin

1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661; Klavitter 2000, p. 45). Introduced mammalian predators (i.e., rats, cats, and mongooses) could potentially prey on Hawaiian hawks or their eggs and are known to have serious impacts on other species of native Hawaiian birds (Atkinson 1977, pp. 120–122, 127–130; Scott *et al.* 1986, pp. 363–364; VanderWerf and Smith 2002, pp. 77–80). However, there is no evidence of predation by these species on Hawaiian hawks or their eggs. There is evidence, on the other hand, that introduced mammalian species are a food resource for the hawk (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 1; Griffin *et al.* 1998, p. 659).

Although the Hawaiian hawk population is not currently known to be substantively affected by any diseases, Griffin (1985, p. 104–105) observed ''pox-like'' lesions on 2 of 44 captured hawks. No bacteriological or virological samples were collected; therefore, these lesions were not confirmed as avian pox.

The IRWG (2001, p. 3) identified disease as a potential factor that might lead to a decline in the size of the Hawaiian hawk population by reducing future reproduction and survival. In their report (IRWG 2001, p. 3) they state: ''[d]isease could have a serious negative impact on 'io as the population does not appear to be separated into disjunct subpopulations that could more easily evade an outbreak. The panmictic nature of the population [i.e., a population where all individuals are potential partners] may also limit genetic variability that could contribute to pockets of disease resistance, although genetic attributes have not been directly studied.''

The hawk does not appear to be susceptible to diseases currently established on the island of Hawaii, such as avian pox or malaria that have devastated many other Hawaiian endemic forest birds (Griffin 1985, pp. 104–106; Griffin *et al.* 1998, pp. 658, 661). The fact that the Hawaiian hawk population has remained stable for at least 20 years (Klavitter 2000, p. 42; Klavitter *et al.* 2003, p. 172) indicates that predators and disease are not having a measurable deleterious impact on Hawaiian hawk viability.

Emergent diseases, such as West Nile virus, have the potential to influence Hawaiian hawk viability in the future. West Nile virus, which is primarily transmitted by infected mosquitoes, has been reported in all of the 48 conterminous United States and is potentially fatal to many species of birds, including members of the genus *Buteo* (Centers for Disease Control and Prevention (CDC) 2005, 2007). Hawaii and Alaska are the only two States that have reported no occurrences of West Nile virus to date (State of Hawaii 2006; CDC 2007). To help prevent West Nile Virus from spreading to Hawaii, the State's Department of Agriculture has established a pre-arrival isolation requirement and a Poultry and Bird Import Permit issued through the Livestock Disease Control Branch for all birds entering the State. Furthermore, the Hawaii State Department of Health has an ongoing, multi-agency West Nile virus surveillance program in place on all of the main Hawaiian Islands, which involves surveillance for infected mosquitoes and dead birds, as well as live-bird surveillance at major ports of entry, equine surveillance, and human surveillance (State of Hawaii 2006). To date, no cases of West Nile virus have been reported in Hawaii; however, there is currently no certainty that we can prevent the disease from arriving and spreading. Should this disease arrive on the island of Hawaii, native birds may be particularly susceptible as they are likely to be immunologically naive to arboviruses such as West Nile virus, because they evolved in the absence of biting insects (van Riper *et al.* 1986, p. 340). Furthermore, there are a number of introduced birds (e.g., house sparrows and house finches) and mosquitoes (e.g., *Culex quinquefasciatus*) that could support West Nile virus amplification in Hawaii and transport it from low to middle to high elevations (Marra *et al.* 2004, p. 398) throughout the range of the Hawaiian hawk. Nevertheless, the short- and long-term impacts of West Nile virus on wildlife are uncertain (Marra *et al.* 2004, p. 394) and it is uncertain whether it will ever arrive on the island of Hawaii.

Summary of Factor C: Neither predation nor avian diseases currently established on Hawaii are known to threaten the Hawaiian hawk. West Nile virus and other emergent avian diseases have the potential to affect the species if they become established on Hawaii. However, it is uncertain whether such diseases will ever arrive. The State is currently implementing a prevention program to reduce the risk of its arrival. They are also implementing a surveillance program so that they can detect if it does arrive and take appropriate and timely action. Furthermore, maintaining the hawk on the List of Endangered and Threatened Wildlife because of speculative future threats would do nothing to prevent their occurrence. We do not believe that disease and predation currently endanger the Hawaiian hawk; nor are they likely to cause the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

A variety of regulatory mechanisms, managed by State and Federal resource agencies, are in place to protect the Hawaiian hawk and the habitats upon which it depends.

If this proposed rule is finalized, the Hawaiian hawk would still be protected by the Migratory Bird Treaty Act (16 U.S.C. 703) (MBTA). Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species. The MBTA and its implementing regulations (50 CFR parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11).

Although we are not aware of any intent to use Hawaiian hawks for falconry, regulations at 50 CFR 21.28 and 21.30 specifically authorize the issuance of permits to take, possess, transport and engage in commerce with raptors for falconry purposes and for propagation purposes. Certain criteria must be met prior to issuance of these permits, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)). In addition to considering the effect on wild populations, issuance of raptor propagation permits requires that the Service consider whether suitable captive stock is available and whether wild stock is needed to enhance the genetic variability of captive stock (50 CFR 21.30(c)(4)).

Another regulatory mechanism that will continue to provide protection to the Hawaiian hawk if this proposed rule is finalized is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the Environmental Protection Agency requires environmental testing of all new pesticides. Testing the effects of pesticides on representative wildlife species prior to pesticide registration is specifically required. Only pesticides

that have been determined not to pose unreasonable adverse effects on the environment may be used in the United States. This protection from effects of pesticides would not be altered by delisting the Hawaiian hawk.

On June 28, 1979, the Hawaiian hawk was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This treaty was established to prevent international trade that may be detrimental to the survival of plants and animals. International trade is regulated through a system of CITES permits and certificates. CITES permits and certificates may not be issued if trade will be detrimental to the survival of the species or if the specimens being imported or exported were not legally acquired. This protection would not be altered by removing the Hawaiian hawk from the List of Endangered and Threatened Wildlife.

Federal delisting of the Hawaiian hawk will automatically remove this species from the State of Hawaii threatened and endangered species lists under Hawaii Revised Statute (HRS) § 195D–4. However, as a native species, the hawk will continue to be afforded the protection of the State in accordance with HRS § 195–1, which states that ''[a]ll indigenous species of aquatic life, wildlife, and land plants are integral parts of Hawaii's native ecosystems and comprise the living heritage of Hawaii, for they represent a natural resource of scientific, cultural, educational, environmental, and economic value to future generations of Hawaii's people'' and that ''it is necessary that the State take positive actions to enhance their prospects for survival.'' Under State of Hawaii Administrative Rules (HAR), it is prohibited to ''catch, possess, injure, kill, destroy, sell, offer for sale, or transport'' any indigenous wildlife, as well as to export any such species (HAR § 13–124–3), unless authorized by permit (HAR § 13–124–4).

Summary of Factor D: Several regulatory mechanisms will protect the Hawaiian hawk should we finalize this delisting proposal and there is no evidence to suggest that those regulatory mechanisms will be modified in the future. Therefore, the inadequacy of existing regulatory mechanisms does not presently endanger the Hawaiian hawk, nor is it likely to do so in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Species that are endemic to a single island, such as the Hawaiian hawk, are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a single population by random demographic fluctuations and localized catastrophes such as fires, hurricanes, and disease outbreaks (IRWG 2001, p. 3). However, the Hawaiian hawk is adaptable to a variety of habitats and is relatively abundant and widespread in suitable habitat on much of the island, making it resilient to random demographic fluctuations or localized catastrophes (e.g., volcanic eruption). Even a large-scale catastrophe such as a major hurricane or fire is unlikely to cause the extinction or endangerment of a hawk that can effectively utilize regenerating forests as foraging areas and can nest in relatively small patches of older forests that are likely to remain intact following such an event. Therefore, due in large measure to their demonstrated ability to effectively use altered habitats on Hawaii, the endemic nature of the Hawaiian hawk population does not currently endanger the species nor is there evidence that it is likely to do so in the future.

Summary of Factor E: The Hawaiian hawk, although an island endemic, appears to be resilient to habitat changes and catastrophes. Therefore, we do not believe that other natural or manmade factors currently endanger the Hawaiian hawk; nor are they likely to cause the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

Finding

For the reasons stated above, we find that the Hawaiian hawk is not currently in danger of extinction, nor is there evidence that it is likely to become endangered in the foreseeable future.

Withdrawal of Proposed Rule To Reclassify the Hawaiian Hawk as Threatened

We have carefully assessed the best scientific and commercial data available regarding the status of the Hawaiian hawk and have analyzed the five threat factors described in section 4(a)(1) of the Act. We find, based on the best available scientific data, that there is not sufficient information to justify the earlier proposed rule to reclassify the Hawaiian hawk as threatened. Due to implementation of recovery actions and other conservation efforts, we now believe that the Hawaiian hawk is broadly distributed throughout the island of Hawaii, has been stable in number for at least 20 years, nests and forages successfully in both native and altered habitats, and has large areas of habitat in protected status. The Hawaiian hawk is not currently threatened by overutilization, disease, predation, contaminants, lack of adequate regulatory mechanisms, or other factors, and therefore no longer meets the definition of a threatened or endangered species throughout its range.

At the time we proposed to reclassify the Hawaiian hawk in 1993, we determined that enough secure habitat was available for reclassification, but there was not enough for delisting. We have reassessed this statement in light of the best available data, including the current land-use plan for the island, and additional studies regarding Hawaiian hawk population status, habitat use, productivity, and survival, and find that sufficient habitat is available for a viable, broadly distributed population of hawks into the foreseeable future. While certain areas of the island are subject to additional development or conversion into habitats that may be unsuitable for hawk nesting or foraging (e.g., eucalyptus plantations) these areas are expected to be small and localized in comparison to protected areas and agricultural areas that do provide suitable habitat. Both implementation of recovery actions and accumulation of additional information on the Hawaiian hawk over the past 30 years contribute to the above assessment. Therefore, we withdraw our proposal to reclassify the Hawaiian hawk.

Proposal To Delist

For the reasons discussed above, we do not believe the species is in danger of extinction throughout all or a significant portion of its range, or that it is likely to become endangered throughout all or a significant portion of its range in the foreseeable future. Therefore, we propose to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. Based on our analysis of the five threat factors and the best scientific data available on the status of the species, we believe that the Hawaiian hawk should be delisted due to the implementation of recovery actions that have facilitated a better understanding of the hawk's ecology and threats.

Additional recovery actions that have benefited the Hawaiian hawk and which likely played a role in maintaining stable hawk populations include numerous native forest habitat conservation projects, protection from human harassment, public education, and evaluation of potential impacts of new pesticides. One example of a significant recovery action that was completed with regard to conservation of habitat for multiple native species, including the Hawaiian hawk, was the

establishment of Hakalau Forest National Wildlife Refuge in 1985. There have also been several other projects undertaken at Hawaii Volcanoes National Park and on private lands on the Island of Hawaii aimed at native forest conservation that have likely benefited the hawk. While the exact benefit of these actions specifically for hawk populations can not be reasonably calculated because these actions benefit multiple species, these actions highlight just a few examples of efforts that have been undertaken that have likely had a significant contribution to conservation of the Hawaiian hawk.

Due to implementation of recovery actions and other conservation efforts, we now believe that the Hawaiian hawk is broadly distributed throughout the island of Hawaii, has been stable in number for at least 20 years, nests and forages successfully in both native and altered habitats, and has large areas of habitat in protected status. The Hawaiian hawk is not currently threatened by overutilization, disease, predation, contaminants, lack of adequate regulatory mechanisms, or other factors, and therefore no longer meets the definition of a threatened or endangered species throughout its range.

Significant Portion of the Range Analysis

Having determined that the Hawaiian hawk is not currently in danger of extinction, nor likely to become endangered throughout its range in the foreseeable future, we next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. We consider factors such as whether there is a biological basis (e.g., population groupings, genetic differences, or differences in ecological setting) or regulatory basis (e.g., International or State boundaries where the threats from lack of regulatory mechanisms might be different on either side of the boundary) for parsing the range into finer portions and whether extinction risk is spread evenly across the range of the species.

In the case of the Hawaiian hawk, (1) there is only one panmictic population, having no apparent barriers to dispersal or gene flow, (2) there are no regulatory differences since the species occurs only in one County in Hawaii, (3) although it occurs in a variety of ecological settings on Hawaii, habitat threats are small in overall magnitude and are not concentrated in any one ecological setting (see Factor A, above), and (4) there are no other geographically concentrated threats. Because extinction risk, both currently and in the foreseeable future, is not measurably higher in any one location on the island, we do not propose to retain listing status for any portion of the species' range.

Effects of the Rule

If made final, this rule would revise 50 CFR 17.11(h) to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Hawaiian hawk. There is no critical habitat designated for this species.

The Hawaiian hawk would continue to be protected under the Migratory Bird Treaty Act (16 U.S.C. 703), CITES (Article IV), and State of Hawaii law (HRS § 195–1).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Service to implement a system, in cooperation with the States, to monitor for not less than 5-years the status of all species that have recovered and been removed from the lists of threatened and endangered wildlife and plants (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that the Hawaiian hawk remains secure from risk of extinction after it has been removed from the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

The Service is developing a draft PDM plan in cooperation with the Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), the National Park Service (NPS), and the U.S. Geological Survey (USGS). We intend to publish a notice of availability of the draft plan in the **Federal Register**, and solicit public comments on that plan, prior to finalizing this proposed rule. All public comments on the draft PDM will be considered and incorporated into the final PDM plan as appropriate. The final PDM plan and any future revisions will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*) and on the Pacific Islands Fish and Wildlife Office Web page (*http://pacificislands.fws.gov*).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register** and will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to delist the Hawaiian hawk. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(D) of the Act requires that we hold one public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register** (see **DATES**). Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the emergency rule? What else could we

do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to this address: *Exsec@ios.goi.gov.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget (OMB) control number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this document are Ms. Karen Marlowe, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) and Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for ''Hawk, Hawaiian'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: July 14, 2008.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–16858 Filed 8–5–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2008–0090; 91200–1231–9BPP–L2]

RIN 1018–AW19

Migratory Bird Hunting; Hunting Methods for Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') proposes to amend the regulations on resident Canada goose management. This proposed rule clarifies the requirements for use of expanded hunting methods during special September hunting seasons. One requirement in the regulations has been misinterpreted, and we are taking this action to make sure that our regulations are clear for the States and the public.

DATES: Comments on this proposed rule must be received by September 5, 2008.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–XXXX; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management from the above address or from the Division of Migratory Bird Management Web site at *http://fws.gov/migratorybirds/issues/cangeese/finaleis.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on

allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a ''closed season'' on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

Background

On August 10, 2006, we published in the **Federal Register** (71 FR 45964), a final rule establishing regulations in 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. On August 20, 2007, we published in the **Federal Register** (72 FR 46403), a final rule that clarified and slightly modified several program requirements in 50 CFR parts 20 and 21 regarding eligibility, definitions, methodologies, and dates. This proposed rule further seeks to clarify the use of expanded hunting methods during special September hunting seasons.

Expanded Hunting Methods During September Special Seasons

One of the components in the resident Canada goose management program is to provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. The regulatory changes in § 20.21(b) and (g) codified in the August 10, 2006, and August 20, 2007, final rules provide State wildlife management agencies and Tribal entities the option of authorizing the use of unplugged shotguns (paragraph (b)) and electronic calls (paragraph (g)) during the first portion of existing, operational September Canada goose seasons (*i.e.*, September 1–15, § 20.21(b)(2)(i) and § 20.21(g)(2)(i)). The final rules also stated that utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (*i.e.*, September 16–30, § 20.21(b)(2)(ii) and § 20.21(g)(2)(ii)) can be approved by the Service and require demonstration of a minimal impact to migrant Canada goose populations. Further, we will authorize these seasons (*i.e.*, those after September 15) on a case-by-case basis through the normal migratory bird hunting regulatory process.

All of these expanded hunting methods and opportunities must be conducted outside of any other open waterfowl season (*i.e.*, when all other waterfowl and crane hunting seasons are closed). Thus, any State listed in § 20.21(b)(2) and (g)(2) may select the use of these expanded hunting methods during September 1–15 without annual Service approval, and during September 16–30 with annual Service approval.

This Proposed Rule

We have become aware of concerns that, as written, the regulations in § 20.21(b)(2) and (g)(2) do not require annual promulgation in the **Federal Register** of a State's decision to use these expanded hunting methods during the period September 1–15. Language in § 20.21(b)(2)(ii) and (g)(2)(ii) requires that any decision by the States to use these expanded hunting methods during the period of September 16–20 be incorporated in the annual migratory bird hunting regulations. The result is that the States are required to notify us of their decision. Because this same language does not appear in § 20.21(b)(2)(i) and (g)(2)(i), the existing regulations could be interpreted as requiring notification by a State only for the period September 16–20 and not for the period September 1–15. We codify all the other season dates, daily bag limits, area restrictions, shooting hours, etc., annually in late August, so this interpretation of the regulations was clearly not our intention.

Therefore, we propose to amend § 20.21(b)(2)(i) and (g)(2)(i) by adding the phrase ''when approved in the annual regulatory schedule in subpart K of this part'' to expressly require States to inform us of their annual selections on the use of these expanded hunting methods during the period of September 1–15. This is the same language that currently exists in § 20.21(b)(2)(ii) and (g)(2)(ii) that requires such notification by the States for the period September 16–30. As a result of these proposed amendments, all State selections, or nonselections, of these expanded hunting methods during September would require publication in the annual regulatory schedule in subpart K of part 20.

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of a final regulation, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a Draft Environmental Impact Statement (DEIS) on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). On August 10, 2006, we published our Record of Decision (ROD) in the **Federal Register** (71 FR 45964). The FEIS is available to the public (see **ADDRESSES**). The proposed changes to the resident Canada goose regulations fall within the scope of the FEIS.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under Section 7 of the ESA for the action described in the August 10 final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfied concerns about certain species and that the action was not likely to adversely affect any threatened, endangered, or candidate species. This proposed change falls within the scope of that informal consultation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. We discussed these impacts in the August 10 final rule. For the reasons detailed in that rule, we have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

This proposed rule does not contain any new information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d). OMB has approved and assigned control number 1018–0133, which expires on 08/31/2009, to the regulations concerning the control and management of resident Canada geese.

We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource

for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

The August 10 final rule and this proposed rule were developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Revise paragraphs (b)(2) and (g)(2) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

(g) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

Dated: July 23, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–18003 Filed 8–5–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 73, No. 152

Wednesday, August 6, 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

Office of the Chief Economist; Strategic Plan for USDA Climate Change Research, Education, and Extension

AGENCY: Office of the Chief Economist, U.S. Department of Agriculture.

ACTION: Request for Public Input on USDA's Climate Change Strategic Planning Priorities and Goals for Research, Education, and Extension.

SUMMARY: The U.S. Department of Agriculture (USDA) is a member of the United States Climate Change Science Program (CCSP) and has undertaken research on issues related to climate change and natural resources over the past two decades. USDA recently prepared a major scientific assessment of the effects of climate change on agriculture, land resources, water resources, and biodiversity in the United States for the CCSP. USDA is requesting input from the public on its effort to prepare a Strategic Plan for Climate Change Research, Education, and Extension. This request is being published in the **Federal Register** for a 45-day public comment period. Public comments will be considered during the preparation of the Strategic Plan. The final version of the Strategic Plan will be published on USDA's Web site.

Public comments received in response to this request will be made available upon request.

DATES: Comments must be received by September 19, 2008.

ADDRESSES: Comments should be sent to Eleanor Rollings, Special Assistant to the Under Secretary for Research, Education, and Extension, USDA, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250, *Eleanor.rollings@usda.gov,* 202–720–1542.

FOR FURTHER INFORMATION CONTACT: Eleanor Rollings, Special Assistant to the Under Secretary for Research, Education, and Extension, USDA, *Eleanor.rollings@usda.gov,* 202–720–1542.

SUPPLEMENTARY INFORMATION: Draft goals of the USDA's Climate Change Strategic Plan for Research, Education, and Extension:

Goal 1: Understand the effects of climate change on natural and managed ecosystems.

USDA will promote an understanding of the impacts of climate change on ecosystems and managed lands, including forests, grazing lands and croplands, is needed to enable continued production of goods and services and stewardship of natural resources. Areas of emphasis include:

- Effects of changing precipitation, temperature and water availability on productivity and system services;
- Implications of enhanced atmospheric carbon dioxide concentrations on system productivity and services;
- Effects on invasive species, weeds, pathogens, insects and other factors limiting natural and managed systems productivity;
- Effects on natural disturbance regimes, including wildfires;
- Effects on production, processing, storage and delivery systems;
- Economic consequences of climate change on natural and managed ecosystems;
- Implications for water, soil and air systems needed for production and ecosystem sustainability;
- Indicators/metrics from earth observations for identifying, measuring and monitoring the effects of climate change;
- Measurement of changing carbon content of ecosystems, and of growth by species;
- Evaluation of social and economic indicators for impacts of climate change on production systems, rural communities, the agricultural workforce and other human dimensions;
- Incorporating climate change observations into USDA data systems.

Goal 2: Develop knowledge and tools to enable adaptation to climate change and improve the resilience of natural and managed ecosystems.

Mechanisms for adaptation to climate changes are critical for continued agricultural production and stewardship of natural resources. USDA activities under this goal will focus on the development of knowledge and technologies to address detrimental effects of climate change and to exploit elements of climate change that are potentially beneficial to agriculture and forestry. Risk management and adaptive management strategies are key elements of Goal 2. Elements of Goal 2 include:

- Sustainable practices for agricultural production in the context of climate change;
- Strategies to enable farmers and other landowners and managers to cope with challenges associated with drought, heat stress, moisture stress, and changes in disease and pest prevalence;
- Management actions to increase forest stress resilience focused on altering forest processes, composition and structure to better withstand the suite of environmental stresses from changing climate, pests, pollutants, and wildfire;
- Economic costs, benefits, and feasibility of adaptation at the producer through the macroeconomic scale;
- Estimation and measurement techniques and capabilities for assessing the effectiveness of adaptive practices;
- Strategies to enable farmers and other landowners to account for longer growing seasons, increases in carbon dioxide concentrations, and increases in precipitation where applicable;
- Management strategies for adapting to the effects of climate on forest health and ecosystem services;
- Knowledge and technology to enhance ecosystem adaptation and sustainability;
- Technologies for maintenance and enhancement of ecosystem services such as water supplies, wildlife, biodiversity, clean air, and recreation within the context of global change;
- Alternative strategies for increasing ecosystem resilience;
- Indicators/metrics for monitoring the progress of strategies for adapting to climate change;
- Life-cycle analysis and management strategy assessments.

Goal 3: Develop knowledge and tools to reduce the contributions of agriculture, forestry, and other land management practices to the build up of greenhouse gases in the atmosphere.

Agriculture, forests, and grazing lands activities can produce greenhouse gas

(GHG) emissions to the atmosphere. Land uses can also reverse the buildup of greenhouse gases in the atmosphere by sequestering and storing carbon in biomass and soils. The dominant drivers of land use emissions of carbon are the conversion of forest and grassland to crop and pastureland and the depletion of soil carbon through agricultural and other land management practices. Practices such as livestock grazing, manure management, and fertilizer application also affect emissions of other GHGs such as methane (CH_4) and nitrous oxide (N_2O). USDA research will identify opportunities to apply resource conserving management practices to reverse past carbon losses and to reduce greenhouse gas emissions. Areas of focus under Goal 3 include:

- Knowledge and technologies that will assist resource managers in enhancing carbon sequestration;
- Management options that increase forest carbon sequestration by increasing the carbon stored in forests and soils, in forest products, and used as biofuels to replace fossil fuels.
- Costs, benefits, and feasibility of mitigation options;
- Technologies and strategies for managing agricultural and forestry emissions of GHGs, including CO_2, N_2O, and CH_4;
- Mechanisms to facilitate the adoption and incorporation of GHG management technologies into agricultural and forestry production, processing, storage and delivery systems;
- Estimation and measurement capabilities for assessing the effectiveness of GHG emission management.

Goal 4: Deliver climate change science and technology to USDA agencies, stakeholders and collaborators for improved decision making. USDA maintains research, education, and extension capabilities which can be drawn on to meet the challenges of climate change. USDA seeks comments on how to best utilize resources to address questions relevant to stakeholders and decision makers at local, regional, national, and international scales. Goal 4 emphasizes the delivery and application of the latest scientific information, including:

- Education of USDA stakeholders, clients and customers including the general public, the scientific community, land managers, producers, and policy makers about climate change and agriculture and forestry;
- Scientific collaboration and technology transfer to integrate climate change into decision-making for management of natural and managed ecosystems using the products of research and development from the three previous goals;
- Distribution and dissemination of USDA climate change data, information, and technology to interested users;
- Decision support tools for policymakers, producers and land managers charged with implementing mechanisms for reducing GHG emissions and enhancing carbon sequestration, thereby increasing resilience of natural, agricultural, and forested ecosystems;
- Risk management paradigms to balance production, conservation and climate change, especially in light of uncertainty regarding the specifics of future climate and climate variability;
- Incorporation of GHG and carbon sequestration data into USDA data collection programs and data base systems.

Gerald A. Bange,

Chairman of the World Agricultural Outlook Board.

[FR Doc. E8–18112 Filed 8–5–08; 8:45 am]

BILLING CODE 3410–38–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of the Utah Advisory Committee will convene at 6 p.m. and adjourn at 8 p.m. (MST) on Wednesday, August 20, 2008 at the Hilton City Center, 255 South West Temple, Salt Lake City, UT 84101.

The purpose of the meeting is for the committee to discuss recent Commission and regional activities, discuss current civil rights issues in the state as well as issues raised during the forum on civil rights issues affecting American Indians in Utah (held Dec. 2006), and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Malee V. Craft, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 31, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–17980 Filed 8–5–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1567]

Approval of Expansion of Subzone 161A and Expansion of Manufacturing Authority, Hospira, Inc. (Pharmaceutical Products), McPherson, KS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of County Commissioners of Sedgwick, Kansas, grantee of FTZ 161, submitted an application to the Board for authority to expand the subzone and the scope of manufacturing authority under zone procedures at Subzone 161A at the Hospira, Inc., pharmaceutical facility in McPherson, Kansas, adjacent to the Wichita Customs and Border Protection port of entry (FTZ Docket 41–2007, filed 8/23/07);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 50326, 8/31/07), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal as described in the application and **Federal Register** notice is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the subzone and the scope of manufacturing authority under zone procedures for Subzone 161A is approved, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 24th day of July 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–18120 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1568]

Grant of Authority for Subzone Status, Baker Hughes, Inc., (Barite Milling), Morgan City, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in significant public benefit and is in the public interest;

Whereas, the Port of South Louisiana Commission, grantee of Foreign-Trade Zone 124, has made application to the Board for authority to establish a special-purpose subzone at the barite milling facility of Baker Hughes, Inc., located in Morgan City, Louisiana (FTZ Docket 2–2008, filed 1/28/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 5175, 1/28/08); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to barite milling at the facility of Baker Hughes, Inc., located in Morgan City, Louisiana (Subzone 124M), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of July 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–18121 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on August 14, 2008, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Report of Composite Working Group and Chemical Equipment Subgroup.
4. Report on July 8 regulation: Implementation of Understandings of the Australia Group Plenary and Additions to Lists of CWC State Parties.
5. Public comments from teleconference and physical attendees.
6. Any other business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than August 7, 2008.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 1, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–18077 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely request, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand for the period of review (POR) July 1, 2006 through June 30, 2007. The review covers one respondent, Vita Food Factory (1989) Ltd. (Vita).

The Department preliminarily determines that Vita made sales to the United States at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of Vita's merchandise during the POR. The preliminary results are listed

below in the section titled ''Preliminary Results of Review.''

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–3782, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CPF from Thailand on July 18, 1995. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775 (July 18, 1995) (*Antidumping Duty Order*). On July 3, 2007, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on CPF from Thailand. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On April 21, 2008, the Department published a revocation of this order effective October 31, 2007. *See Canned Pineapple Fruit from Thailand: Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Revocation of Antidumping Duty Order*, 73 FR 21311 (April 21, 2008).

The Department received a request for review from Vita, by the July 31, 2007 deadline and therefore, on August 20, 2007, the Department published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on CPF from Thailand for Vita. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 20, 2007).

On September 13, 2007, the Department issued sections A through E of the questionnaire to Vita.[1] Vita submitted its sections A through D responses on October 22, 2007. The Department issued a supplemental questionnaire on January 8, 2008, and Vita responded on January 18, 2008.

On March 30, 2008, the Department, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), extended the deadline for the preliminary results of this antidumping duty administrative review by 120 days from April 1, 2008 until no later than July 30, 2008. *See Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 12704 (March 10, 2008).

Period of Review

This review covers the period July 1, 2006 through June 30, 2007.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar–based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice–packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

Less than Fair Value Analysis

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the export price (EP) to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by respondents that are covered by the description in the ''Scope of the Order'' section, above, and that were sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaires.

Date of Sale

It is the Department's practice to use invoice date as the date of sale. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the invoice date if the Secretary is satisfied that the material terms of the sale were established on some other date. *See Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 217–219 (CIT 2000). Vita reported invoice date as the date of sale for all sales in both the comparison and U.S. markets. After analyzing Vita's responses and the sample sales documents provided, we preliminarily determine that invoice date is the appropriate date of sale for all sales under review.

U.S. Price

In accordance with section 772(a) of the Act, we use EP when the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) was not otherwise warranted by the facts on the record. As discussed below, we conclude that all of Vita's U.S. sales are EP sales.

Vita identified all of its U.S. sales as EP sales in its questionnaire responses. The Department based the price of each of Vita's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold prior to importation, to unaffiliated purchasers in the United States, or to unaffiliated purchasers for exportation to the United States and the use of CEP was not otherwise warranted based on the facts on the record. In accordance with section 772 (a) and (c) of the Act, we calculated EP using the prices Vita charged for packed subject merchandise shipped FOB. We made deductions for movement expenses, including, where applicable, charges for transportation, terminal handling, container stuffing, bill of lading preparation, customs clearance, and legal and port fees documentation. *See Analysis Memorandum for Vita Food Factory (1989) Co., Ltd.*, (*Vita Preliminary Analysis Memorandum*) dated concurrently with this notice.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See* ''Level of Trade'' section below. After testing comparison market viability and whether comparison market sales were at below–cost prices, we calculated NV for Vita as discussed in the following sections.

Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product normally should be greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the aggregate volume of home market sales of the foreign like product to the aggregate volume of its U.S. sales of subject merchandise. *See also* 19 CFR 351.404(b).

Because the aggregate volume of Vita's home market sales of foreign like product is less than five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in a country other than Vita's home market. *See* section 773(a)(1)(B)(ii) of the Act. Specifically, we based NV for Vita on sales of the foreign like product in Germany due to the fact that Vita exported the largest amount of CPF (by quantity) to Germany during the POR, and did not sell merchandise more similar to that sold to the U.S. to any other third country market.

Cost of Production (COP) Analysis

In the most recently completed administrative review of the antidumping duty order on CPF from Thailand, the Department determined that Vita sold foreign–like product in its comparison market at prices below the cost of producing the product and excluded such sales from the calculation of NV. *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 44490 (August 8, 2007) (*11th Review Preliminary Results*) unchanged in *Canned Pineapple Fruit from Thailand: Final Results of Antidumping Duty Administrative Review*, 73 FR 5792 (January 31, 2008) (*11th Review Final Results*). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department determined that there are reasonable grounds to believe or suspect that during the current POR, Vita sold the foreign like product at prices below the cost of producing the product and instituted a below cost inquiry as to Vita's sales in the comparison market.

Test of Comparison Market Sales Price

We compared sales of the foreign like product in the home market with model–specific COP values in the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, and financial expenses and packing. In our sales–below-cost analysis, we used comparison market sales and COP information provided by Vita in its questionnaire responses. *See* Vita's October 22, 2007 section D questionnaire response.

Results of COP Test

We compared the weighted–average COPs to comparison market sales of the foreign like–product, consistent with section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. *See also* 19 CFR 351.404(b). In determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product–specific basis, we compared the COP to comparison market prices, less any movement charges, discounts and rebates, and direct and indirect selling expenses. *See Treatment of Adjustments and Selling Expenses in Calculating the Cost of Production (''COP'') and Constructed Value (''CV'')* Import Policy Bulletin (March 25, 1994) on file in the CRU, which can also be accessed directly on the Web at http://ia.ita.doc.gov.

Pursuant to section 773(b)(2)(C) of the Act, where fewer than 20 percent of a respondent's sales of a given model were at prices less than the COP, we did not disregard any below–cost sales of that model because the below–cost sales were not made in substantial quantities within an extended period of time.[2] Where 20 percent or more of a respondent's sales of a given model were at prices less than the COP, we disregarded the below–cost sales when: (1) they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act and; (2) based on our comparison of prices to average COPs in the POR, we determined that the below–cost prices would not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Price–to-Price Comparisons

For those product comparisons for which there were comparison market sales of like product in the ordinary course of trade, we based NV on comparison market prices to affiliated (when made at prices determined to be arms–length) or unaffiliated parties, in accordance with section 773(a)(1)(A) and (B) of the Act. We made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CRF 351.411 as well as for differences in direct selling expenses, in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We relied on our model match criteria in order to match U.S. sales of subject merchandise to comparison sales of the foreign like product based on the reported physical characteristics of the subject merchandise. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* section 771(16) of the Act.

When comparing Vita comparison market sales to its EP sales, the Department calculated Vita's NV (shipped FOB) based on its gross unit price to customers in Germany. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses (*i.e.*, inland freight,

[2] Section 773(b)(2)(ii)(B-C) of the Act defines extended period of time as a period that is normally 1 year, but not less than 6 months, and substantial quantities as sales made at prices below the cost of production that have been made in substantial quantities if (i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or (ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

ocean freight and warehousing), when appropriate. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted comparison market direct selling expenses (*i.e.*, credit, warranty) and added U.S. direct selling expenses. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c).

Vita reported that it paid its customer in the U.S. market a commission on sales to the United States during the POR. Based on the information on the record, specifically that the commissions were paid to the U.S. customer rather than to an agent asking on behalf of Vita, we have determined these payments to be reductions in price, and therefore, more appropriately considered them as discounts. Accordingly, we have treated them as discounts in our calculations. *See Vita Preliminary Analysis Memorandum*.

Price to Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when we could not determine NV because there were no above–cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act, including the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market. Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, SG&A expenses, and profit for CV, where possible.

We used CV as the basis for NV for sales for which there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added reported materials, labor, and factory overhead costs to derive the cost of manufacture (COM), in accordance with section 773(e)(1) of the Act. We then added interest expenses, SG&A expenses, profit, and U.S. packing expenses to derive the CV (and added U.S. credit expenses for comparison to EP), in accordance with sections 773(e)(2) and (3) of the Act. We calculated profit based on the total value of sales and total COP reported by Vita in its questionnaire response, in accordance with section 773(e)(2)(A) of the Act. Finally, we deducted comparison market credit expenses from CV and added U.S. credit to calculate the foreign unit price in dollars (FUPDOL), pursuant to section 773(e)(2)(A) of the Act.

Level Of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*South African Plate Final*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),[3] including selling functions,[4] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third–country prices), we consider the starting prices before any adjustments. With respect to CEP sales, the Department removes the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001). As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. Vita reported that the selling activities for its respective comparison market and U.S. market channels were made at the same level of trade. After conducting an analysis of Vita's sales channels and selling activities, the Department preliminarily determines that no level of trade adjustment is necessary for Vita, consistent with what Vita reported in its respective questionnaire responses. For further details on the Department's LOT analysis, *see Vita Preliminary Analysis Memorandum*.

Currency Conversion

In accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See also* 19 CFR 351.415.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin
Vita Food Factory (1989) Ltd.	2.48 %

Cash Deposits

Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department revoked this order and notified U.S. Customs and Border Protection (CBP) to discontinue suspension of liquidation and collection of cash deposits on entries of the subject

[3] The marketing process in the United States and in the comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[4] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, technical service, freight and delivery, and inventory maintenance.

merchandise entered or withdrawn from warehouse on or after October 31, 2007, the effective date of revocation of this AD order. *See Canned Pineapple Fruit from Thailand: Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Revocation of Antidumping Duty Order*, 73 FR 21311 (April 21, 2008). Therefore, cash deposits of estimated antidumping duties are no longer required.

Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in the final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the publication of this notice. Requests should contain 1) the party's name, address and telephone number; 2) the number of participants; and, 3) a list of issues to be raised. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will issue the final results of this administrative review within 120 days after the publication of this notice, unless extended. *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18027 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests for review by respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephtalate film, sheet and strip (PET Film) from India for the period of review (POR) July 1, 2006 through June 30, 2007. The review covers one respondent, Jindal Poly Film, Ltd. (Jindal).

The Department preliminarily determines that Jindal did not make sales at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries during the POR without regard to antidumping duties. The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the antidumping duty order on PET Film from India. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 20002). On July 3, 2007, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review.'' *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On July 30, 2007, the

Department received timely requests for an administrative review from Jindal and MTZ Polyfilms, Ltd. (MTZ), manufacturers and exporters of PET film in India. On July 31, 2007, MTZ submitted a request for revocation of the antidumping duty order on certain PET Film produced and exported by MTZ.[1] The Department initiated an administrative review of the antidumping duty order on August 24, 2007 of Jindal and MTZ. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 24, 2007). On September 14, 2007 the Department issued questionnaires to Jindal and MTZ.[2]

On October 19, 2007, Jindal submitted its section A response. On October 30, 2007, MTZ withdrew its request for review. On November 6, 2007, Jindal submitted sections B and C responses to the Department's questionnaire. On November 20, 2007, Jindal submitted its section D response. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), on February 14, 2008, the Department extended the deadline for the completion of the preliminary results of this review. *See Certain Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 9768 (February 22, 2008).

On February 28, 2008, the Department issued a section A supplemental questionnaire to Jindal. On April 14, 2008, Jindal timely responded to the Department's section A supplemental questionnaire. On April 18, 2008, the Department issued sections B and C supplemental questionnaires. We received Jindal's responses to these supplementals on May 1, 2008. On May 20, 2008, the Department issued its section D supplemental questionnaire. On June 30, 2008, we received Jindal's response to the section D supplemental questionnaire.

[1] As discussed *infra*, because the Department is rescinding the administrative review of MTZ, based upon MTZ's timely withdrawal of its review request, there is no review pertaining to MTZ in which to examine MTZ's revocation from the antidumping duty order.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing all home market sales or if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information of the cost of production of the foreign like product and the constructed value of merchandise under investigation.

Scope of the Order

The products covered by the order are all gauges of raw, pretreated or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.90. Although the HTSUS subheadings are provided for the convenience and customs purposes, the written description of the scope of the order is dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested administrative review. MTZ withdrew its request to be reviewed by the Department before the 90–day time period expired. MTZ was the only party to request an administrative review of its sales. Therefore, the Department is rescinding this administrative review with respect to MTZ.

Date of Sale

The Department's regulations at 19 CFR 351.401(i) state that ''{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' Jindal reported invoice date as the date of sale for sales in the home market and U.S. market. We examined Jindal's responses to the Department's questionnaire and preliminarily determine that invoice date is the appropriate date of Jindal's sales under review.

Comparisons to Normal Value

To determine whether Jindal's sales of subject merchandise to the U.S. were made at less than normal value (NV), we compared the export price (EP) of individual U.S. sales to the weighted average NV of sales of the foreign like product, as described in the ''Export Price'' and ''Normal Value'' sections of this notice in accordance with section 777A(d)(2) of the Tariff Act of 1930 (''the Act'').

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Jindal that are covered by the description in the ''Scope of the Order'' section above, and that were sold in the home market during the POR, to be foreign like products for the purposes of determining appropriate product comparison to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales made by Jindal to sales made in the home market within the contemporaneous window period. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparison, the Department used the physical characteristics of the subject merchandise to match foreign like products to U.S. sales, according to specification (type/grade), thickness, microns, and surface. *See Analysis Memorandum for Jindal Poly Film Limited for Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film Sheet and Strip from India*; 2006–2007 (Analysis's Memorandum), concurrently with this notice and on file in the Central Records Unit (CRU), room 1117, of the main Commerce building.

Export Price

In accordance with section 772(a) of the Act, we used export price (EP) in this review because the subject merchandise was sold prior to importation to unaffiliated purchasers in the United States, and constructed export price (CEP) methodology was not warranted based on the facts on the record. Jindal reported its U.S. sales on a Cost, Insurance, and Freight (CIF) basis. As such, in accordance with sections 772(a) and 772(c) of the Act, we calculated EP by using the prices that Jindal sold to its unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for foreign movement expenses, brokerage and handling, insurance, international freight, and marine insurance under section 772(c) of the Act. In accordance with section 772(c)(1)(C) of the Act, we have increased EP to account for countervailing duties attributable to export subsidies.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See* ''Level of Trade'' section below. After testing comparison market viability and whether comparison market sales were at below–cost prices, we calculated NV for Jindal as discussed in the following sections.

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV) (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Jindal's home market sales of the foreign like product during the POR to the volume of U.S. sales of subject merchandise during the POR. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Jindal's quantity of sales in the home market exceeded five percent of its sales of PET Film to the United States. Thus, in accordance with 19 CFR 351.404(b), Jindal's volume of sales in the home market during the POR was sufficient to serve as a viable basis for calculating NV.

B. Cost of Production Analysis

In the most recently completed administrative review of PET Film from India, the Department determined that Jindal sold certain foreign like product at prices below the cost of production and the Department excluded such sales from the calculation of NV. *See Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (February 17, 2005). As a result, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department determined that there are reasonable grounds to believe or suspect that Jindal sold foreign like product at prices below the cost of production during the instant POR. We have relied upon Jindal's cost of production (COP) and constructed value (CV) information from Jindal's submissions, except in the instances where the data presented was not appropriately quantified or valued. *See Analysis's Memorandum*. Accordingly, the Department required that Jindal provide a response to section D of the questionnaire. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that during the POR, Jindal sold foreign like product at prices below the cost of production of the subject merchandise.

1. Calculation of Cost of Production

We have revised Jindal's consolidated financial expense rate to exclude interest income related to sales, dividends from investments, and profit on sales of investments. As a result, the financial expense rate was adjusted. *See* Calculation Memorandum for Jindal Poly Film Limited for Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film Sheet and Strip from India; 2006–2007.

2. Test of Comparison Market Sales Prices

To determine whether sales were made at prices below the COP, on a product-specific basis, the Department compared Jindal's adjusted weighted–average COP to the prices of its home market sales of the foreign like product, as required under section 773(b)(3) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) were not at prices which permit recovery of all costs within a reasonable period of time. The prices, here, were inclusive of billing adjustments and exclusive of any applicable movement charges, discounts and rebates, direct and indirect selling expenses, and packing expenses, revised where appropriate.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices below the COP, the Department does not disregard any below cost of sales of that product, because the Department determines that in such instances the below cost of sales were not made and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices below the COP, the Department disregards the below cost sales because they: (1) were in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of home market prices to the weighted–average COPs for the POR, the below cost sales were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on the results of our test, we found that, for certain products, more than 20 percent of Jindal's home market sales were at prices less than the COP. In addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales of the foreign like product in the ordinary course of trade as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade as the export price or constructed export price. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from normal value for movement expenses, including domestic inland freight, and domestic brokerage, as appropriate. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c) and 19 CFR 351.410(d), we deducted home market credit and added U.S. credit. Jindal reported that it did not pay commissions on U.S. sales, and that it paid commissions in the home market. Therefore, we made the appropriate adjustment for commissions paid in the comparison market pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). In accordance with 19 CFR 351.410(e), we made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the commission offset. Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. In accordance with sections 773(a)(6)(A) and (B)(i) of the Act, we deducted home market packing and added U.S. packing costs. We made an adjustment for other direct selling expenses, such as bank charges, because Jindal's supplemental responses demonstrate that these expenses consist of additional direct selling expenses that have not already been accounted for elsewhere.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales in the U.S. market (Jindal had only EP sales in the U.S. market). The NV LOT is based on the starting price of the sales in the comparison market. Where NV is based on constructed value (CV), the Department determines the NV LOT based on the LOT of the sales from which the Department derives selling, general, and administrative expenses, and profit for CV, where possible. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile*, 63 FR 2664–2670 (January 16, 1998)(unchanged in final determination). For EP sales, the U.S LOT is based on the starting price of the sales to the U.S. market.

To determine whether NV sales are at a different LOT than EP sales, the Department examines stages in the marketing process and level of selling function along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). When the Department is unable to match U.S. sales to foreign like product sales in the comparison market at the same LOT as the EP sale, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where the differences affect price comparability, as manifested by a pattern of consistent price differences between comparison market sales at the NV LOT and comparison market at the LOT of the export transaction, the Department makes an LOT adjustment under section 773(a)(7)(A) of the Act. Because Jindal had only EP sales in the U.S. market, it is not necessary to apply the CEP methodology.

Because Jindal's U.S. sales during this POR are made through one single distribution channel, Jindal to an unaffiliated trading company, we preliminarily determine that one LOT exists in the U.S. market. For home market sales, Jindal reported two categories of customers through two channels of distribution, end users and trading companies. We reviewed information from Jindal's questionnaire responses regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. *See* Exhibit A–Questionnaire Response. We compared the selling functions performed by Jindal for the two home market distribution channels and found that Jindal performed similar selling activities in the home market for its customers in both channels of distribution. *See* Jindal's *Analysis Memorandum* dated July 30, 2008. We preliminarily determined that Jindal sold foreign like product in the home market at one LOT. We noted that the record of this review indicates that Jindal performs essentially the same sales functions for all its home market and U.S. sales. Thus, we determine that Jindal's home market sales were made at the same LOT as its U.S. sales. *See* Jindal's *Analysis Memorandum* dated July 30, 2008. Therefore, the Department preliminarily determines that no level of trade adjustment is necessary for Jindal.

Currency Conversion

In accordance with section 773A(a) of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted–average dumping margin exists for the period July 1, 2006 through June 30, 2007:

Manufacturer/Exporter	Margin (percent)
Jindal Poly Films Limited (Jindal)	0.47 (de minimis)

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.71 percent, the all–others rate made effective by the LTFV investigation, adjusted for the export subsidy rate found in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. For the period July 1, 2006 through June 30, 2007, we preliminarily determine the antidumping duty margin to be 0.47 percent *ad valorem*. This rate is less than 0.5 percent. Consequently, if these preliminary results are adopted in our final results of this review, the Department will instruct CBP to liquidate shipments of PET Film by Jindal entered or withdrawn from warehouse, for consumption from July 1, 2006 through June 30, 2007, without regard to antidumping duties. *See* 19 CFR 351.106(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold

to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate un–reviewed entries at the all others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

For MTZ, for which this administrative review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18028 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–808]

Purified Carboxymethylcellulose from Sweden: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Sweden, in response to timely received requests for review, submitted by CP Kelco AB (respondent), and the Aqualon Company, a division of Hercules Incorporated (Aqualon), a U.S. manufacturer of CMC (petitioner).

This review covers the period July 1, 2006, through June 30, 2007. We preliminarily determine that U.S. sales of subject merchandise have been made by CP Kelco AB (CP Kelco) below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. See the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published in the **Federal Register** the antidumping duty order on CMC from Sweden. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005) (*Order*). On July 3, 2007, we published in the **Federal Register** a notice of opportunity to request an administrative review of, *inter alia*, the antidumping duty order on CMC from Sweden. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Aqualon timely requested an administrative review of the antidumping duty order on CMC from Sweden for CP Kelco on July 25, 2007. On July 27, 2007, CP Kelco entered its appearance and also requested that the Department conduct an administrative review of the antidumping duty order on CMC from Sweden. On August 24, 2007, in accordance with section 751(a) of the Act and 19 C.F.R. 351.221(c)(1)(i), the Department published a notice of initiation of the administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613, 48614 (August 24, 2007). We are conducting an administrative review of the order on CMC from Sweden for CP Kelco for the period July 1, 2006, through June 30, 2007.

On September 6, 2007, the Department issued its antidumping duty questionnaire to CP Kelco. On October 12, 2007, we received the section A response from CP Kelco (SQA). On October 26, 2007, CP Kelco filed its sections B and C questionnaire responses (SQBC). On November 14, 2007, Aqualon alleged that CP Kelco

made home market sales of CMC at prices below the cost of production (COP) during the period of review (POR). On December 19, 2007, based on the information contained in the petitioner's allegation and after conducting our own analysis, we initiated a sales–below-cost investigation of home market sales made by CP Kelco. See Memorandum to Richard Weible, Director, Office 7, from Patrick Edwards, Case Analyst and Angelica Mendoza, Program Manager, Office 7, entitled ''Petitioner's Allegation of Sales Below the Cost of Production for CP Kelco AB,'' dated December 19, 2007 (Cost Initiation Memorandum). As a result, on December 20, 2007, the Department requested that CP Kelco respond to section D of the Department's questionnaire. CP Kelco submitted its section D response on January 10, 2008 (SQD), including its cost reconciliation. On January 16, 2008, petitioner filed comments regarding the shutdown of CP Kelco's plant and operations, as disclosed in its questionnaire responses.

On February 1, 2008, the Department issued its first supplemental questionnaire regarding CP Kelco's responses to sections A through C of the Department's antidumping duty questionnaire. CP Kelco submitted its response on February 26, 2008 (Supplemental Response). On March 18, 2008, due to the complexity of several issues in this case, and pursuant to section 751(a)(3)(A) of the Act, the Department extended the deadline for the preliminary results by 120 days from April 1, 2008, until July 30, 2008. *See Purified Carboxymethylcellulose from Sweden: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 14436 (March 18, 2008). The Department issued its first supplemental questionnaire concerning CP Kelco's section D cost response on April 11, 2008, and CP Kelco submitted its supplemental response on April 28, 2008 (Supplemental Cost Response). On May 2, 2008, the Department issued to CP Kelco a second supplemental questionnaire concerning its sales responses regarding sections A through C of the questionnaire, and on May 15, 2008, CP Kelco submitted its response (Second Supplemental Response). On June 17, 2008, the Department issued a second supplemental questionnaire concerning CP Kelco's cost responses, and CP Kelco submitted its response on June 25, 2008 (Second Supplemental Cost Response). On July 2, 2008, Aqualon submitted additional comments regarding the shutdown of operations at the CP Kelco plant in Sweden.

Period of Review

The POR is July 1, 2006, through June 30, 2007.

Scope of the Order

The merchandise covered by this order is purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Date of Sale

CP Kelco reported the invoice date as the date of sale for its U.S. sales. The Department considers invoice date to be the presumptive date of sale (*see* 19 CFR 351.401(i)). For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established. The Department, in reviewing CP Kelco's questionnaire responses, found that the material terms of sale are set on the date on which the invoice is issued. CP Kelco reported that, following the receipt of purchase orders, the terms of sale are susceptible and subject to changes in price and quantity until issuance of the sales invoice. *See* SQA at A–31; *see also*, SQBC at C–12. Therefore, we preliminarily determine that invoice date is the appropriate date of sale for U.S. sales in this administrative review because it represents the date upon which the material terms of sale were established. This is consistent with the most recently completed administrative reviews of this order. However, for instances where the date of shipment preceded the date of invoice, we have preliminary determined to use the date of shipment for those sales.

Similarly, based on our review of CP Kelco's questionnaire responses, we preliminary find that the date of invoice constitutes the date on which the material terms of sale are established in the comparison market (*i.e.*, Sweden). *See* SQBC at B–12. CP Kelco reported that the terms of sale recorded on purchase orders in the comparison market are also subject to change, typically in the form of packing and product grade (which can affect price). Therefore, we are using the invoice date as the date of sale for comparison market sales. For a further discussion of our date of sale analysis, *see* Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards, Senior Case Analyst, titled ''Analysis of Data Submitted by CP Kelco AB in the Preliminary Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from Sweden,'' dated July 30, 2008 (Analysis Memorandum).

Fair Value Comparisons

To determine whether sales of CMC from Sweden to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted–average NVs.

Product Comparisons

We compared U.S. sales with sales of the foreign like product in the comparison market. Specifically, in making our comparisons, we used the following methodology. If an identical comparison–market model was reported, we made comparisons to weighted–average comparison market prices that were based on all sales which passed the COP test of the identical product during the relevant or contemporary month. *See* sections 771(16) and (35), 773(a)(1) of the Act; 19 CFR 351.414(b)-(c). If there were no contemporaneous sales of an identical model, we identified the most similar comparison–market model. *See id.* To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: (1) grade, (2) viscosity, (3) degree of substitution, (4) particle size, and (5) solution characteristics.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculate either an EP or a CEP, depending on the nature of each sale.

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. CP Kelco classified two types of sales to the United States: 1) direct sales to end–user customers (EP); and 2) sales via its U.S. affiliate, CP Kelco U.S., to end–users and distributors (CEP). For purposes of these preliminary results, we have accepted CP Kelco's classifications.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date as the date of sale.[1] We based EP on the packed, delivered prices to the first unaffiliated purchasers outside Sweden. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included foreign inland freight, international freight, marine insurance, U.S. inland freight, inland insurance, U.S. warehousing, U.S. brokerage and handling, and U.S. customs duties, while adding freight revenue, in accordance with section 772(c)(1) of the Act and section 351.401(e) of the Department's regulations. We made further adjustments for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act. Additionally, and consistent with the prior administrative review of this antidumping duty order, we made a deduction from EP for the factoring charges incurred by CP Kelco on its U.S. account receivables.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from CP Kelco U.S. to its unaffiliated U.S. customers, making adjustments where necessary for billing adjustments and other discounts. Where applicable and pursuant to sections 772(c)(2)(A) and (d)(1) of the Act, the Department made deductions for movement expenses (foreign inland freight, international freight, marine insurance, U.S. inland freight, inland insurance, U.S. warehousing, U.S. brokerage and handling, and U.S. customs duties), while adding freight revenue, where applicable, in accordance with section 772(c)(1) of the Act and section 351.401(e) of the Department's regulations. In accordance with section 772(d)(1) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and Sweden associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act. We also made a deduction from CEP for factoring charges incurred by CP Kelco U.S. on its U.S. account receivables. *See* section 772(d)(1) of the Act.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Pursuant to section 773(a)(1)(B)(ii)(II) of the Act, because CP Kelco's aggregate volume of home market sales of the foreign–like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

On December 19, 2007, based on an allegation from Aqualon, the Department initiated a sales–below-cost investigation of CP Kelco because Aqualon provided a reasonable basis to believe or suspect that CP Kelco is selling CMC in the home market at prices below its COP. *See* Cost Initiation Memorandum. Based on the Department's findings, there is a reasonable basis to believe or suspect that CP Kelco is selling CMC in Sweden at prices below COP. Therefore, pursuant to section 773(b)(1) of the Act, we examined whether CP Kelco's sales in Sweden were made at prices below the COP. *See* Cost Initiation Memorandum.

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, financial expenses, and packing costs. We relied on the COP data submitted by CP Kelco.

D. Test of Home Market Prices

We compared the weighted–average COP of CP Kelco's home market sales to home market sales prices (net of billing adjustments, any applicable movement expenses, direct and indirect selling expenses, and packing) of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

E. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below–cost sales of that model because these below–cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted–average per–unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act. In this review, we found sales below the COP and have, as described above, disregarded such sales from our margin calculations. *See* Analysis Memorandum.

[1] *See* Analysis Memorandum for a further discussion of this issue.

F. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. *See* 19 CFR 351.404(c). We used the sale invoice date as the date of sale. *See* 19 CFR 351.401(i). We increased price for certain billing adjustments where appropriate. We made deductions, where appropriate, for foreign inland freight and inland insurance incurred in the comparison market, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* ''Level of Trade'' section below. Additionally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made a deduction from NV for factoring charges incurred by CP Kelco on its home market account receivables.

G. Price–to-Constructed Value–Comparison

In accordance with section 773(a)(4) of the Act, we base NV on constructed value (CV) if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, selling, general and administrative (SG&A) expenses, financial expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, financial expense, and profit on the amounts CP Kelco incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Accordingly, for sales of CMC for which we could not determine the NV based on comparison market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the sales–below-cost test, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the home market is the LOT of the starting–price sales in the home market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting–price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether home market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign home market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6. In the present review, CP Kelco did not claim a LOT adjustment. *See* CP Kelco's SQBC at pages B–18 and C–18. In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[2] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

CP Kelco reported one LOT in the home market, Sweden, with two channels of distribution to two classes of customers: (1) direct sales from the plant to end users, and (2) direct sales from the plant to distributors. Based on our review of evidence on the record, we find that home market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. CP Kelco performed the same selling functions for sales in both home market channels of distribution, including sales negotiations, customer care, credit risk management, logistics, inventory maintenance, packing, freight and delivery services, collection, sales promotion, and guarantees, *etc.* *See* CP Kelco's SQA at page A–25. Each of these selling functions were identical in the intensity of their provision or only differed in that some were provided with ''low–moderate'' frequency for direct sales to end users, while those same functions were provided with ''moderate'' intensity for direct sales to

[2] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution involved in the two markets may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered CP Kelco's narrative response to properly determine where in the chain of distribution the sale occurs.

distributors. After considering all of the above, we preliminarily find that CP Kelco had only one LOT for its home market sales.

CP Kelco reported one EP LOT and one CEP LOT, each with two separate channels of distribution in the United States. EP sales were made to end users and distributors either from inventory or made to order, and CEP sales were also made to end users and distributors and were either made from inventory or made to order. Therefore, we preliminarily find that CP Kelco has two channels of distribution for EP sales, and two channels of distribution for CEP sales. *See* CP Kelco's SQA at pages A–13 through A–15.

We reviewed the selling functions and services performed by CP Kelco in the U.S. market for EP sales, as described by CP Kelco in its questionnaire responses. CP Kelco reported that for sales produced to order and pulled from stock, the customer care unit of CP Kelco's U.S. affiliate (CP Kelco U.S.) handles the initial order processing for CP Kelco's EP sales, which are entered into the affiliate's operating system. However, all logistics and invoicing functions are coordinated by CP Kelco in Sweden. These functions include the retrieval of merchandise from warehouse or the scheduling of production to complete orders, arranging for shipment, and issuance of sales invoices directly to the customer. The logistics department of CP Kelco in Sweden arranges for freight and delivery to CP Kelco's unaffiliated U.S. customers. *See* CP Kelco's SQA at page A–17 through A–18 and A–25.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by CP Kelco on CEP sales as described in its questionnaire responses, after these deductions. We found that CP Kelco provides almost no selling functions to its U.S. affiliate in support of the CEP LOT. CP Kelco reported that the only services it provided for the CEP sales were logistics for freight and delivery, and very limited customer care and inventory maintenance. *See* CP Kelco's SQA at page A–13 through A–25.

We then examined the selling functions performed by CP Kelco on its EP sales in comparison with the selling functions performed on CEP sales (after deductions). We found that CP Kelco performs an additional layer of selling functions at a greater frequency on its direct sales to unaffiliated U.S. customers which are not performed on its sales to its affiliate (*e.g.*, sales negotiating, credit risk management, collection, sales promotion, direct sales personnel, technical support, guarantees, etc.). *See* CP Kelco's AQR at page A–29. Because these additional selling functions are significant, we find that CP Kelco's direct sales to unaffiliated U.S. customers (EP sales) are at a different LOT than its CEP sales.

Next, we compared the home market and EP sales. CP Kelco's home market and EP sales were both made to end users and distributors. In both cases, the selling functions performed by CP Kelco were almost identical for both markets. In both markets CP Kelco provided the following services: sales negotiating, credit risk management, customer care, logistics, inventory maintenance, packing, freight/delivery, collection, sales promotion, direct sales personnel, technical support, guarantees and discounts. *See* CP Kelco's SQA at page A–25. Because the selling functions and channels of distribution are substantially similar, we preliminarily determine that the home market LOT is the same as the EP LOT. It was, therefore, unnecessary to make an LOT adjustment for comparison of CP Kelco's home market and EP prices.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. CP Kelco reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the home market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by CP Kelco for sales in the home market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by CP Kelco on sales to its U.S. affiliate), we preliminarily find that the home market LOT is at a more advanced stage of distribution when compared to CEP sales because CP Kelco provides many selling functions in the home market at a higher level of service (*i.e.*, sales negotiations, customer care, collection, direct sales personnel, technical support, *etc.*) as compared to selling functions performed for its CEP sales (*i.e.*, CP Kelco reported that the only services it provided for the CEP sales were logistics, packing, freight and delivery services, and very limited inventory maintenance and customer care). *See* CP Kelco's SQA at page A–25. Thus, we find that CP Kelco's home market sales are at a more advanced LOT than its CEP sales. As there was only one LOT in the home market, there were no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment; therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. As such, we limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act. *See* section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415 based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See* Import Administration website at: http://ia.ita.doc.gov/exchange/index.html.

Preliminary Results of Review

We preliminarily determine that for the period July 1, 2006, through June 30, 2007, the following dumping margin exists:

Manufacturer/Exporter	Weighted–Average Margin (percent)
CP Kelco AB	6.89

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions for CP Kelco directly to CBP 15 days after the date of publication of the final results of this administrative review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for any intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of*

Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash–deposit rates will be effective upon publication of the final results of this review for all shipments of CMC from Sweden entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced by CP Kelco, the cash–deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) if the exporter is not a firm covered in this review or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate of 25.29 percent from the LTFV investigation. *See Order*, 70 FR at 39735.

These deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and (d)(1). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; and (2) a brief summary of the argument. *See* 19 CFR 351.309. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. *See* 19 CFR 351.310(d)(1). Parties will be notified of the time and location.

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. See section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18029 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from respondent ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2006, to June 30, 2007.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct United States Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560 (July 27, 1999). On July 3, 2007, the Department published a notice entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 36420 (July 3, 2007), covering, *inter alia,* S4 in coils from Mexico for the period July 1, 2006 through June 30, 2007.

In accordance with 19 CFR 351.213(b)(1), Mexinox and petitioners requested that the Department conduct

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers of America.

an administrative review. On August 24, 2007, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2006 through June 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 24, 2007).

On September 11, 2007, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire on October 3, 2007, and its response to sections B through E of the questionnaire on October 29, 2007. On January 9, 2008, the Department issued its supplemental questionnaire for section A. Mexinox responded to this supplemental questionnaire on February 1, 2008. On March 5, 2008, the Department issued another supplemental questionnaire which covered sections A through C. Mexinox filed its response to this questionnaire on April 7, 2008. The Department also issued a supplemental questionnaire for section D on April 11, 2008, to which Mexinox responded on May 19, 2008. On May 2, 2008, the Department issued another supplemental questionnaire for sections A through C, as well as for section E, the latter of which pertains to an affiliated U.S. reseller, Ken-Mac Metals (Ken-Mac). Mexinox filed its response to this supplemental questionnaire also on May 19, 2008. Finally, the Department issued separate supplemental questionnaires covering section D and sections A through C on May 19, 2008 and May 30, 2008, respectively. Mexinox submitted its responses to both of these supplemental questionnaires on June 11, 2008.

Because it was not practicable to complete this review within the normal time frame, on February 22, 2008, we published in the **Federal Register** our notice of the extension of time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 9772 (February 22, 2008). This extension established the deadline for these preliminary results as July 30, 2008.

Cost Reporting Period

On December 19, 2007, Mexinox submitted information regarding its material input costs for the period of review (POR) and claimed the use of a single weighted-average cost for austenitic products for the entire POR would distort the dumping margin calculation due to sharply rising nickel costs throughout the period. Rather than using a single POR-average cost for purposes of the sales-below-cost test, Mexinox urged the Department to consider employing monthly or quarterly costs for austenitic products (*i.e.* those products that contain nickel) in this segment of the proceeding. On June 27, 2008, petitioners submitted comments claiming the Department's standard practice of using POR-average costs is appropriate in the instant case. In rebuttal comments submitted July 2, 2008, Mexinox maintains record evidence shows a direct link between cost increases for austenitic hot-rolled stainless steel band (hot band), the principle material input for S4 in coils, and price increases for finished S4 in coils during the POR through alloy surcharges which Mexinox claims act as a pass-through pricing mechanism. In addition, on July 10, 2008, the Department met with representatives for Mexinox on this issue. *See Ex Parte* Memorandum to the File, from Maryanne Burke dated July 14, 2008, on file in CRU in room 1117 of the main Commerce building.

The Department has considered the sales and cost information reported by Mexinox, in addition to the comments submitted by petitioners and Mexinox. Based on our analysis, we preliminarily find it appropriate to use Mexinox's reported quarterly costs of austenitic products for this review. With the exception of cases where high inflation exists in which the Department restates an annual weighted-average cost to an equivalent basis, the Department's normal practice is to calculate a weighted-average cost for the entire POR unless this methodology results in inappropriate comparisons or skewed data. *See, e.g., Certain Pasta from Italy; Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000) and accompanying Issues and Decision Memorandum at comment 18; *see also Final Results of Antidumping Duty Administrative Review and Determination not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands,* 65 FR 742, 746 (January 5, 2000). In determining whether distortions result from significant cost fluctuations in the context of our antidumping duty calculations, the Department has historically evaluated the case specific record evidence using two primary factors: (1) Whether the cost changes throughout the POI/POR were significant; and (2) whether sales during the shorter averaging periods could be accurately linked with the COP/CV during the same shorter averaging periods. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part (Rebar from Turkey),* 70 FR 67665 (November 8, 2005) and accompanying Issues and Decision Memorandum at Comment 1. *See also Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S., Plantiff,* v. *United States,* Court No. 05–00613, Slip Op. 07–167 (CIT November 15, 2007).

With regard to the first factor, record evidence provided by Mexinox demonstrates significant changes in the total cost of manufacture (COM) throughout the POR for austenitic stainless steel sheet and strip products produced during the POR. Based upon the record of this review, the significant change throughout the POR in the total COM is due to the price volatility of nickel which is used in the production of the austenitic hot band purchased by Mexinox. Austenitic hot band is Mexinox's raw material input for certain merchandise under consideration. Thus, unlike *Rebar from Turkey,* we preliminary conclude that the differences in COM are significant enough to warrant a departure from our standard annual costing approach based upon record evidence indicating our annual cost approach would lead to distortions in our sales-below-cost test and inconsistencies in our overall margin calculation.

To address the second factor, Mexinox demonstrated that, through its alloy surcharge levied on all sales during the POR, there is a linkage between the increasing direct material costs and final sale prices. Specifically, Mexinox illustrated that nickel acquisition and consumption costs are related to the market prices promulgated by the London Metal Exchange. We note the alloy surcharge regime is a common business practice in the stainless steel industry, whereby the changes in material costs realized by producers during the months preceding the date of sale are measured and ultimately transferred to its final customers. While we acknowledge that the alloy surcharge figure does not directly correspond to changes in the price of the applicable raw material used in the production to which the surcharge applies, as found in *Brass from the Netherlands,* the surcharge amount is, by design, a pass-through mechanism developed to account for raw material price changes. The objective of this pass-through mechanism satisfies the basic theory behind our second criterion—it demonstrates a direct link between production costs and sales prices. We have examined the data submitted by

Mexinox and have concluded that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculations for austenitic products. For those products reported that do not contain nickel, we have continued to use a single weighted-average cost for the POR.

Additionally, we note the Department solicited comments from outside parties on shorter cost averaging periods in a **Federal Register** notice. *See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment,* 73 FR 26364 (May 9, 2008) (*Antidumping Methodologies; Request for Comment*). On June 9, 2008, the Department extended the time limit for parties to submit written comments concerning this issue to June 23, 2008. *See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment and Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment,* 73 FR 32557 (June 9, 2008). We are currently analyzing the comments received which could lead the Department to formulate a different methodological framework on this matter. Thus, we will further examine the facts of this case for the final results of this review in light of both the comments received from the interested parties in this administrative review and the general comments received with respect to *Antidumping Methodologies; Request for Comment.*

Period of Review

The POR is July 1, 2006 through June 30, 2007.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits

magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [6]

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., which in turn is a subsidiary of ThyssenKrupp AG, sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise to U.S. affiliate Ken-Mac which is an operating division of ThyssenKrupp Materials Inc., which is a subsidiary of ThyssenKrupp USA, Inc., the primary holding company for ThyssenKrupp AG in the U.S. market. Ken-Mac purchased subject merchandise from Mexinox USA and further manufactured and/or resold the subject merchandise to unaffiliated customers in the United States during the POR. *See* Mexinox's October 3, 2007, section A questionnaire response at 13, 22 and 29. For purposes of this review, we have included both Mexinox USA's and Ken-Mac's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a wholly owned subsidiary of Mexinox S.A., resold the foreign like product as well as other merchandise in the home market. Mexinox S.A.'s sales to Mexinox Trading represented a small portion of Mexinox S.A.'s total sales of the foreign like product in the home market and constituted less than five percent of all home market sales. *See, e.g.*, Mexinox's October 3, 2007, section A questionnaire response at 3, and its April 7, 2008, supplemental questionnaire response covering sections A through C at Attachment A–26 (quantity and value chart). Because sales to Mexinox Trading of the foreign like product were below the five percent threshold established under 19 CFR 351.403(d), we did not require Mexinox S.A. to report Mexinox Trading's downstream sales to its first unaffiliated customer. This is consistent with our practice to date and the methodology we have employed in past administrative reviews of S4 in coils from Mexico. *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) (*2005–2006 Final Results*), as amended, *Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 73 FR 14215 (March 17, 2008) (*2005–2006 Amended Final Results. See also Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005) and accompanying Issues and Decisions Memorandum at Comment 2.

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value, we compared CEP sales made in the United States by both Mexinox USA and Ken-Mac to unaffiliated purchasers to NV as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Tariff Act), we compared individual CEPs to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Tariff Act we considered all products produced by Mexinox S.A. covered by the description in the ''Scope of the Order'' section above, and

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original September 11, 2007, questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

We obtained information from Mexinox regarding the marketing stages involved in making its reported home market and U.S. sales to both affiliated and unaffiliated customers. Mexinox provided a description of all selling activities performed, along with a flowchart and tables comparing the levels of trade among each channel of distribution and customer category for both markets. *See* Mexinox's October 3, 2007, section A questionnaire response at 33 through 39 and Attachments A–4–A through A–4–C; *see also* Mexinox's February 1, 2008, supplemental section A questionnaire response at 21 through 24 and Attachments A–20–A and A–20–B.

Mexinox sold S4 in coils to end-users and retailers/distributors in the home market and to end-users and distributors/service centers in the United States. For the home market, Mexinox identified two channels of distribution described as follows: (1) direct shipments (*i.e.*, products produced to order) and (2) sales from inventory. Within each of these two channels of distribution, Mexinox S.A. made sales to affiliated and unaffiliated distributors/retailers and end-users. *See* Mexinox's October 3, 2007, section A questionnaire response at 3 and 26 through 27. We reviewed the intensity of all selling functions Mexinox claimed to perform for each channel of distribution and customer category. For certain functions, such as pre-sale technical assistance, processing of customer orders, sample analysis, prototypes and trial lots, freight and delivery, price negotiation/customer communications, sales calls and visits, and warranty services, the level of performance for both direct shipments and sales through inventory was identical across all types of customers. Only a few functions exhibited differences, including inventory maintenance/just-in-time performance, further processing, credit and collection, low volume orders and shipment of small packages. *See* Mexinox's February 1, 2008, supplemental section A questionnaire response at Attachment A–20. While we find differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish distinct levels of trade in Mexico. Based on our analysis of all of Mexinox S.A.'s home market selling functions, we find all home market sales were made at the same LOT, the NV LOT.

We then compared the NV LOT, based on the selling functions associated with the transactions between Mexinox S.A. and its customers in the home market, to the CEP LOT, which is based on the selling functions associated with the transaction between Mexinox S.A. and its affiliated importer, Mexinox USA. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Mexinox USA. *See* Mexinox's October 3, 2007 section A questionnaire response at 33 through 39 and Attachments A–4–A through A–4–C; *see also* Mexinox's February 1, 2008, supplemental section A questionnaire response at 21 through 24 and Attachment A–20. For example, in comparing Mexinox's selling functions, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.,* pre-sale technical assistance, sample analysis, prototypes and trial lots, price negotiation/customer communications, sales calls and visits, credit and collection, and warranty services). For selling functions performed for both home market sales and CEP sales (*e.g.,* processing customer orders, freight and delivery arrangements), we find Mexinox S.A. actually performed each activity at a higher level of intensity in the home market. Based on Mexinox's responses, we note that CEP sales from Mexinox S.A. to Mexinox USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller

volumes and more customer interaction which, in turn, require the performance of more selling functions. *See* Mexinox's October 3, 2007, section A questionnaire response at 33 through 39 and Attachments A–4–A through A–4–C; *see also* Mexinox's February 1, 2008, supplemental section A questionnaire response at Attachment A–20. Based on the foregoing, we conclude the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Constructed Export Price

Mexinox indicated it made CEP sales through its U.S. affiliate, Mexinox USA, in the following four channels of distribution: (1) Direct shipments to unaffiliated customers; (2) stock sales from the San Luis Potosi (SLP) factory; (3) sales to unaffiliated customers through Mexinox USA's warehouse inventory; and (4) sales through Ken-Mac. *See* Mexinox's October 3, 2007, section A questionnaire response at 27 through 31. Ken-Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to unaffiliated U.S. customers.

In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We find Mexinox properly classified all of its U.S. sales of subject merchandise as CEP transactions because such sales were made in the United States through Mexinox USA or Ken-Mac to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Mexinox USA or its affiliated reseller, Ken-Mac. We made adjustments for billing adjustments, discounts and rebates where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act. These expenses included, where appropriate: foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* credit costs, warranty expenses, and a certain expense of proprietary nature), commissions, inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. We used the expenses as reported by Mexinox made in connection with its U.S. sales, with the exception of the U.S. indirect selling expense ratio which we recalculated. *See* ''Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review of S4 in Coils from Mexico'' (Preliminary Analysis Memorandum) from Maryanne Burke, Trade Analyst, to the File, dated July 30, 2008.

For sales in which the material was sent to an unaffiliated U.S. processor, we made an adjustment based on the transaction-specific further-processing expenses incurred by Mexinox USA. In addition, the U.S. affiliated reseller Ken-Mac performed some further manufacturing for its sales to unaffiliated U.S. customers. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon Ken-Mac's reported cost of further manufacturing materials, labor and overhead. We also included amounts for further manufacturing general and administrative expenses (G&A), as reported in Mexinox's May 19, 2008, supplemental section D questionnaire response.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mexinox's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See, e.g.*, Mexinox's April 7, 2008, supplemental questionnaire response covering sections A through C and E at Attachment A–26.

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* section 773(f)(2) of the Tariff Act; *see also* 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, ''the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length.'' *See China Steel Corp.* v. *United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts and rebates, movement charges and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). We found both affiliated home market customers failed the arm's length test and, in accordance with the Department's practice, we excluded sales to these affiliates from our analysis.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below

the cost of production (COP) in the most recently completed review of S4 in coils from Mexico (*see Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 35618, 35623 (June 21, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006) (*2004–2005 Final Results*) we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Mexinox. We relied on home market sales and COP information provided by Mexinox in its questionnaire responses, except where noted below:

ThyssenKrupp Nirosta GmbH (TKN) and ThyssenKrupp AST, S.p.A. (TKAST), hot band producers affiliated with Mexinox, sold hot band to Mexinox USA, which in turn sold hot band to Mexinox S.A. Hot band is considered a major input to the production of S4 in coils. Section 773(f)(3) of the Tariff Act, (the major input rule) states:

> ''in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).''

Paragraph 2 of section 773(f) (transactions disregarded) states:

> ''a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.''

In accordance with the major input rule, and as stated in *2005–2006 Final Results,* it is the Department's normal practice to use all three elements of the major input rule (*i.e.*, transfer price, COP and market price) where available.

For these preliminary results, we evaluated the transfer prices between Mexinox and its affiliated hot band suppliers on a grade-specific basis. For certain grades of hot band, all three elements of the major input analysis were available. These grades of hot band account for the majority of volume of hot band that Mexinox purchased from TKN and TKAST during the POR. As such, we find these purchases provide a reasonable basis for the Department to measure the preferential treatment, if any, given to Mexinox for purchases of hot band from TKN and TKAST during the POR. Therefore, we adjusted the reported costs to reflect the higher of transfer prices, COP, or market prices of hot band, where available. Additionally, we relied on these results to adjust the reported cost for grades where all three elements of the major input were not available. See the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—ThyssenKrupp Mexinox S.A. de C.V. from LaVonne Clark, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, dated July 30, 2008 (Cost Calculation Memorandum).

In certain cases, where market prices have not been available, the Department has constructed market prices in order to perform the major input analysis. *See Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663 (December 10, 2007) (*PSF from Korea*) and accompanying Issues and Decision Memorandum at Comment 5 and *Certain Hot-Rolled Carbon Steel Flat Product from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 27802 (May 17, 2007) (*Carbon Steel Flat Products from Thailand*) and accompany Issues and Decision Memorandum at Comment 3. In the instant case we have applied the results of our analysis of those grades where market prices were available to those grades where market prices were not available. We find this approach to be reasonable because the grades where market prices are available constitute the majority of hot band purchased by Mexinox from the affiliated parties. As such, these purchases provide reasonable grounds to determine the arm's length nature of purchases between Mexinox and its affiliates during the POR. For further details, *see* Cost Calculation Memorandum.

Because we have determined that shorter cost periods are appropriate for the COP analysis of austenitic grades, we have performed the cost-based part of the major input analysis by quarter for all grades of austenitic hot band. For all other grades of hot band, we have performed the cost-based part of the major input analysis on a POR basis.

We also revised Mexinox's reported COP to include depreciation expenses related to a newly installed production line. We recalculated Mexinox's G&A expense rate to include employee profit sharing in the numerator, and adjusted for a certain provision accounted for during a prior period. We revised Mexinox's financial expense ratio to exclude certain interest income from accounts receivable and adjusted ThyssenKrupp AG's cost of goods sold to exclude packing expenses. *See* Cost Calculation Memorandum.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(1)(D) of the Tariff Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on Mexinox's reported quarterly costs of austenitic grades of merchandise. Mexinox calculated the reported quarterly costs using a methodology that is similar to that used by the Department in cases of high-inflation (*see e.g. Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia,* 64 FR 73164 (December 29, 1999) at Comment 1). Because this methodology restates the quarterly costs on an equivalent basis, by calculating an annual weighted-average COP for the POR and then restating it to each respective quarter, we find Mexinox's reported quarterly costs meet the requirements of section 773(b)(1)(D) of the Tariff Act.

Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more

of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Mexinox revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. Mexinox S.A. reported home market sales in Mexican pesos, but noted certain home market sales were invoiced in U.S. dollars during the POR. *See* Mexinox's October 29, 2007, section B questionnaire response at B–26 and B–27. In our margin calculation we used the currency of the sale invoice at issue and applied the relevant adjustments in the actual currency invoiced or incurred by Mexinox. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. As noted above in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

We used Mexinox's home market adjustments and deductions as reported, except for certain handling expenses and imputed credit expenses. We have recalculated the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading, and applied the revised ratio to those home market sales for which Mexinox reported a handling expense. We calculated imputed credit expenses based on the short-term borrowing rate associated with the currency of each home market sale transaction. *See* Preliminary Analysis Memorandum. Our methodology for calculating handling charges and imputed credit expenses is consistent with past administrative reviews of this case. *See, e.g., 2005–2006 Final Results,* as amended, and *2004–2005 Final Results.*

F. Price-to-CV Comparisons

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Tariff Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2006 through June 30, 2007:

Manufacturer exporter	Weighted average margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V.	2.87

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results.

Duty Assessment

Upon completion of this administrative review, the Department shall determine, and United States Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The total customs value is based on the entered value reported by Mexinox for all U.S. entries of subject merchandise initially purchased for consumption to the United States made during the POR. *See* Preliminary Analysis Memorandum. In

accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 30.85 percent, which is the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 40560 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–17987 Filed 8–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Preliminary Results of Eleventh Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2006, through June 30, 2007. This review covers four producers/exporters of subject merchandise. We preliminarily determine that during the POR, respondents sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett (Divella) or Stephanie Moore (Zara) , AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996).

On July 3, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). We received requests for review from petitioners [1] and from individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(1) and (2). On August 24, 2007, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2006, through June 30, 2007, listing the following companies as respondents: Atar S.r.L. (''Atar''), Domenico Paone fu Erasmo S.p.A., F. Divella SpA (''Divella''), Industria Alimentare Colavita S.p.A., and Pasta Zara SpA 1 (''Zara 1'') and Pasta Zara SpA 2 (''Zara 2'') (collectively, ''Zara''), Pastificio Carmine Russo, Pastificio Di Martino Gaetano & F. lli SrL., Pastificio Felicetti SrL, Pastificio Fratelli Pagani S.p.A., Pastificio Russo di Cicciano, Rummo S.p.A. Molino e Pastificio, and Valdigrano Di Flavio Pagani SrL. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007) (''*Initiation Notice*'').

On October 15, 2007, due to the significant number of requests received and then current resource constraints, the Department selected the three exporters/producers accounting for the largest volume of exports—Atar, Divella, and Zara, as mandatory respondents.[2]

The following companies self-requested that the Department conduct an administrative review: Atar, Domenico Paone fu Erasmo S.p.A., Industria Alimentare Colavita S.p.A., Pastificio Carmine Russo, Pastificio Fratelli Pagani S.p.A. [sic], Pastificio Russo di Cicciano, Rummo S.p.A. Molino e Pastificio, and Valdigrano Di Flavio Pagani SrL. The companies

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[1] New World Pasta Company; Dakota Growers Pasta Company; and American Italian Pasta Company.

[2] *See* Memorandum to Melissa Skinner, Director, Office 3, from Team regarding Selection of Respondents for Individual Review, October 15, 2007.

subsequently timely withdrew their request for review. Therefore, on December 10, 2007, the Department rescinded the review with respect to these companies.[3]

On January 18, 2008, the Department initiated an investigation to determine whether Divella and Zara were selling pasta in Italy at prices below the cost of production (''COP'').[4]

Between August 2006 and May 2007, the Department issued its initial questionnaire and supplemental questionnaires to each respondent, as applicable. We received responses to the Department's initial and supplemental questionnaires on December 12, 2007, February 15, 2008, March 31, 2008, April 14, 2008, May 5, 2008, and July 3, 2008, from Divella. Zara provided responses to the Department's initial and supplemental questionnaires on December 12, 2007, April 8, 2008, May 27, 2008, and July 1, 2008. On January 2, 2008, and March 6, 2008, and March 27, 2008, and May 29, 2008, the petitioners filed comments on Divella's responses. On January 14, 2008, March 7, 2008, and on May 21, 2008, petitioners filed comments on Zara's responses. On March 12, 2008, the Department fully extended the due date for the preliminary results of review from April 1, 2008, to July 30, 2008. *See Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Eleventh Antidumping Duty Administrative Review*, 73 FR 13208 (March 12, 2008).

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale (''ICEA'') are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, ''Recognition of Instituto per la Certificazione Etica e Ambientale.''

The merchandise subject to this order is currently classifiable under subheadings 1901.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (''the Act''), we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (''CV''), in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (''VCOM'') between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the export price (''EP'') or constructed export price (''CEP'') to the NV, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. *See* the Department's ''Calculation Memorandum for F. Divella S.p.A.'' (''Divella's calculation memo'') *see also* ''Calculation Memorandum for Pasta Zara S.p.A.'' (''Zara's calculation memo''), both dated July 30, 2008, available in the Central Records Unit (CRU) in Room 1117 of the Main Commerce Building.

Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost-insurance-freight (''CIF''), ex-factory, free-on-board (''FOB''), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. inland freight expenses, warehousing, and U.S. duties. In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed countervailing duty administrative review, in accordance with section 772(c)(1)(C) of the Act.

Zara's U.S. sales are made through Zara USA, an affiliated subsidiary in the United States. Zara argues that its U.S. sales should be treated as EP because the pasta is shipped directly from Italy to the U.S. customer, and that Zara USA's role is minimal as it has no employees and its functions are performed by an accountant/consultant. Zara states that Zara USA is the importer of record, and that Zara USA receives an invoice from the U.S. customs broker, which it then pays. Zara USA invoices the unaffiliated U.S.

[3] *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 69662 (December 10, 2007).

[4] *See* Memoranda from the Team to Melissa Skinner, ''Petitioners' Allegation of Sales Below the Cost of Production for F. Divella SpA'' and ''Petitioners' Allegation of Sales Below the Cost of Production for Pasta Zara SpA,'' dated January 18, 2008.

customer in the United States and also receives payment from the unaffiliated U.S. customers and deposits the checks into Zara USA's bank account. Zara states that in terms of document flow, Zara sells to Zara USA, and Zara USA sells to the American customer, who pays Zara USA. *See* Zara's April 8, 2008, questionnaire response at pages 39–41.

The Department finds that the transactions at issue constitute CEP rather than EP sales. First, Zara's argument regarding functions performed by Zara USA is misplaced because the Department no longer employs a function-driven approach known as the ''PQ'' test in determining whether sales are EP or CEP.

As the U.S. Court of Appeals for the Federal Circuit explained:

> The definition of CEP includes sales made by either the producer/exporter or ''by a seller affiliated with the producer or exporter.'' 19 U.S.C. § 1677a(b). EP sales, on the other hand can only be made by the producer or exporter of the merchandise. *See* 19 U.S.C. § 1677a(a). Consequently, while a sale made by a producer or exporter could be either EP or CEP, one made by a U.S. affiliate can only be CEP. Limiting affiliate sales to CEP flows logically from the geographical restriction of the EP definition, as a sale executed in the United States by a U.S. affiliate of the producer or exporter to a U.S. purchaser could not be a sale ''outside the United States.'' The location of the sale and the identity of the seller are critical to distinguishing between the two categories. Congress provided for only two mutually exclusive categories: EP or CEP sales. In distinguishing the two, Congress opted for what can be seen as a structural approach to defining EP and CEP sales, not the function-driven approach of the PQ Test. Congress chose clear and unambiguous words such as ''affiliated,'' ''sold,'' and ''in'' or ''outside'' the United States. In no sense did it leave the distinguishing factor to the agency to identify exporter.[5]

Thus, the primary focus in determining whether a sale is properly classified as EP or CEP is: (1) The identity of the seller of subject merchandise to the first unaffiliated U.S. customer; and (2) the location of the sale to the first unaffiliated U.S. customer.[6] Because the Federal Circuit invalidated the ''PQ'' test in *AK Steel*, the Department will not conduct an analysis of the relative functions or activities performed by Zara USA in the sales process.

In *AK Steel*, the Court held that the ''seller'' is the party who contracts to sell.[7] In *Corus Staal*, the Court stated ''{a}s the material terms of the sale or agreement to sell were not fixed until the final invoice, Commerce could properly conclude that the final invoices determined when a sale or agreement to sell first occurred.''[8] In this case, even though the U.S. customer places the order directly with Zara, the record evidence suggests that the terms of sale are not finalized prior to invoice date. As the invoice issued to the first unaffiliated customer identifies Zara USA as the seller of subject merchandise, and as Zara USA serves as importer of record, thus transferring title to the first unaffiliated purchaser in the United States, we preliminarily find that the subject merchandise is first sold in the United States to an unaffiliated U.S. customer, and thus CEP is warranted. *See e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008). *See also*, Zara's calculation memo.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, banking, slotting fees, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by its affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* Divella's calculation memo, *see also* Zara's calculation memo.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) of the Act, because Divella and Zara each had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both Divella and Zara.

B. Cost of Production Analysis

With respect to Divella, we made the following COP and CV adjustments for the preliminary results. First, we revised the yielded per-unit cost of semolina reported in the cost database to include the transportation costs related to the sales of by-products, costs incurred to transport semolina from the wheat mill to the pasta plant, property taxes, and an adjustment made to the June 30, 2007, durum wheat inventory. Second, we revised the fixed overhead costs of the pasta plant to include property taxes and other operating costs. Third, we revised the general and administrative (''G&A'') expense rate to include property taxes, other operating costs, and various litigation and settlement losses. In addition, the G&A expense ratio denominator was revised to exclude the fixed overhead costs related to packing and include transportation costs related to the sales of by-products. Finally, we revised Divella's net financial expenses to exclude dividend income. For further discussion of these adjustments for Divella, *see* the Memorandum from Sheikh Hannan to Neal Halper entitled, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results—F. Divella SpA,'' dated July 30, 2008.

With respect to Zara, we revised Zara 1 and Zara 2's reported database to reflect differences in the originally submitted trial balance and the finalized trial balance used to prepare the audited financial statements. Additionally, we included credit notes for purchases of semolina for both companies and for Zara 2, we included water costs and purchases of semolina from Zara 1 in the cost of manufacturing (''COM''). We also included certain non-operating expenses in the G&A expenses. Further, we adjusted Zara 1's financial expenses to exclude certain income items generated from long-term assets and losses related to investment activity. Last, we weight-averaged Zara 1 and Zara 2's respective cost databases to calculate one weighted-average COP for the POR. For further discussion of these adjustments for Zara, *see* the Memorandum from Christopher Zimpo to Neal Halper entitled, ''Cost of Production and Constructed Value

[5] *See AK Steel Corporation* v. *United States*, 226 F.3d 1361, 1370–1371 (Fed. Cir. 2000) (''*AK Steel*'').

[6] *See AK Steel*, 226 F.3d at 1370: ''the critical difference between EP and CEP sales is whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate.'' *See also id* at 1371: ''The location of the sale and the identity of the seller are critical to distinguishing between {EP and CEP}.''

[7] *See AK Steel*, 226 F.3d at 1371.

[8] *Corus Staal BV et al.* v. *United States*, 2006 Ct. Intl. Trade LEXIS 113, at 20, Slip Op. 2006–112 (CIT July 25, 2006) (''*Corus Staal*'').

Adjustments for the Preliminary Results—Pasta Zara SpA,'' dated July 30, 2008.

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Divella and Zara pursuant to section 773(b) of the Act, to determine whether Divella's and Zara's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative (''SG&A'') expenses and packing, in accordance with section 773(b)(3) of the Act.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. See Divella's calculation memo, *see also* Zara's calculation memo.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for Divella and Zara, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Divella's calculation memo, *see also* Zara's calculation memo.

C. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance-of-sale adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments for Divella and Zara, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using POR-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were disregarded. *See* Divella's calculation memo, *see also* Zara's calculation memo.

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

Both respondents claim two LOTs in the home market. Divella reported that it sold through three channels of distribution to seven customer categories. Divella reported that two of the seven customer categories constituted a separate LOT because these two customer categories had a greater intensity of selling activities. Zara reported that it sold through three channels of distribution to 14 customer categories. Zara claimed that six of the customer categories were at a different LOT because of a greater intensity of selling activities.

We disagree with both Divella and Zara that there are two LOTs in the home market. Section 351.412(c)(2) of the Department's regulations provides that: The Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Our analysis of the selling activities for Divella shows that there is overlap in these activities for channels of distribution and customer categories. In other words, Divella performs similar selling activities for all customer categories and channels of distribution.

Although there is greater intensity of these activities for some of the claimed customer categories, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding a different LOT. *See e.g., Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review,* 72 FR 52070 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Due to the proprietary nature of this issue, please refer to Divella's calculation memo for further discussion.

Our analysis of the selling activities for Zara shows that Zara also performs similar selling activities for different customer categories, although some of the activities were at different levels of intensity. Moreover, some selling activities within the claimed LOT1 are at higher level of intensity while other selling activities are at lower level of intensity than the same selling activities in the claimed LOT2. In addition, there is overlap among the channels of distribution for the different customer categories in these two claimed LOTs. The differences in Zara's selling activities chart do not rise to a level of substantial differences that would support a finding that there are two LOTs in the home market. Due to the proprietary nature of this issue, please refer to Zara's calculation memo for further discussion.

While Divella and Zara attempted to further support their LOT claims by submitting an analysis comparing the average volume per invoice sold to these different customer categories, the Department does not normally consider average quantities as part of our LOT analysis. *See e.g., Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part,* 69 FR 6255 (February 10, 2004).

In the U.S. market, both Divella and Zara reported that their sales were made through one channel of distribution to one customer category, therefore, at one LOT. The Department has determined that Divella's and Zara's home market sales were made at LOT1 and at the same stage of marketing as the U.S. sales LOT. Therefore, the Department will not make an LOT adjustment for Divella or Zara's sales to the United States.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. *See* Divella's calculation memo, *see also* Zara's calculation memo.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2006, through June 30, 2007, for the mandatory respondents:

Manufacturer/exporter	Margin (percent)
Divella	2.83
Zara	10.34

For those companies not selected as mandatory respondents, we preliminarily determine that the following simple average percentage margin (based on the two reviewed companies) exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Margin (percent)
Pastificio Di Martino Gaetano & F. lli SrL	6.59
Pastificio Felicetti SrL	6.59

The Department will disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). The Department intends to verify the information upon which we will rely in making our final determination. As a result, we intend to establish the briefing schedule upon the completion of verification.

Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.,* international freight) from the gross sales value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

To calculate the cash deposit rate for Divella and Zara, we divided its total dumping margin by the total net value of its sales during the review period. For the responsive companies which were not selected for individual review, we have calculated a cash deposit rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that

manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18026 Filed 8–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results of the 11th (2006) Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2006, through December 31, 2006. We preliminarily find that De Matteis Agroalimentare S.p.A. (''De Matteis''), Pastificio Lucio Garofalo S.p.A. (''Garofalo''), and F.lli De Cecco di Filippo Fara San Martino S.p.A. (''De Cecco'') received countervailable subsidies, and that Pastificio Felicetti SrL (''Felicetti'') did not receive any countervailable subsidies. *See* the ''Preliminary Results of Review'' section, below. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section of this notice.

EFFECTIVE DATE: August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996) (''*Pasta Order*''). On July 3, 2007, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2006, the period of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On July 31, 2007, we received requests for review from Garofalo, Valdigrano Di Flavio Pagani SrL (''Valdigrano''), Felicetti, and Prodotti Mediterranei, Inc. on behalf of De Cecco. On July 31, 2007, we received a request for review from New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (''petitioners'') for De Matteis. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 24, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 24, 2007).

On September 11, 2007, we issued countervailing duty questionnaires to the Commission of the European Union (''EU''), the Government of Italy (''GOI''), Garofalo, Valdigrano, Felicetti, De Cecco, and De Matteis. On October 16, 2007, Valdigrano withdrew its request for review. On November 5, 2007, we rescinded the review with respect to Valdigrano. *See Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 72 FR 62437 (November 5, 2007).

We received responses to our questionnaires in November 2007. We issued supplemental questionnaires to the respondents and GOI in February, March, April, May, June, and July 2008, and we received responses to our supplemental questionnaires in March, April, May, June, and July 2008.

Period of Review

The POR for which we are measuring subsidies is January 1, 2006, through December 31, 2006.

Scope of the Order

Imports covered by the order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic

pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under items 1901.90.9095 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

(3) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(4) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. The Department's regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''IRS Tables''). *See* 19 CFR 351.524(d)(2). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or interested parties objected to this allocation period. Therefore, we have used the 12–year allocation period for all respondents.

Attribution of Subsidies

Pursuant to 19 CFR 351.525(b)(6), the Department will attribute subsidies received by certain companies to the combined sales of those companies. Based on our review of the responses, we preliminarily find that ''cross–ownership'' exists with respect to certain companies, as described below, and we have attributed subsidies accordingly:

De Matteis: De Matteis has reported that it is affiliated with De Matteis Construzioni S.r.L. (''Construzioni'') by virtue of being 100 percent owned by Construzioni. *See* De Matteis's November 21, 2007, questionnaire response (''QR'') at 2–3. De Matteis has reported that Construzioni did not receive any subsidies during the POR or AUL period. *See* De Matteis's April 1, 2008, supplemental questionnaire response (''SQR'') at 1. Therefore, we are attributing De Matteis's subsidies to its sales only.

Garofalo: Garofalo has reported that it has no affiliates. Thus, we are attributing any subsidies received to Garofalo's sales only.

De Cecco: De Cecco has responded on behalf of two members of the De Cecco Group: F.lli De Cecco di Filippo Fara San Martino S.p.A. (''Pastificio'') and Molino e Pastificio F.lli De Cecco S.p.A. (''Pescara''). Pastificio and Pescara manufacture pasta for sale in Italy, to third- countries, and to the United States. Pastificio and Pescara are directly or indirectly 100 percent–owned by members of the De Cecco family. Effective January 1, 1999, Molino F.lli De Cecco di Filippo S.p.A. (''Molino''), a third member of the De Cecco Group on whose behalf De Cecco responded in the fourth administrative review, was merged with Pastifico and ceased to be a separate entity. The Department will continue to consider countervailable any benefits received by Molino in past administrative review periods and allocated over a period that extends into or beyond the current POR. In accordance with 19 CFR 351.525(b)(6)(i) and (ii), we are attributing subsidies received by Pastificio and Pescara to the combined sales of both.

Discount Rates

Pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long–term, fixed–rate loans as a discount rate for allocating non–recurring benefits over time because no company for which we need such discount rates took out any loans in the years in which the government agreed to provide the subsidies in question. Consistent with past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark–up an Italian commercial bank would charge a corporate customer. *See, e.g., Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005); *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005) (unchanged in Final Results). For benefits received in 1995–2004, we used the Italian Bankers' Association (''ABI'') prime interest rate (as reported by the Bank of Italy), increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. The Bank of Italy ceased reporting this rate in 2004. Because the ABI prime rate was no

longer reported after 2004, for 2005 and 2006, we have used the ''Bank Interest Rates on Euro Loans: Outstanding Amounts, Non–Financial Corporations, Loans With Original Maturity More Than Five Years'' published by the Bank of Italy and provided by the GOI in its November 8, 2007, QR at Exhibit 5. We made the adjustments described above to this rate.

Analysis of Programs

I. Programs Preliminarily Determined to be Countervailable

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the *Mezzogiorno* (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993. De Matteis, Garofalo, and De Cecco received grants under Law 64/86 which conferred a benefit during the POR.

In the *Pasta Investigation*,[1] the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended (''the Act''). They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* section 771(5)(D)(i); *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Pasta Investigation*, the Department treated the industrial development grants as non–recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non–recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full (''expensed'') in the year of receipt. We determined that grants received by De Matteis, Garofalo, and De Cecco under Law 64/86 exceeded 0.5 percent of their sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits from those grants that were allocated over time. We divided the benefit received by each company in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.05 percent *ad valorem* for De Matteis, 0.59 percent *ad valorem* for Garofalo, and 0.56 percent *ad valorem* for De Cecco. *See* Memorandum to the File, ''2006 Preliminary Results Calculation Memorandum for De Matteis Agroalimentare S.p.A.,'' dated July 30, 2008 (''De Matteis Calc Memo''); Memorandum to the File, ''2006 Preliminary Results Calculation Memorandum for Pastificio Lucio Garofalo S.p.A.,'' dated July 30, 2008 (''Garofalo Calc Memo''); and Memorandum to the File, ''2006 Preliminary Results Calculation Memorandum for F.lli De Cecco di Filippo Fara San Martino S.p.A.,'' dated July 30, 2008 (''De Cecco Calc Memo'').

B. Industrial Development Loans Under Law 64/86

In addition to the Law 64/86 industrial development grants discussed above, Law 64/86 also provided reduced–rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the *Mezzogiorno*. As with the grants discussed above, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The fixed–interest rates on these long–term loans were set at the reference rate with the GOI's interest contributions serving to reduce this rate. Although Law 64/86 was abrogated in 1992 (effective 1993), projects approved prior to 1993 were authorized to receive interest subsidies after 1993.

Garofalo and De Cecco had Law 64/86 industrial development loans outstanding during the POR.

In the *Pasta Investigation*, the Department determined that Law 64/86 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. *See* Section 751(5)(E)(ii). Also, these loans were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit for the POR by computing the difference between the payments Garofalo and De Cecco made on their Law 64/86 loans net of GOI interest contributions and the payments Garofalo and De Cecco would have made on the benchmark loan. We divided the benefit received by Garofalo and De Cecco by their respective total sales in the POR.

On this basis, we determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.16 percent *ad valorem* for Garofalo and 0.02 percent *ad valorem* for De Cecco. *See* Garfalo Calc Memo and De Cecco Calc Memo.

C. Industrial Development Grants Under Law 488/92

In 1986, the EU initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the *Mezzogiorno*. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants.

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry.

[1] *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy*, 61 FR 30288 (June 14, 1996) (''*Pasta Investigation*'').

On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

De Matteis, Garofalo, and De Cecco received grants under Law 488/92 which conferred a benefit during the POR. Based upon findings at verification, we adjusted De Matteis's reported disbursement amounts to include an interest amount received by De Matteis reflecting a lag in payment. *See* Memorandum to the File, ''Verification of the Questionnaire Responses of De Matteis Agroalimentare S.p.A. in the 11th Administrative Review,'' dated July 30, 2008 (''De Matteis Verification Report''), at 8; *see also* De Matteis Calc Memo.

In the *Second Administrative Review*,[2] the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* section 771(5)(D)(i); *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Second Administrative Review*, the Department treated the industrial development grants as non–recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non–recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is expensed in the year of receipt. We determined that grants received by De Matteis, Garofalo, and De Cecco under Law 488/92 exceeded 0.5 percent of their sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by each company in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 1.11 percent *ad valorem* for De Matteis, 0.81 percent *ad valorem* for Garofalo, and 0.25 percent *ad valorem* for De Cecco. *See* De Matteis Calc Memo, Garofalo Calc Memo, and De Cecco Calc Memo.

D. European Regional Development Fund (''ERDF'') *Programma Operativo Plurifondo* (P.O.P.) Grant

The ERDF is one of the EU's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome in order to reduce regional disparities in socio–economic performance within the EU. The ERDF program provides grants to companies located within regions which meet the criteria, as described above, of Objective 1, Objective 2, or Objective 5(b) under the Structural Funds.

De Matteis received a P.O.P. Grant from the Regione Campania in 1998.[3] The P.O.P. Grants were funded by the EU, the GOI, and the Regione Campania.

In the *Pasta Investigation*, the Department determined that ERDF P.O.P. Grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* section 771(5)(D)(i); *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the EU, the GOI, nor the responding companies have provided new information which would warrant reconsideration of our determination that ERDF grants are countervailable subsidies.

In the *Pasta Investigation*, the Department treated ERDF grants as non–recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. In accordance with 19 CFR 351.524(b)(2), we determined that the ERDF grant received by De Matteis exceeded 0.5 percent of its sales in the year in which the grant was approved, as was the case in the *Fourth Administrative Review*.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the ERDF P.O.P. Grant to be 0.05 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

E. Social Security Reductions and Exemptions – *Sgravi*

Italian law allows companies, particularly those located in the *Mezzogiorno* region, to use a variety of exemptions from and reductions (*sgravi*) of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that benefits under some of these laws (*e.g.*, Laws 183/76, 449/97, and 223/91) are available only to companies located in the *Mezzogiorno* and other disadvantaged regions. Certain other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the *Mezzogiorno* and other disadvantaged regions than for companies in other parts of the country. Still, other laws provide benefits that are not linked to any region.

In the *Pasta Investigation* and subsequent reviews, the Department determined that certain types of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. *See* section 771(5)(D)(ii) of the Act. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the *Mezzogiorno* or because the higher levels of benefits were limited to companies in the *Mezzogiorno*.

In the instant review, no party in this proceeding challenged our past determinations in the *Pasta Investigation* and subsequent reviews that *sgravi* benefits, generally, were countervailable for companies located within the *Mezzogiorno* region.

[2] *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 17618 (April 12, 1999) (''*Second Administrative Review*''); *Certain Pasta From Italy: Final Results of Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) (unchanged in Final Results).

[3] *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 66 FR 40987 (August 6, 2001) (''*Fourth Administrative Review*''); *Certain Pasta From Italy: Final Results of Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001) (unchanged in Final Results).

However, the GOI has submitted information claiming that benefits provided under Article 8 of Law 223/91 should be found not countervailable. *See* Memorandum to the File, ''GOI's June 11, 2008, Letter,'' dated July 30, 2008.

The laws identified as having provided *sgravi* benefits during the POR are the following: Law 863/84 (De Matteis and Garofalo), Law 196/97 (De Matteis), Law 407/90 (De Matteis and Garofalo), Law 223/91 Article 8 Paragraph 2 (De Matteis), and Law 223/91 Article 25 Paragraph 9 (De Matteis). These companies are located in the *Mezzogiorno* region of Italy.

1) *Law 863/84*

Law 863/84 provides social security reductions or exemptions when a company hires a worker under a non–renewable contract with a term of 24 months or less and the contract includes an educational or training component. The GOI refers to these as ''skilling'' contracts. *See* GOI Verification Report,[4] at 10–11. The employer may receive reductions or exemptions from social security contributions for a period of up to 24 months. *Id.* Typically, employees hired under these contracts must be no more than 29 years old, but in the *Mezzogiorno*, the maximum age is 32 years old. *Id.* Also, a company in the *Mezzogiorno* is exempted from making social security contributions for employees hired under these skilling contracts, while companies in other areas of Italy received a 25 percent reduction in social security contributions. *Id.*

Legislative Decree (''L.D.'') 276/03 repealed the provision related to skilling contracts by private companies and, as of November 2004, no new skilling contracts could be made. *Id.* However, for skilling contracts entered into as of October 2004, benefits could be realized for the duration of the two–year period. *Id.*

In the *Pasta Investigation*, we determined Law 863/84 conferred a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes is revenue forgone and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the difference in the amount of the tax savings between companies located in the *Mezzigiorno* and companies located in the rest of Italy in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because higher levels of benefits are limited to companies in the *Mezzogiorno* region.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation*, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy for De Matteis and Garofalo, we calculated the difference during the POR between the savings for each of these respondent companies located in the *Mezzogiorno* and the savings a company located in the rest of Italy would have received. This amount was divided by the respondent's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 863/84 to be 0.01 percent *ad valorem* for De Matteis and 0.03 percent *ad valorem* for Garofalo. *See* De Matteis Calc Memo and Garofalo Calc Memo.

2) *Law 196/97*

Law 196/97 is closely related to Law 863/84. *See* GOI Verification Report, at 11–12. It provides additional exemptions for employers in the *Mezzogiorno* that hire on a long–term (or permanent) basis, employees hired under skilling contracts. *Id.* Law 196/97 permits such employers a total exemption from social security contributions for an additional 12–month period.

Benefits from Law 196/97 could only be requested after an employee had participated in a 24–month skilling contract under Law 863/84. As noted above, no new skilling contracts under Law 863/84 could be made after October 31, 2004. Thus, the last possible date to request exemptions under Law 196/97 was October 31, 2006. Moreover, because the exemption granted under Law 196/97 only lasts for twelve months, benefits were set to expire by October 31, 2007.

In the *Fourth Administrative Review*, we determined Law 196/97 confers a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes is revenue forgone and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act . The benefit is the amount of the tax savings in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because benefits are limited to companies in the *Mezzogiorno* region.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation*, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided De Matteis's savings in social security contributions during the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 196/97 to be 0.09 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

3) *Law 407/90*

Law 407/90 grants an exemption from social security taxes for three years when a company hires a worker who (1) has received wage supplementation for a period of at least two years, or (2) has been previously unemployed for a period of two years. *See* GOI Verification Report, at 12–13. A 100–percent exemption is allowed for companies in the *Mezzogiorno*, while companies located in the rest of Italy receive a 50–percent reduction.

In the *Pasta Investigation*, we determined Law 407/90 confers a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes is revenue forgone and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the difference in the amount of the tax savings between companies located in the *Mezzigiorno* and companies located in the rest of Italy in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because higher levels of benefits are limited to companies in the *Mezzogiorno* region.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation*, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy for De Matteis and Garofalo, we divided the difference during the POR between the savings for each respondent company located in the *Mezzogiorno* and the savings a company located in the rest of Italy would have received. This amount was divided by the respondent's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 407/90 to be 0.03 percent *ad valorem* for De Matteis and 0.01 percent *ad valorem* for Garofalo. *See* De Matteis Calc Memo and Garofalo Calc Memo.

4) *Law 223/91*

[4] *See* Memorandum to the File, ''Verification of the Questionnaire Responses of the Government of Italy in the 11th Administrative Review,'' dated July 30, 2008 (''GOI Verification Report'').

Law 223/91 is designed to increase employment by providing benefits to companies that hire unemployed workers on a special mobility list. The mobility list comprises recently fired workers in certain sectors of the economy, but companies in any sector may hire workers off the mobility list.

(a) *Article 8, Paragraph 2*

Under Law 223/91, Article 8, Paragraph 2, the employer is exempted from social security contributions when a mobility–listed worker is hired under a short–term contract of up to 12 months. *See* GOI Verification Report, at 13–14. The employer receives such benefits for the length of the contract to a maximum of 12 months. *Id.* But, if the short–term contract is converted to a permanent contract, the employer receives benefits for an additional 12 months. *Id.*

In the *Seventh Administrative Review*,[5] we determined that Law 223/91 conferred a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes was treated as revenue forgone and was, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the amount of tax savings in accordance with 19 CFR 351.509(a). Additionally, we found that the program was regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it was limited to companies in the *Mezzogiorno* or because the higher levels of benefits were limited to companies in the *Mezzogiorno*.

Based on our review of the record of the seventh administrative review and our verification in this administrative review, we continue to find the exemption or reduction of taxes as revenue forgone, with the benefit equal to the amount not collected; however, we now find no basis for *de jure* specificity under Law 223/91, Article 8, Paragraph 2. *See* GOI Verification Report, at 13–14. However, on June 16, 2008, we sent a supplemental questionnaire to the GOI which in part asked for a list of the industries that received benefits under this law. The GOI did not respond to this portion of the supplemental questionnaire. *See* GOI's June 27, 2008, SQR. Therefore, the GOI has not provided information to support a finding that Law 223/91, Article 8, Paragraph 2, is not *de facto* specific, within the meaning of section 771(5A)(iii) of the Act. Accordingly, we continue to find the exemptions provided under Law 223/91, Article 8, Paragraph 2, countervailable. After these preliminary results, we intend to issue another supplemental questionnaire to the GOI asking about industry usage of Law 223/91, Article 8, Paragraph 2.

To calculate the countervailable subsidy, we divided De Matteis's savings in social security contributions during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 223/91, Article 8, Paragraph 2 to be 0.02 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

(b) *Article 25, Paragraph 9*

Under Law 223/91, Article 25, Paragraph 9, an employer is exempted from social security contributions for a period of 18 months when the worker is hired from the mobility list on a permanent basis. *See* GOI Verification Report, at 13–14.

In the *Seventh Administrative Review*, we determined that Law 223/91 conferred a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes was treated as revenue forgone and was, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the amount of tax savings in accordance with 19 CFR 351.509(a). Additionally, we found that the program was regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it was limited to companies in the *Mezzogiorno* or because the higher levels of benefits were limited to companies in the *Mezzogiorno*.

Based on our review of the record of the seventh administrative review and our verification in this administrative review, we continue to find the exemption or reduction of taxes as revenue forgone, with the benefit equal to the amount not collected; however, we now find no basis for *de jure* specificity under Law 223/91, Article 25, Paragraph 9. *See* GOI Verification Report, at 13–14. However, on June 16, 2008, we sent a supplemental questionnaire to the GOI which in part asked for a list of the industries that received benefits under this Law. The GOI did not respond to this portion of the supplemental questionnaire. *See* GOI's June 27, 2008, SQR. Therefore, the GOI has not provided information to support a finding that Law 223/91, Article 25, Paragraph 9, is not *de facto* specific, within the meaning of section 771(5A)(iii) of the Act. Accordingly, we continue to find the exemptions provided under Law 223/91, Article 25, Paragraph 9, countervailable. After these preliminary results, we intend to issue another supplemental questionnaire to the GOI asking about industry usage of Law 223/91, Article 25, Paragraph 9.

To calculate the countervailable subsidy, we divided De Matteis's savings in social security contributions during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 223/91, Article 25, Paragraph 9, to be 0.00 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

F. Law 289/02

1) *Article 62 - Investments in Disadvantaged Areas*

Article 62 of Law 289/02 provides a benefit in the form of a credit towards direct taxes, indirect taxes, or social security contributions. *See* GOI Verification Report, at 2–4. The credit must be used within three years. *Id.* The law was established to promote investment in disadvantaged areas by providing credits to companies that undertake new investment by purchasing capital goods, equipment, patents, licenses, or know how. *Id.* The granting of new benefits under Article 62 of Law 289/02 expired as of December 31, 2006, but the credits obtained prior to this date may be used in future years. *Id.*

In the *Tenth Administrative Review*,[6] we determined that Article 62 of Law 289/02 confers a countervailable subsidy. The credits are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because they represent revenue foregone by the GOI, and a benefit is conferred in the amount of the tax savings in accordance with 19 CFR 351.509(a). Finally, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because it is limited to certain geographical regions in Italy, specifically, the regions of Calabria, Campania, Basilicata, Pugilia, Sicilia, and Sardegna, and certain municipalities in the Abruzzo and Molise region, and certain municipalities in central and northern Italy. No new information has been placed on the record of this review that would cause us to depart from this treatment.

De Matteis is located in Campania and took advantage of this program. It did so by constructing a new semolina milling

[5] *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR 45676, 45683 (July 30, 2004) (''*Seventh Administrative Review*''); *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004) (unchanged in Final Results).

[6] *See Certain Pasta From Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review*, 72 FR 43616 (August 6, 2007) (''*Tenth Administrative Review*''); *Certain Pasta From Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review*, 72 FR 7251 (February 7, 2008) (unchanged in Final Results).

facility, including wheat silos, by–product storage silos, semolina silos, and milling equipment. A tax credit for De Matteis was approved in 2005 and a portion was used to reduce the company's income taxes for 2005 and 2006.

In the *Tenth Administrative Review*, the Department treated the amount credited against 2005 income as a non–recurring grant in accordance with the criteria in 19 CFR 351.524(c)(2)(i)-(iii). Specifically, the tax credit is exceptional because it was only available for a limited period of time, and was dependent upon companies making specific investments. Further, the tax credit required the GOI's authorization, and was tied to capital assets of the firm. Moreover, in accordance with 19 CFR 351.524(b)(2), we determined that the tax credit received by De Matteis exceeded 0.5 percent of its sales in the year in which the tax credit was approved. Therefore, we treated the portion of the tax credit used to offset income in 2005 as a grant received in that year and allocated the benefit over the AUL using the formula described in 19 CFR 351.524(d).

We have followed the same methodology for the portion of the tax credit used to offset income earned during the POR. Consequently, we divided the benefit received by De Matteis from the 2005 and 2006 grants in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 289/02 Article 62 to be 0.74 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

2) *Article 63 - Increase in Employment*

Article 63 of Law 289/02 provides a benefit in the form of a credit towards direct taxes, indirect taxes, or social security contributions. *See* GOI Verification Report, at 4–5. The law was established to promote employment by providing a tax credit to companies that increase the number of employees at the company by hiring new workers to long–term contracts. *Id.* The monthly credit is 100 euros for a new hire for any company in Italy. If the employee is 45 years old or older, the monthly amount increases to 150 euros. The monthly credit is 300 euros if the company is located in the *Mezzogiorno. Id.* Under the law, the granting of new credits ceased as of December 31, 2006. *Id.* There is no limit as to when the credits can be applied as these credits carry over from one year to the next. *Id.* However, as of 2007, the credits must be used as soon as possible and failure to do so forfeits the portion of the credit that could have been taken during the given year. *Id.*

In the *Tenth Administrative Review*, we determined that Article 63 of Law 289/02 confers a countervailable subsidy. The credits are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because they represent revenue foregone by the GOI, and a benefit is conferred in the amount of the tax savings in accordance with 19 CFR 351.509(a). Finally, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because the greater benefit amount is limited to certain geographical regions in Italy, specifically, Campania, Basilicata, Puglia, Calabria, Sicilia, Sardegna, Abruzzo, Molise, and the municipalities of Tivoli, Formia, Sora, Cassino, Frosnone, Viterbo, and Massa. No new information has been placed on the record of this review that would cause us to depart from this treatment.

De Matteis and Garofalo are located in Campania; however, only De Matteis claimed the higher tax credits on the income tax forms filed during the POR.

Consistent with the *Tenth Administrative Review*, we are treating these as recurring subsidies and attributing the benefit to the year in which the taxes would otherwise have been due, *i.e.*, the year in which the company filed its tax form.[7] Based upon findings at verification, we revised De Matteis's reported amount to reflect the amount associated with the tax return filed during the POR. *See* De Matteis Verification Report and De Matteis Calc Memo. To calculate the countervailable subsidy, we divided the credit taken by De Matteis on the tax return filed during the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 289/02 Article 63 to be 0.05 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

G. *Law 662/96*

The GOI describes Patti Territoriali grants (Law 662/96 Article 2, Paragraph 203, Letter d) as being provided to companies for entrepreneurial initiatives such as new plants, additions, modernization, restructuring, conversion, reactivation, or transfer. Companies that can apply for the grants must be involved in mining, manufacturing, production of thermal or electric power from biomasses, service companies, tourist companies, agricultural, maritime and salt–water fishing businesses, aquaculture enterprises, or their associations.

The Patti Territoriali provides grants to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or article 87.3.c of the Treaty of Rome. A Patti Territoriali is signed between the provincial government and the GOI. *See* GOI Verification Report, at 5–7. Based upon project submissions, the provincial government ranks the projects and selects the projects it considers to be the best. *Id.* The provincial government submits the detailed plans to the GOI and, if approved, a special authorizing decree is issued for each company specifying the investment required and a schedule of the benefits. *Id.*

The GOI reported that De Matteis received disbursements from the Patti Territoriali in 2000 and 2004 from a grant approved on January 29, 1999.

In the *Tenth Administrative Review*, the Department determined that this grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i); *see also* 19 CFR 351.504(a). Also, this grant was found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or article 87.3.c of the Treaty of Rome. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Tenth Administrative Review*, the Department treated the Patti Territoriali grant as non–recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non–recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is expensed in the year of receipt. We determined that the grant received by De Matteis under Law 662/96 exceeded 0.5 percent of its sales in the year in which the grant as approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

[7] *See* 19 CFR 351.509(b).

On this basis, we preliminarily determine the countervailable subsidy from the Patti Territoriali grant to be 0.50 percent ad valorem for De Matteis. *See* De Matteis Calc Memo.

II. Programs Preliminarily Determined to be Not Countervailable

A. Research and Investigation Program of Legislative Decree 297/99 and Ministerial Decree 593/00

Garofalo has reported receiving benefits under Legislative Decree (''L.D.'') 297/99 which is implemented by Ministerial Decree (''M.D.'') 593/00. M.D. 593/00 provides a tax credit or contribution to costs for planned research or analytical investigations aimed at acquiring new knowledge for new products, production processes, or services or to improve existing products, production processes, or services. *See* GOI's April 1, 2008, SQR at Exhibit 3. Requests for these benefits can be filed by (1) companies engaged in industrial activities aimed at the production of goods and/or services, (2) companies engaged in transportation by land, sea, or air; (3) companies engaged in handicraft activities; (4) research centers, and (5) consortia companies. *See* GOI's April 1, 2008, SQR. The benefits are paid automatically after the filing of the request and after verification of eligibility. *Id.* Additionally, M.D. 593 has no provisions that restrict eligibility by region.

We preliminarily find that L.D. 297/99 is a nationwide program that potentially provides a similar level of deductions to all recipients and is not *de jure* specific to any particular company or industry pursuant to sections 771(5A)(D)(i) or 771(5A)(D)(ii) of the Act. We reviewed the translated text of this law and find the only location requirement for consideration under L.D. 297/99 Article 5 is that applicants must have a permanent establishment in the national territory. *See* GOI's April 1, 2008, SQR at Exhibit 3. Therefore, it appears to be not regionally specific under section 771(5A)(D)(iv) of the Act. Additionally, we find that L.D. 297/99/M.D. 593/00 is not *de facto* specific pursuant to 771(5A)(D)(iii), as during the POR, companies from diverse sectors were granted benefits under this law and the agro–food sector received only 3.7 percent of the total disbursements granted by the Ministry of University and Research. *See* GOI's May 19, 2008, SQR at Exhibit 2. Moreover, there is no record evidence indicating that there are a limited number of recipients under this program. *See* section 771(5A)(D)(iii)(I) of the Act. Accordingly, we preliminarily determine that assistance provided under L.D. 297/99 and M.D. 593/00 is not countervailable.

III. Programs Preliminarily Determined to Not be Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)

PRISMA, a program funded by the European Structural Fund, seeks to contribute to the creation of a single EU market by improving standardization and quality control procedures, and seeks to assist small- and medium–sized enterprises in Objective 1 regions to adapt to a single EU market and increased competition. Garofalo received a PRISMA grant in 1996.

In the *First Administrative Review*,[8] the Department determined that PRISMA grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* section 771(5)(D)(i); *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to firms located in designated geographic regions. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

Because the grant received by Garofalo was less than 0.5 percent of the company's sales in 1996, the year in which the grant was approved, we expensed the entire grant in the year of receipt, *i.e.*, 1996. Therefore, this program was not used in the POR. *See* Garofalo Calc Memo.

[8] *See Certain Pasta From Italy: Preliminary Results of the First Countervailing Duty Administrative Review*, 63 FR 17372 (April 9, 1998) (''*First Administrative Review*''); *Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review*, 63 FR 43905 (August 17, 1998) (unchanged in Final Results).

B. European Regional Development Fund (''ERDF'') *Programma Operativo Multiregionale* (P.O.M.) Grant

The P.O.M. Grants are managed by the central government and the Ministry of Industry (now the Ministry of Economic Development) is responsible for the administration of grants related to industry and services. *See* GOI's May 19, 2008, SQR.

Garofalo was approved to receive a P.O.M. Grant from the GOI in 1998. The P.O.M. Grants are co–funded by the EU and the GOI. Because the amount was less than 0.5 percent of Garofalo's sales in 1998, we expensed the entire grant in the years of receipt, *i.e.*, 1998 and 2000. Therefore, this program was not used in the POR. *See* Garofalo Calc Memo.

C. Certain Social Security Reductions and Exemptions – *Sgravi* (including Law 223/91, Article 8, Paragraph 4)

D. Law 236/93 Training Grants

E. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump–Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)

F. Development Grants Under Law 30 of 1984

G. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans

H. Law 317/91 Benefits for Innovative Investments

I. Brescia Chamber of Commerce Training Grants

J. Ministerial Decree 87/02

K. Law 10/91 Grants to Fund Energy Conservation

L. Export Restitution Payments

M. Export Credits Under Law 227/77

N. Capital Grants Under Law 675/77

O. Retraining Grants Under Law 675/77

P. Interest Contributions on Bank Loans Under Law 675/77

Q. Preferential Financing for Export Promotion Under Law 394/81

R. Urban Redevelopment Under Law 181

S. Industrial Development Grants under Law 183/76

T. Interest Subsidies Under Law 598/94

U. Duty–Free Import Rights

V. European Social Fund Grants

W. Law 113/86 Training Grants

X. European Agricultural Guidance and Guarantee Fund

Y. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)

Z. Interest Grants Financed by IRI Bonds

AA. Article 44 of Law 448/01

IV. Programs for Which More Information is Required

A. Social Security Reductions and Exemptions – *Sgravi*

1) *Legislative Decree (''L.D.'') 276/03*

De Matteis, Garofalo, and De Cecco have reported receiving benefits under L.D. 276/03. L.D. 276/03 is aimed at making the labor market more flexible by providing incentives for apprentice contracts. *See* GOI's April 1, 2008, SQR. Companies receive benefits for hiring workers under mixed contracts possessing a work component and a training component. *See* GOI Verification Report, at 14–15. Specifically, three categories of employee contracts recognized under this decree are: (1) working toward completion of compulsory schooling, (2) working toward completion of trade schooling, and (3) high–level training of special skills for a worker. *Id.*

Except for a weekly flat fee paid by the employer on behalf of the employee, the employer receives a total exemption from its social security contribution. *See* GOI Verification Report, at 14–15. The contributions are applied in equal measure across Italy and the decree may be used in all sectors of activity. *See* GOI's May 19, 2008, SQR and Exhibit 1; *see also* GOI Verification Report, at 14–15.

Based on our review of the record of this administrative review and our verification, we find no basis for *de jure* specificity. Additionally, based on record evidence and our verification, the law does not appear to be regionally specific under section 771(5A)(D)(iv) of the Act. However, at this time, we do not have sufficient information to determine whether this program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we intend to seek further information regarding specificity of this program from the GOI and we will provide parties an opportunity to comment on this information before the final results.

Verification

In accordance with 19 CFR 351.222(f)(2)(ii) and 351.307(b)(1)(v), we verified information submitted by the GOI for De Matteis in Rome, Italy on May 26–28, 2008. *See* GOI Verification Report. We verified information submitted by De Matteis in Flumeri, Italy on May 29–30, 2008. *See* De Matteis Verification Report.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for De Matteis, Garofalo, and De Cecco. Felicetti had no countervailable subsidies.

For the period January 1, 2006, through December 31, 2006, we preliminarily determine the net subsidy rates for the producers/exporters under review to be those specified in the chart shown below:

Producer/Exporter	Net Subsidy Rate
De Matteis Agroalimentare S.p.A.	2.65%
Pastificio Lucio Garofalo S.p.A.	1.60%
F.lli De Cecco di Filippo Fara San Martino S.p.A.	0.83%
Pastificio Felicetti SrL	0.00%
All–Others Rate	3.85%

Consequently, if these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties at these net subsidy rates. The Department will issue appropriate instructions directly to CBP 15 days after publication of the final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2006, and December 31, 2006, at the rates in effect at the time of entry.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above. No cash deposits of estimated duties will be required for Felicetti. For all non–reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company–specific or all–others rate applicable to the company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice.

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results, in accordance with section 751(a)(3) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18030 Filed 8–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary

Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1442 or 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On December 31, 2007, the Department of Commerce (''Department'') received petitions on imports of innersprings from the PRC, South Africa, and the Socialist Republic of Vietnam (''Vietnam'') filed in proper form by Leggett & Platt Incorporated (''Petitioner''). *See Antidumping Duty Petition: Uncovered Innerspring Units from China, South Africa, and Vietnam* (December 31, 2007) (''petition''). These investigations were initiated on January 22, 2008. *See Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008) (''*Initiation Notice*'').

On February 14, 2008, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC, South Africa, and Vietnam of innersprings. The ITC's determination was published in the **Federal Register** on November 30, 2007. *See Uncovered Innerspring Units From China, South Africa, and Vietnam, 73 FR 13567 (March 13, 2008); see also Uncovered Innerspring Units from China, South Africa, and Vietnam: Investigation Nos. 731–TA–1140–1142 (Preliminary)*, USITC Publication 3983 (February 2008).

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). See also *Initiation Notice*, 73 FR at 4818. We received no comments from interested parties on issues related to the scope.

Respondent Selection

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (''CBP'') data of U.S. imports of innersprings. *See Initiation Notice*, 73 FR at 4822. On January 28, 2008, the Department placed the CBP information on the record of the investigation, and set aside a period for interested parties to submit comments on the CBP information. On February 4, 2008, the Department received comments on respondent selection from Petitioner. After receiving comments from interested parties, the Department determined to seek quantity and value (''Q&V'') data from all known producers/exporters of the subject merchandise from the PRC. On February 22, 2008, the Department requested Q&V information from 17 companies that petitioner identified with sufficient address information as potential exporters or producers of innersprings from the PRC. *See* Petition at Exhibit I–8. Additionally, on February 25, 2008, the Department posted the questionnaire requesting Q&V information from potential producers/exporters of innersprings on its website at www.trade.gov/ia. For a complete list of all parties from which the Department requested Q&V information, *see* Memorandum to the File, from Blaine Wiltse, International Trade Compliance Analyst, regarding ''Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China (''PRC''): Delivery of Quantity and Value Questionnaires,'' dated March 10, 2008 (''Q&V Delivery Memo''). The Department received timely Q&V responses from twelve interested parties. One of the Q&V responses that the Department received on March 14, 2008, was from High Hope Int'l Group Jiangsu Native Produce Imp. & Exp. Corp. Ltd. (''High Hope''). On March 27, 2008, High Hope submitted a letter to the Department withdrawing its Q&V submission, stating that it would no longer be participating in the investigation.

On April 3, 2008, the Department selected Jiangsu Soho International Group Holding Co., Ltd. (''Jiangsu Soho'') and Nanhai Animal By–Products I&E Co. Ltd. Guangdong (''Nanhai Animal'') as mandatory respondents in this investigation. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, through James C. Doyle, Director, Office 9, AD/CVD Operations, and Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst, ''Selection of Respondents for the Antidumping Investigation of Uncovered Innerspring Units from the People's Republic of China,'' dated April 3, 2008.

Separate Rates Applications

Between March 24, 2008, and March 31, 2008, we received timely separate–rate applications from eight non–mandatory respondent companies: Zibo Senbao Furniture Co., Ltd. (''Senbao''), Hebei Yililan Furniture Co., Ltd. (''Yililan''), Anshan Yuhua Industrial Trade Co., Ltd. (''Yuhua''), Xilinmen Group Co., Ltd. (''Xilinmen''), East Grace Corporation (''East Grace''), Jiangsu Soho Technology Trading Co., Ltd. (''Soho Tech''), Nanjing Meihua I&E Trade Co., Ltd. (''Meihua''), and Zhejiang Sanmen Herod Mattress Co., Ltd. (''Sanmen'').

Product Characteristics & Questionnaires

In the *Initiation Notice*, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of innersprings from South Africa and Vietnam, for comments on the appropriate product characteristics for defining individual products. We received comments from Petitioner on February 15, 2008, with recommended appropriate product characteristics and proposed model matching criteria and hierarchy.

On April 7, 2008, the Department issued to Jiangsu Soho and Nanhai Animal its sections A, C, D, and E questionnaire,[1] which included product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration. Between April 29, 2008, and May 29, 2008, the Department received section A, C, and D questionnaire responses from Jiangsu Soho and Nanhai Animal. Jiangsu Soho and Nanhai Animal were not required by the Department to submit a Section E response, because the Department determined that neither company had further manufacturing in the United States. Petitioner submitted deficiency comments on the Section A questionnaire responses of both respondents on May 22, 2008,

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

deficiency comments on the questionnaire responses to Sections C & D of both respondents on June 27, 2008, and deficiency comments on Nanhai Animal's response to the supplemental Section A questionnaire on July 10, 2008. The Department issued supplemental questionnaires to Jiangsu Soho and Nanhai Animal and received responses between June 13, 2008, and July 15, 2008.

Surrogate Country

On April 11, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. *See* Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, regarding ''Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China,'' dated April 14, 2008 (''Surrogate Country Letter''), attaching Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Acting Director, Office of Policy, regarding ''Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China (PRC): Request for List of Surrogate Countries,'' dated March 25, 2008.

On April 11, 2008, the Department requested comments on surrogate country selection from the interested parties in this investigation. On June 2, 2008, the Department extended the deadline for interested parties to submit comments on surrogate country selection. Petitioner submitted surrogate country comments on June 16, 2008. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, see ''Surrogate Country'' section below.

Surrogate Value Comments

On June 27, 2008, the Department extended the deadline for interested parties to submit surrogate information with which to value the factors of production in this proceeding. On July 7, 2008, Petitioner submitted surrogate value comments.

Postponement of Preliminary Determination

On May 20, 2008, Petitioner made a request, pursuant to 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determinations with respect to China, South Africa, and Vietnam. The Department published a postponement of the preliminary determination on May 28, 2008. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations; Uncovered Innerspring Units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam*, 73 FR 30604 (May 28, 2008).

Period of Investigation

The period of investigation (''POI'') is April 1, 2007, through September 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, December, 2007. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

Non–Market-Economy Country

For purposes of initiation, Petitioner submitted LTFV analyses for the PRC as a non–market economy (''NME''). *See Initiation Notice*, 73 FR at 4819. The Department considers the PRC to be a NME country. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production (''FOP'') valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,[2] which states that ''OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank).'' The Department considers the five countries identified in

[2] *See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004), (''Policy Bulletin 04.1'')* at Attachment II of the Department's *Surrogate Country Letter*, also available at http://ia.ita.doc.gov/policy/bull04-1.html.

its Surrogate Country List as ''equally comparable in terms of economic development.'' *See Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of development equally comparable to that of the PRC.

Second, *Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. Based on the data provided by Petitioner, we find that India is a producer of identical merchandise. *See* Petition at 5–6 and Exhibit PRC–6. Additionally, Petitioner submitted information for Indian companies that produce comparable merchandise, such as comparable spring products, and noted that the Department has found India to be a significant producer of related steel wire products. *Id. See also Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008). Because the Department was unable to find production data, we are relying on export data as a substitute for overall production data in this case. The Department first attempted to obtain export data for innersprings from the World Trade Atlas (''WTA'') and was unable to find data for any of the countries on the Surrogate Country List. Thus, the Department obtained worldwide export data for steel wire products, which Petitioner also stated were comparable to innersprings. Specifically, we reviewed export data from the WTA for the HTS heading 7326.20, ''Other Articles of Iron/Steel Wire,'' for 2007. The Department found that, of the countries provided in the Surrogate Country List, all five countries were exporters of comparable merchandise: steel wire products. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported comparable merchandise.

The *Policy Bulletin 04.1* also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are significant producers of that comparable merchandise. The data we obtained show that, in 2007, worldwide exports for HTS 7326.20 from: India were approximately 7,375,861 kg; Indonesia were approximately 431,376 kg; Colombia were approximately 9,309,295 units; the Philippines were approximately 271,308 kg; and Thailand were approximately 8,193,889 kg. Although India, Colombia, and Thailand appear to be significant producers of comparable merchandise, no party in this proceeding requested that Colombia or Thailand be selected as the surrogate country.

With respect to data considerations in selecting a surrogate country, it is the Department's practice that, ''. . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.'' *See Policy Bulletin 04.1 at 4*. Currently, the record contains surrogate value information, including possible surrogate financial statements, only from India.

Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value Foshan Jingxin Steel Wire & Spring Co., Ltd.'s (''Foshan Jingxin'')[3] factors of production. *See* Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China: Selection of Factor Values,'' dated July 30, 2008 (''Surrogate Value Memorandum'').

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.[4]

Determination of Seller

For purposes of the preliminary determination, we find that Nanhai Animal should not be considered the mandatory respondent for purposes of calculating a dumping margin because we determine that Nanhai Animal did not make any sales of innersprings to the United States during the POI. In its questionnaire responses, Nanhai Animal stated that all of the sales negotiations for exports of innersprings to the United States take place directly between its producer, Foshan Jingxin, and the U.S. customer. In addition, Nanhai Animal stated that it is solely responsible for PRC customs declaration and receipt of payment from the U.S. customer, which is sent directly to Foshan Jingxin minus a commission. Nanhai Animal also stated in its questionnaire responses that it does not take title to the merchandise, and the merchandise is shipped directly from the producer's location to the U.S. customer. Therefore, we find that Nanhai Animal acts as an export agent for Foshan Jingxin and that all essential terms of sale are negotiated and executed between Foshan Jingxin and its U.S. customer. Thus, we find that Foshan Jingxin should be considered the seller for purposes of calculating a dumping margin. *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 17.

Separate Rates

Additionally, in the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 73 FR at 4822. The process requires exporters and producers to submit a separate–rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''*Policy Bulletin 05.1*'') available at http://ia.ita.doc.gov/policy/bull05–1.pdf.[5] However, the standard

[3] *See* section ''Determination of Seller'' regarding the Department's determination to treat Foshan Jingxin, Nanhai Animal's unaffiliated producer, as the mandatory respondent.

[4] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[5] The *Policy Bulletin 05.1*, states: ''{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME

for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Senbao, Yililan, Yuhua, Xilinmen, East Grace, Meihua, and Sanmen, (hereinafter referred to as ''Separate Rate Companies'') have provided company–specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate–rate test is not concerned, in general, with macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. *See, e.g.*, Yililan's March 28, 2008, Separate Rate Application (''SRA'') at 6–9; East Grace's March 28, 2008, SRA at 5–9; and Yuhua's March 28, 2008, SRA at 6–9.

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management. *See, e.g.*, Meihua's March 28, 2008, SRA at Exhibit 7; Xilinmen's March 28, 2008, SRA at Exhibit 8; Sanmen's March 31, 2008, SRA at Exhibit 7; and Senbao's March 24, 2008, SRA at Exhibit 5.

As the Department has preliminarily determined that Foshan Jingxin is properly considered the seller of the subject merchandise for purposes of calculating a dumping margin, and because we have changed the designation of the appropriate party to serve as the mandatory respondent, we are preliminarily granting Foshan Jingxin a separate rate. Although the information on the record demonstrating Foshan Jingxin's eligibility for a separate rate is not complete, as information regarding separate rate status was submitted by its exporting agent, Nanhai Animal, the Department finds that it cannot preliminarily deny Foshan Jingxin a separate rate because the Department did not specifically ask for additional information to determine Foshan Jingxin's separate rate eligibility. Thus, we intend to request additional information from Foshan Jingxin subsequent to the preliminary determination in order to determine Foshan Jingxin's separate rate status for

investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

the final determination. Moreover, as mentioned above, because we have determined that Nanhai Animal had no sales of subject merchandise during the POI, we preliminarily determine that Nanhai Animal is not eligible to receive a separate rate.

With respect to Soho Tech, we determine that it failed to provide evidence regarding its affiliations, specifically whether any of its affiliates were involved in the export or production of the subject merchandise. The separate rate application requires that the applicant provide specific documentation regarding its affiliation with any entities that exported merchandise to the United States that would fall under the description of the merchandise covered by the scope of the proceeding. Although Soho Tech stated that it was not affiliated with any entities involved in the production or export of the subject merchandise, information submitted on the record by Jiangsu Soho proves otherwise. Specifically, Jiangsu Soho stated that Soho Tech is a subsidiary of Jiangsu Soho, and that Soho Tech is responsible for exporting Jiangsu Soho's sales of innersprings to the United States as well as its own exports of innersprings. *See* Jiangsu Soho's July 2, 2008, Supplemental Section A response at 13. Therefore, we determine that Soho Tech has failed to provide accurate information with respect to its affiliates and therefore has failed to establish its eligibility for a separate rate. As a result, Soho Tech will be considered a part of the PRC–wide Entity.

The evidence placed on the record of this investigation by the Separate Rate Companies demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we have granted the Separate Rate Companies a weighted–average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total AFA for the purposes of this preliminary determination. In addition, for the reasons outlined above, we have preliminarily granted Foshan Jingxin separate rate status and assigned Foshan Jingxin a rate based on the data submitted by Nanhai Animal.

Use of Total Adverse Facts Available

The PRC–Wide Entity PRC–Wide Rate

The Department has data that indicate there were more exporters of innersprings from the PRC than those indicated in the response to our request for Q&V information during the POI. *See Respondent Selection Memorandum*. We issued our request for Q&V information to 17 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's website. *See Q&V Delivery Memo*. While information on the record of this investigation indicates that there are numerous producers/exporters of innersprings in the PRC, we received only twelve timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Further, we received a Q&V response from High Hope, who subsequently withdrew it and informed the Department that it was not going to participate further in the investigation. Additionally, Jiangsu Soho, the mandatory respondent, did not cooperate to the best of its ability in responding to the Department's requests for information. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC–wide entity because they did not qualify for a separate rate.

Jiangsu Soho

Jiangsu Soho withheld or failed to provide information specifically requested by the Department during the course of this investigation. First, in its response to Sections C and D of the Department's questionnaire, Jiangsu Soho did not submit a sales or cost reconciliation, as required in the Department's questionnaire. The company offered no explanation as to why, but simply stated that it did not complete them. We gave Jiangsu Soho additional time to submit the reconciliations, but the information that Jiangsu Soho submitted was incomplete, and unusable for purposes of reconciling Jiangsu Soho's reported sales and FOP information to its financial statements.

Next, Jiangsu Soho withheld information requested by the Department and provided information that cannot be verified. In its questionnaire responses, Jiangsu Soho reported that its POI sales were sourced from four producers. Of the four producers, only one producer has provided factors of production data. The remaining three producers have been uncooperative and have not responded to the Department's requests for information. Therefore, the Department has incomplete information with respect to the factors of production for all of Jiangsu Soho's sales during the POI. Additionally, Jiangsu Soho has provided very limited information with regard to its accounting system and that of the one cooperative producer. Moreover, there are a number of data issues that have prevented the Department from being able to calculate a dumping margin.[6] Due to the proprietary nature of these issues, *see* the Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, ''Uncovered Innerspring Units from the People's Republic of China: Preliminary Application of Adverse Facts Available to Jiangsu Soho International Group Holding Co., Ltd.,'' dated July 30, 2008.

Finally, as mentioned above, Jiangsu Soho did not cooperate to the best of its ability to provide the Department with timely information regarding its affiliations with other exporters/producers of the subject merchandise. Jiangsu Soho initially stated that it was not affiliated with any other exporters/producers of the subject merchandise during the POI, but the Department, through deficiency questionnaires, learned that Jiangsu Soho is affiliated with Soho Tech, another exporter of innersprings to the United States during the POI. Because the Department was given this information only a few weeks prior to the preliminary determination, we were unable to sufficiently investigate this matter over the course of the investigation, as the information was initially withheld by Jiangsu Soho. Therefore, because of the number of deficiencies with respect to Jiangsu Soho's questionnaire responses and the amount of misleading and inadequate information, we find that the information provided by Jiangsu Soho to be so deficient that there is insufficient information to analyze and verify. Thus, we find that Jiangsu Soho does not merit a separate rate, and will be subject to the PRC–wide rate. *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying

[6] We note that Jiangsu Soho made an additional submission on July 25, 2008. Because this submission was received so close to the due date for this preliminary determination, the Department did not have sufficient time to analyze its contents and incorporate any findings into this preliminary determination. Thus, we will consider the submission in its entirety for purposes of the final determination.

Issues and Decision Memorandum at Comment 4.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC–wide entity was non–responsive. Certain companies did not respond to our request for Q&V information and did not respond to the Department's questionnaire. In addition, Jiangsu Soho withheld information requested by the Department and provided insufficient information to analyze and verify. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available is appropriate to determine the PRC–wide rate. S*ee Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''SAA''); see also Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC–wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, the statute indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. *See SAA* at 870. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Carbon Quality Steel Products from the People's Republic of Chin*a, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at ''Facts Available.'' As AFA, we have preliminarily assigned to the PRC–wide entity a rate of 234.51 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information.[7]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.''[8] The SAA explains that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also explains that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. Id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[9]

We corroborated the U.S. price used to calculate the highest calculated rate from the petition listed in the *Initiation Notice* by comparing it to the U.S. prices calculated for Foshan Jingxin. We found that the U.S. price used to calculate the highest petition margin was within the range of net U.S. prices in our margin calculations for Foshan Jingxin in this investigation. *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China,'' dated July 30, 2008 (''Foshan Jingxin Analysis Memorandum'').

We then corroborated the normal value used to calculate the highest calculated rate from the petition listed in the *Initiation Notice* with the normal values calculated for Foshan Jingxin based on its reported factors of production. We found that the normal value used to calculate the highest petition margin was within the range of normal values in our margin calculations for Foshan Jingxin in this investigation. *See* Foshan Jingxin Analysis Memorandum.

Consequently, we are applying the 234.51 percent rate from the petition as the AFA antidumping rate to the PRC–wide entity, which includes Jiangsu Soho. The PRC–wide rate applies to all entries of the merchandise under investigation except for entries from Foshan Jingxin, and the Separate Rate Companies.

Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Companies, who are all exporters of innersprings from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies

[7] *See* the ''Corroboration'' section below.

[8] See SAA at 870.

[9] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part:*, 62 FR 11825 (March 13, 1997).

have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for the Separate Rate Companies based on the rate we calculated for the cooperating mandatory respondent, Foshan Jingxin.[10] Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations states that, ''{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.'' However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (''*Allied Tube*''). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In *Allied Tube*, the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisf{y}' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.''' *Allied Tube* 132 F. Supp. 2d at 1090 (quoting 19 CFR 351.401(i)). In order to simplify the determination of date of sale for both the respondent and the Department and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. For instance, in *Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 10151 (March 7, 2007), unchanged in *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595 (September 10, 2007), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

We note that Nanhai Animal reported that Foshan Jingxin did not issue any commercial invoices because the U.S. customer did not require Foshan Jingxin to do so. However, after examining the questionnaire responses and the sales documentation that Foshan Jingxin placed on the record, we preliminarily determine that the factory delivery note date, otherwise known as the date of loading and date of exit of factory, is the most appropriate date of sale for all EP sales made by Foshan Jingxin, as it is the date on which the seller's obligation of delivery has been fulfilled and the exact sales quantity and unit price are confirmed and finalized. *See* Nanhai Animal May 29, 2008, Section C questionnaire response at C–13 and July 8, 2008, supplemental response at A–13.

Fair Value Comparisons

To determine whether sales of innersprings to the United States by Foshan Jingxin were made at less than fair value, we compared EP to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

For Foshan Jingxin, we based U.S. price on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from Foshan Jingxin to the first unaffiliated customer in the United States. Where applicable, we deducted a commission from the starting price (gross unit price), in accordance with section 772(c) of the Act.

For a complete discussion of the calculation of the U.S. price for Foshan Jingxin, *see Foshan Jingxin Analysis Memorandum*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non–market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Foshan Jingxin. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. A detailed description of all surrogate values used for Foshan Jingxin can be found in the Surrogate Value Memorandum and Foshan Jingxin Analysis Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Foshan Jingxin FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product–specific, and tax–exclusive. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price

[10] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (''*CTVs from the PRC*''). Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Foshan Jingxin used to produce the subject merchandise during the POI, except where listed below.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, *see Corrected 2007 Calculation of Expected Non–Market Economy Wages*, 73 FR 27795 (May 14, 2008), and http://ia.ita.doc.gov/wages/index.html. The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Surrogate Value Memorandum.

We used Indian transport information in order to value the freight–in cost of the raw materials. Due to the proprietary nature of this information, *see* Surrogate Value Memorandum.

To value electricity, the Department used rates from *Key World Energy Statistics 2003*, published by the International Energy Agency (''IEA''). Because the data were not contemporaneous to the POI, we adjusted for inflation using WPI. *See* Surrogate Value Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the audited 2006–2007 financial statements from Lakshmi Precision Screws Limited, a producer of merchandise comparable to innersprings in India.

For a detailed discussion of all surrogate values used for this preliminary determination, *see* Surrogate Values Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 72 FR at 60806. This practice is described in *Policy Bulletin 05.1*, available at http://ia.ita.doc.gov/.

Preliminary Determination

The weighted–average dumping margins are as follows:

UNCOVERED INNERSPRING UNITS FROM THE PRC

Exporter	Producer	Weighted–Average Margin
Foshan Jingxin Steel Wire & Spring Co., Ltd.	Foshan Jingxin Steel Wire & Spring Co., Ltd.	118.17%
Anshan Yuhua Industrial Trade Co., Ltd.	Anshan Yuhua Industrial Trade Co., Ltd.	118.17%
East Grace Corporation	Wuxi Xihuisheng Commercial Co., Ltd.	118.17%
Hebei Yililan Furniture Co., Ltd.	Hebei Yililan Furniture Co., Ltd.	118.17%
Nanjing Meihua Import & Export Trade Co., Ltd.	Nanjing Dongdai Furniture Co., Ltd.	118.17%
Xilinmen Group Co., Ltd.	Xilinmen Furniture Co., Ltd.	118.17%
Zhejiang Sanmen Herod Mattress Co., Ltd.	Zhejiang Sanmen Herod Mattress Co., Ltd.	118.17%
Zibo Senbao Furniture Co., Ltd.	Zibo Senbao Furniture Co., Ltd.	118.17%
PRC–wide (including Jiangsu Soho International Group Holding Co., Ltd.)		234.51%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of innersprings

from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Foshan Jingxin, Senbao, Yililan, Yuhua, Xilinmen, East Grace, Meihua, and Sanmen, and the PRC–wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of innersprings, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs (*see* 19 CFR 351.309(c)(i) and (d)). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Unless the deadline is extended pursuant to section 735(a)(2) of the Act, the Department will make its final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18031 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–522–803]

Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that uncovered innerspring units (''innersprings'') from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination. We intend to make our final determination within 75 days after the date of this preliminary determination pursuant to section 735 of the Act.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0414 or 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 31, 2007, Leggett and Platt, Incorporated (''Petitioner''), filed petitions in proper form on behalf of the domestic industry, concerning imports of innersprings from the People's Republic of China (''the PRC''), South Africa, and Vietnam (collectively, the Petitions). On January 28, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the initiation of a antidumping investigations on innersprings from the PRC, South Africa, and Vietnam. *See Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008) (''*Initiation Notice*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 73 FR at 4818. We did not receive comments regarding product coverage from any interested party. Additionally, in the *Initiation Notice*, the Department applied a process by which exporters and producers may obtain separate–rate status in non–market economy (''NME'') investigations. The process requires exporters and producers to submit a separate–rate status application (''SRA''),[1] rather than a full response to Section A of the Department's Questionnaire. The standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities), however, has not changed. The SRA for this investigation was posted on the Department's website at http://ia.ita.doc.gov/ia–highlights-and–news.html on January 28, 2008. The due date for filing an SRA was March 28, 2008. No party filed an SRA in this investigation.

In our *Initiation Notice*, we requested parties to provide comments regarding the physical characteristics of subject merchandise by February 11, 2008, and rebuttal comments by February 21, 2008. On February 8, 2008, we extended the deadline for submission of comments regarding physical characteristics to February 15, 2008, and the deadline for rebuttal comments to

[1] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at http://ia.ita.doc.gov/policy/bull05-1.pdf.

February 25, 2008. On February 15, 2008, Petitioner submitted comments. No other party submitted comments, and no party submitted rebuttal comments.

On February 14, 2008, the International Trade Commission (''ITC'') notified the Department of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of innersprings from the PRC, South Africa, and Vietnam. *See Uncovered Innerspring Units From China, South Africa, and Vietnam*, USITC Pub. 3983, Inv. Nos. 731–TA–1140–1142 (Preliminary) (February 2008).

On February 21, 2008, the Department issued its Quantity and Value (''Q&V'') questionnaire to eleven potential exporters of innersprings from Vietnam identified in the petition. We received a response to our Q&V questionnaire from only three of the potential respondents (*i.e.*, Yang Ching Enterprise Co., Ltd. (''Yang Ching''), Uu Viet Co., Ltd. (''Uu Viet''), and Dong Bang Stainless Steel Co. Ltd (''Dong Bang'')). Each potential respondent stated that they did not export innersprings to the United States during the period of investigation (''POI''). *See* Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Yang Ching, March 13, 2008; Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Uu Viet, March 20, 2008; and Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Dong Bang, March 25, 2008.

Period of Investigation

The POI is April 1, 2007, through September 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2007. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this proceeding is dispositive.

Non–Market-Economy (''NME'') Treatment

The Department considers Vietnam to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005, 71007 (December 8, 2004). The Department has not revoked Vietnam's status as an NME country. Therefore, in this preliminary determination, we have treated Vietnam as an NME country and applied our NME methodology.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters must demonstrate the absence of both *de jure* and *de facto* government control over export activities, under a test developed by the Department and described in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994).

No party filed separate rate information in this investigation. Absent separate rate information, the Department has presumed that all companies within Vietnam exporting the subject merchandise are subject to government control and are part of the Vietnam–wide entity and should be assessed a single, Vietnam–wide, antidumping duty rate.

Application of Facts Available

Sections 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the

information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 870 (1994) (''SAA''). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Application of Total Adverse Facts Available

The Vietnam–Wide Entity

The Department issued a Q&V questionnaire to all exporters identified in the petition. Out of the eleven exporters to whom the Department issued its Q&V questionnaire, only three responded. Each of the responding exporters stated that they did not export innersprings to the United States during the POI. *See* Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Yang Ching, March 13, 2008; Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Uu Viet, March 20, 2008, and Memorandum to the File, Response to the Department of Commerce's Quantity and Value Questionnaire from Dong Bang, March 25, 2008. However, the remaining eight companies did not respond to the Department's Q&V questionnaire. The Department issued and tracked its Q&V questionnaire via DHL. According to DHL's tracking system the remaining eight exporters received the Department's Q&V questionnaire. Record evidence indicates there were imports into the United States of innersprings from Vietnam. Based on the above facts, the Department preliminarily determines that there were exports of the subject merchandise under investigation from Vietnam producers/exporters that did not respond to the Department's questionnaire, and we are treating these Vietnam producers/exporters as part of the countrywide entity. Additionally, because we have determined that the companies named above are part of the Vietnam–wide entity, the Vietnam–wide entity is now under investigation. Further, pursuant to section 776(a)(2)(A) of the Act, we find that because the Vietnam–wide entity (including the eight companies discussed above) failed to respond to the Department's Q&V questionnaire, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is appropriate to apply a dumping margin to the Vietnam–wide entity using the facts otherwise available on the record pursuant to section 776(a)(2)(A) of the Act. Additionally, because these parties failed to respond to our requests for information, we find an adverse inference is appropriate.

Selection of the Adverse Facts Available Rate

In sum, because the Vietnam–wide entity failed to respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for the Vietnam–wide entity.

In deciding which facts to use as adverse facts available (''AFA''), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. *See also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

Generally, it is the Department's practice to select, as AFA, the highest rate in any segment of the proceeding. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) (unchanged in the final results, 71 FR 38366 (July 6, 2006)).

The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Fed. Cir.'') have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (upholding the Department's presumption that the highest margin was the best information of current margins) (''*Rhone Poulenc*''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683–84 (CIT 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc*, 899 F. 2d at 1190 (emphasis removed). In this case,

as AFA, the Department has selected 116.31 percent, the highest margin alleged in the petition, as revised in the Petitioner's supplemental responses, and the margin the Department used in the *Initiation Notice*.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, examine the reliability and relevance of the information submitted. *See, e.g. Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000). Because there are no mandatory respondents, to corroborate the 116.31 percent margin used as AFA for the Vietnam–wide entity, to the extent appropriate information was available, we revisited our pre–initiation analysis of the adequacy and accuracy of the information in the petition. *See* Antidumping Investigation Initiation Checklist: Uncovered Innersprings from the Socialist Republic of Vietnam (''Initiation Checklist'') (January 22, 2008). We examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner prior to initiation to determine the probative value of the margins alleged in the petition. During our pre–initiation analysis, we examined the information used as the basis of export price and normal value (''NV'') in the petition, and the calculations used to derive the alleged margins. Also during our pre–initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. *See id*. We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition and used for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the Vietnam–wide entity.

Preliminary Determination

The weighted–average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
Vietnam–Wide Rate	116.31

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of innersprings from Vietnam, as described in the ''Scope of the Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin indicated in the chart above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. Under section 735(b)(2) of the Act, if the Department's final determination is affirmative, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments on the preliminary determination may be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309. Executive summaries should be limited to five pages total, including footnotes. See id. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with an electronic copy of the public version of such briefs.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case and rebuttal briefs. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. *See* 19 CFR 351.310(d)(1). Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See id*.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18032 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–821]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that imports of uncovered innerspring units from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination. We intend to make our final determination within 75 days of the date of publication of this preliminary determination pursuant to section 735 of the Act.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2008, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on uncovered innerspring units from South Africa. See *Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*, 73 FR at 4818. We did not receive comments regarding product coverage from any interested party.

On February 14, 2008, the International Trade Commission (ITC) notified the Department of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of uncovered innerspring units from South Africa. See *Uncovered Innerspring Units From China, South Africa, and Vietnam Investigation Nos. 731 TA 1140 1142 (Preliminary),*, 73 FR 13567 (March 13, 2008).

On May 28, 2008, the Department extended the deadline for the preliminary results of this investigation from June 9, 2008, to July 30, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations; Uncovered Innerspring Units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam*, 73 FR 30604 (May 28, 2008).

Period of Investigation

The period of investigation (POI) is October 1, 2006, through September 30, 2007.

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Issuance of Questionnaire

On February 26, 2008, we identified Bedding Component Manufacturers (Pty) Ltd. (BCM) as the sole exporter of subject merchandise during the POI. See the Memorandum to Stephen J. Claeys entitled ''Antidumping Duty Investigation of Uncovered Innerspring Units from South Africa - Respondent Identification,'' dated February 26, 2008.

On March 4, 2008, we issued sections A, B, C, D, and E[1] of the antidumping questionnaire to BCM. In the cover letter to the antidumping questionnaire, we informed BCM that, if we did not receive its questionnaire response by 5 p.m. on the due date or a written request for an extension of the due date and if we have information demonstrating that BCM either received the questionnaire or refused delivery of the questionnaire, we would conclude that BCM had decided not to cooperate in this investigation. We also informed BCM that its refusal to cooperate in an investigation requires application of facts available, which may include an adverse inference, in accordance with sections 776(a) and 776(b) of the Act, when determining the company's antidumping duty margin.

On March 25, 2008, we received a facsimile communication from BCM requesting an extension of time to submit a response to Section A of the antidumping questionnaire.[2] On March 25, 2008, we granted BCM's request for an extension in full with the new due date of April 2, 2008, for its response to Section A of our questionnaire. On April 4, 2008, we received an electronic–mail communication, containing an attachment in the form of a dated letter in PDF format, from BCM notifying us that BCM would not ''be able to'' file its response (see letter on file in Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230). In addition, we did not receive a response from BCM to sections B and C by the close of business on April 10, 2008, the established deadline.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of facts available with an adverse inference (AFA) is appropriate for the preliminary determination with respect to BCM.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds requested information or fails to provide such information by the deadlines for submission of the information or in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use,

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

[2] In our letter, we reiterated that BCM's refusal to cooperate in this investigation would require the use of facts available, which may include an adverse inference, in accordance with sections 776(a) and 776(b) of the Act, when determining the company's antidumping duty margin. BCM's responses to sections B and C of the antidumping questionnaire remained due on April 10, 2008.

subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, BCM did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, BCM failed to respond to our questionnaire, thereby withholding, among other things, home–market and U.S. sales data that are necessary for preliminarily determining whether BCM is selling subject merchandise into the United States at less than fair value, pursuant to section 733 of the Act. BCM's failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Furthermore, because BCM did not submit any response to our requests for information and did not suggest alternative forms in which it could submit such responses, sections 782(c)(1), (d), and (e) of the Act do not apply. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based the dumping margin on facts otherwise available for BCM.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, *e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*Steel Hollow Products from Japan*).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52352 (September 13, 2007) (*Glycine from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007)); see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol.1 (1994) at 870 (*SAA*). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Although the Department provided BCM with notice informing it of the consequences of its failure to respond adequately to the questionnaire in this case, BCM did not respond to the questionnaire. This constitutes a failure on the part of BCM to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department has preliminarily determined that BCM failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, *e.g., Steel Hollow Products from Japan* (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the *SAA* at 829–831. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to BCM the single margin alleged in the petition, as recalculated in the Initiation Notice, of 121.39 percent (see *Petitions on Uncovered Innerspring Units from China, South Africa, and Vietnam*, dated December 31, 2007 (*Petition*), and January 11, 2008, supplement to the *Petition* filed on behalf of Leggett and Platt, Incorporated, Inc. (the petitioner)), as recalculated in the January 22, 2008, *Antidumping Investigation Initiation Checklist: Uncovered Innerspring Units from South Africa (Initiation Checklist)* on file in Import Administration's CRU. See also *Initiation Notice*, 73 FR at 4822.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

''Corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. See, *e.g., Glycine from Japan; see also SAA at 870. As stated in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example,

published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and *SAA* at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre–initiation analysis and for purposes of this preliminary determination. See *Initiation Checklist*. We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre–initiation analysis, we examined the key elements of the export–price and normal–value calculations used in the *Petition* to derive an estimated margin. During our pre–initiation analysis, we also examined information from various independent sources provided either in the *Petition* or, on our request, in the supplement to the *Petition*, that corroborates key elements of the export–price and normal–value calculations used in the *Petition* to derive an estimated margin.

Specifically, the petitioner calculated an export price using pricing information during the POI obtained from its U.S. customer of South African–produced uncovered innerspring units sold, or offered for sale, by U.S. importers of the subject merchandise. The pricing information identified specific terms of sale and payment terms. We obtained affidavits from persons who obtained the U.S. price quote. See *Initiation Checklist* at 6–8. The petitioner made adjustments to the starting price, where applicable, for foreign inland freight, ocean freight, marine insurance, and U.S. customs and port fees to arrive at net export price. To examine further the reliability of the U.S. price information in the *Petition* for purposes of this preliminary determination we obtained the average monthly Average Unit Values (AUVs) (Landed, Duty Paid) of imports of uncovered innerspring units from South Africa for consumption in the United States, classified under HTSUS number 9404299010 for the POI gathered from the Bureau of the Census IM145 import statistics.[3] We confirmed, by examining the Harmonized Tariff Schedule of the United States Annotated, that this HTSUS number is not a ''basket category'' such that it only includes entries of subject merchandise. U.S. official import statistics are sources that we consider reliable. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and applicable Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' dated August 11, 2005 (*Chromium from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). We then compared the U.S. price quote in the *Petition* to the AUVs for the POI and confirmed that the value of the U.S. price quote was consistent with average U.S. import values. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

The petitioner made adjustments to the starting U.S. price for foreign inland freight, ocean freight, marine insurance, and U.S. customs and port fees to arrive at the net export price. The petitioner calculated foreign inland–freight costs based on the petitioner's South African subsidiary's transportation experience and the related shipping costs it incurs. See *Initiation Checklist* at 7–8. The petitioner provided an affidavit from an individual attesting to the source and validity of the inland–freight costs it used in the calculation of net U.S. price. *Id.* The petitioner calculated international–freight costs and marine–insurance charges based on price quotes it obtained from respective service providers. *Id.* The petitioner provided an affidavit from an individual attesting to the source and validity of the international–freight and marine-insurance charges it used in the calculation of net U.S. price. *Id.* The petitioner estimated harbor–maintenance and merchandise–processing fees using standard U.S. government percentage rates. Id. Such publically available data are sources of information we consider reliable. See, *e.g., Glycine from Japan*, 72 FR at 52353. The petitioner calculated U.S. credit expense using the Federal Reserve's reported average prime rate charged by banks on commercial and industrial loans with duration of less than a year and an estimated credit period consisting of ocean transit time and customary payment terms of 30 days commencing with the arrival of product at the U.S. port of entry. See *Initiation Checklist* at 7–8. The petitioner calculated the U.S. short–term interest rate and the time period in ocean transit using publically available information. *Id.* Such publically available data are sources of information we consider reliable. See, *e.g., Glycine from Japan*, 72 FR at 52353. The petitioner provided an affidavit from an individual attesting to the validity of customary payment terms associated with sales of subject merchandise to the United States. See *Initiation Checklist* at 7–8. Because we obtained no other information that would make us question the reliability of the adjustments to the U.S. price provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the petitioner's calculation of net U.S. price to be reliable. See, *e.g., Glycine from Japan*, 72 FR at 52353.

To calculate normal value, the petitioner relied on its South African subsidiary's actual price to an unaffiliated customer in South Africa for uncovered innerspring units it sold during the POI. The pricing information identified specific terms of sale and payment terms. See *Initiation Checklist* at 7–8. The petitioner provided an affidavit from an individual attesting to the validity of the South African price and associated sale and payment terms that the petitioner used in the calculation of net foreign price. *Id.* The petitioner converted the starting price from Rand to U.S. dollars using the POI–average exchange rate of 0.1388 dollars per Rand. The petitioner calculated the POI–average exchange rate using the daily exchange rates listed on Import Administration's website. *Id.* The petitioner made adjustments to the starting home–market price by deducting home–market credit expense and adding U.S. credit expenses and packing costs. To calculate home–market credit expenses, the petitioner used the payment terms its South African subsidiary extends to its customer, which the petitioner claims are typical payment terms in South Africa. *Id.* The petitioner calculated home–market credit expenses using a payment period typical in South Africa and the average three-month trade–financing interest rate as reported by the South African Reserve Bank for the period of investigation. *Id.* The petitioner provided information indicating that its South African subsidiary ships the foreign like product unpacked and ships subject merchandise roll–packed. The

[3] See The Memorandum to File from Case Analyst entitled ''Less-Than-Fair-Value Investigation on Uncovered Innerspring Units from South Africa - Placement of Certain Import Statistics Data from the USITC Interactive Tariff and Trade DataWeb on the Record of This Investigation,'' dated July 30, 2008.

petitioner calculated U.S. packing costs based on the experience of its South African subsidiary. *Id.*

The petitioner demonstrated the validity of the various assumptions it employed in its calculation of normal value and it used public sources of information such as official home–market and U.S. short–term interest rates and currency exchange rates that we confirmed were accurate. See, *e.g., Chromium from Japan* (where we stated that publicly available information or import statistics do not require further corroboration). Therefore, absent other information on the record disputing the validity of the sources of information or the validity of information supporting the underlying price (and applicable price adjustments) used in the *Petition*, we consider the petitioner's calculation of normal value to be reliable. Accordingly, because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the *Petition* by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation. See, *e.g., Glycine from Japan*, 72 FR at 52353.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a ''rational relationship'' to the respondent's ''commercial practices'' and was, therefore, relevant. In the pre–initiation stage of this investigation, we confirmed that the calculation of the margin in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the margin in the *Petition*, which we determined during our pre–initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for BCM. See, *e.g., Glycine from Japan*.

As described above, the Department attempted to corroborate all of the secondary information from which the margin in the *Petition* was calculated by reviewing all of the data presented and by requesting clarification, attestation, and confirmation from the petitioner and its sources, as needed. Moreover, during the investigation, the Department was provided no other information from any other interested party. The Department also is aware of no other independent sources of information that would enable it to corroborate further the U.S. and home–market prices (and their respective adjustments), as furnished by the petitioner, for this preliminary determination. Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving BCM, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre–initiation stage of this investigation and preliminarily determined to be reliable and relevant to BCM in this investigation, we have corroborated the AFA rate ''to the extent practicable.'' See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, ''pursuant to the to the extent practicable' language...the corroboration requirement itself is not mandatory when not feasible''). See also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada*, 63 FR 59527, 59529 (November 4, 1998) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999)).

Therefore, based on our efforts described above to corroborate the margin in the *Petition*, we find that the estimated margin of 121.39 percent in the *Initiation Notice* has probative value within the meaning of section 776(c) of the Act. Consequently, in selecting AFA with respect to BCM, we have applied the margin rate of 121.39 percent, the estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*.

All–Others Rate

Section 735(c)(5)(A) of the Act provides that ''the estimated all–others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776.'' Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all–others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight–averaging margins other than the zero, de minimis, or total facts–available margins, the Department may use any other reasonable methods. See also *SAA* at 873. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available with which to establish the all–others rate. See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002). Therefore, we are using the preliminary determination margin of 121.39 percent as the all–others rate.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer or Exporter	Margin (percent)
Bedding Component Manufacturers (Pty) Ltd.	121.39
All Others	121.39

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of uncovered innerspring units from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct

CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated above, as follows: (1) the rate for BCM will be 121.39 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 121.39 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the ITC's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs consistent with 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting a verification of BCM because it failed to respond to our questionnaire, as discussed above in the ''Use of Facts Otherwise Available'' section in this notice. Therefore, the deadline for submission of factual information pursuant to 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice. We intend to make our final determination within 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18033 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request under the U.S.-Australia Free Trade Agreement (USAFTA)

July 30, 2008.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request to expand the scope of a modification of the U.S.-Australia Free Trade Agreement (USAFTA) rules of origin for a viscose/polyester blended yarn.

SUMMARY: On February 26, 2008, CITA published in the Federal Register a request for public comment on a commercial availability petition from Gentry Mills that there be a modification to the rules of origin for a certain viscose/polyester blended yarn (73 FR 10227). No public comments were received alleging that viscose rayon fiber could be supplied in commercial quantities in a timely manner. Subsequently, the United States requested consultations with the Government of Australia on its proposal to modify the rule of origin for 5510.90.2000 to allow the use of non-U.S. and non-Australian viscose rayon fiber. In those consultations, the Government of Australia proposed expanding the scope of the U.S. proposal for a modification to the rule of origin. The Government of Australia proposes that the modification to the rule of origin be applied to all yarns of subheading 5510.90 of the Harmonized Tariff Schedule of the United States (HTSUS).

The President may proclaim a modification to the USAFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Australia on the modification. CITA hereby solicits public comments on this proposal to expand the scope of the rule of origin modification to all yarns in HTSUS subheading 5510.90 to allow the use of non-U.S. and non-Australian viscose rayon fiber. Comments must be submitted by September 5, 2008 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 203 (o)(2)(B)(i) of the United States - Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USAFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

Background:

Under the USAFTA, the parties are required to progressively eliminate customs duties on originating goods. See Article 2.3.1. The USAFTA provides that, after consultations, the parties may agree to revise the rules of origin for textile and apparel products to address issues of availability of supply of fibers, yarns, or fabrics in the free trade area. See Article 4.2.5 of the USAFTA. In the consultations, each party must consider data presented by the other party showing substantial production of the good. Substantial production has been shown if domestic producers are capable of supplying commercial quantities of the good in a timely manner. See Article 4.2.4 of the USAFTA.

The USAFTA Implementation Act provides the President with the authority to proclaim modifications to the USAFTA rules of origin as are necessary to implement the agreement after complying with the consultation and layover requirements of Section 104

of the USAFTA Implementation Act. See Section 203(o)(2)(B)(i) of the USAFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On February 1, 2008, the Chairman of CITA received a request from Gentry Mills, alleging that certain viscose rayon fiber, classified in HSTUS subheading 5504.10.0000, cannot be supplied by the domestic or Australian industry in commercial quantities in a timely manner and requesting that CITA consider whether the USAFTA rule of origin for 52% viscose/48% polyester blended yarn, classified under HTSUS subheading 5510.90.2000 should be modified to allow the use of non-U.S. and non-Australian viscose rayon fiber. On February 26, 2008, CITA published in the Federal Register a request for public comment on the proposed modification (73 FR 10227). No public comments were received alleging that viscose rayon fiber could be supplied in commercial quantities in a timely manner. Subsequently, the United States requested consultations with the Government of Australia on Gentry Mills' request. In those consultations, the Government of Australia proposed expanding the scope of the modification of the rule of origin to all yarns under HTSUS subheading 5510.90 to allow the use of non-U.S. and non-Australian viscose rayon fiber.

CITA is soliciting public comments regarding this proposal to expand the scope of the rule of origin modification to all yarns in HTSUS subheading 5510.90 to allow the use of non-U.S. and non-Australian viscose rayon fiber. Comments must be received no later than September 5, 2008. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–18119 Filed 8–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent No. 7,094,417, issued August 22, 2006, entitled ''Fish Hatching Method and Apparatus,'' and U.S. Patent Application No. 11/340,757 filed January 27, 2006 entitled, ''Fish Hatching Method and Apparatus,'' and foreign rights to Diapause Research Foundation, with its principal place of business at 1924 Creighton Road, Pensacola, FL 32504.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–18015 Filed 8–5–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent No. 5,983,557, issued November 16, 1999, entitled ''Lethal Mosquito Breeding Container,'' U.S. Patent No. 6,185,861 issued February 13, 2001, entitled ''Lethal Mosquito Breeding Container,'' U.S. Patent No. 6,389,740, issued May 21, 2002, entitled ''Lethal Mosquito Breeding Container,'' and foreign rights to SpringStar, Inc., with its principal place of business at 17669 128th Place NE., Woodinville, WA 98072.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–18020 Filed 8–5–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Conveyance of Federal Lands at Lake Texoma to the City of Denison, Grayson County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of the Environmental Impact Statement (EIS) is to address alternatives and environmental impacts associated with the conveyance of approximately 900 acres of Federal land at Lake Texoma, Oklahoma and Texas, to the city of Denison, TX.

ADDRESSES: Questions or comments concerning the proposed action should be addressed to Mr. Stephen L. Nolen, Chief, Environmental Analysis and Compliance Branch, Tulsa District, U.S. Army Corps of Engineers, CESWT–PE–E, 1645 S. 101st E. Ave., Tulsa, OK 74128–4629.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Nolen, (918) 669–7660, fax: (918) 669–7546, e-mail: *Stephen.L.Nolen@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Section 3182 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directed the Secretary of the Army (Secretary) to offer to convey, at fair market value to the city of Denison, TX, all right, title and interest of the United States in and to approximately 900 acres of land located in Grayson County, TX. The exact acreage and description of the real property will be determined by a survey that is satisfactory to the Secretary and the property conveyed by quitclaim deed. The real property is currently held in fee by the U.S. Government and managed by the Tulsa District Corps of Engineers as a part of Lake Texoma, a multipurpose reservoir located along the Red River in Oklahoma and Texas. The lands subject to this action are located along the eastern shore of the Little Mineral Arm of Lake Texoma in Grayson County, TX. Upon receipt of title to the property, the City of Denison intends to develop the area, in conjunction with development of adjacent private lands, to include such features as single and multi-family residential housing, hotel and conference facilities, golf course(s), retail and commercial space, office and light industry, public boat ramp(s), beach and yacht clubs, and related commercial development facilities.

Reasonable alternatives to be considered include varying amounts of acreages to be conveyed, alternative deed restrictions on conveyed lands, varying development features and locations, alternative locations and nature of shoreline development, and no action.

Issues to be addressed in the EIS include but are not limited to: (1) Socioeconomic impacts associated with planned development, (2) matters pertaining to shoreline management and potential changes to the Lake Texoma shoreline management plan in the immediate area of the conveyance, (3) potential impacts to cultural and ecological resources, (4) public access and safety, (5) impacts to lake use and recreation, (6) aesthetics, (7) water and wastewater infrastructure, (8) lake water quality, (9) traffic patterns, (10) terrestrial and aquatic fish and wildlife habitat, (11) Federally-listed threatened and endangered species, and (12) cumulative impacts associated with past, current, and reasonably foreseeable future actions at Lake Texoma.

A public scoping meeting for the action will be conducted in early fall, 2008 in Denison, TX. News releases and notices informing the public and local, state, and Federal agencies of the proposed action and date of the public scoping meeting will be published in local newspapers. Comments received as a result of this notice, news releases, and the public scoping meeting will be used to assist the Tulsa District Corps of Engineers in identifying potential impacts to the quality of the human or natural environment. Affected Federal, state, or local agencies, affected Indian tribes, and other interested private organizations and parties are encouraged to participate in the scoping process by forwarding written comments to (see **ADDRESSES**) or attending the scoping meeting.

The draft EIS will be available for public review and comment. While the specific date for release of the draft EIS has yet to be determined, all interested agencies, tribes, organizations and parties expressing an interest in this action will be placed on a mailing list for receipt of the draft EIS. In order to be considered, any comments and suggestions should be forwarded to (see **ADDRESSES**) in accordance with dates specified upon release of the draft EIS.

Dated: July 28, 2008.

Anthony C. Funkhouser,

Colonel, U.S. Army, District Commander.

[FR Doc. E8–18017 Filed 8–5–08; 8:45 am]

BILLING CODE 3710–39–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability Supplemental Draft Environmental Impact Statement for the White River Minimum Flow Reallocation Study, Arkansas

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (USACE), Little Rock District, has prepared a Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed implementation of the White River Minimum Flow, Arkansas. This SDEIS is being made available for a 45-day public comment period.

DATES: Public meetings for receiving comments on the DEIS are tentatively scheduled for August 26, 2008, at Forsyth, MO; and August 27, 2008, at Mountain Home, AR. Specific times and locations will be announced at a later date. Written comments on the SDEIS should be submitted on or before September 22, 2008.

ADDRESSES: Questions or comments concerning the SDEIS should be addressed to Mike Biggs, Project Manager, Planning & Environmental Office, P.O. Box 867, Little Rock, Arkansas 72203–0867.

FOR FURTHER INFORMATION CONTACT: Mike Biggs, telephone 501–324–7342, E-mail: *mike.l.biggs@swl02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Setting: The White River and its tributaries drain a total area of 27,765 square miles (10,620 square miles in Missouri and 17,145 square miles in Arkansas). The White River basin originates in the Boston Mountains of northwest Arkansas (AR), near the city of Fayetteville. Three forks, the White River, the Middle Fork, and the West Fork, come together in Washington County, AR, to form the mainstem of the White River. The White River is first impounded as Lake Sequoyah, a 500-acre impoundment at the junction of the Middle Fork and the White River, near Fayetteville. The White River flows south out of Lake Sequoyah and joins the West Fork before entering Beaver Lake just west of Eureka Springs, AR. The White flows out of Beaver Dam (the first in a series of four hydroelectric dams) northward into Missouri (MO) near the town of Eagle Rock, Barry County. The White then flows eastward where it has been impounded as Table Rock Lake, just below its confluence with the James River near Branson. The White River below Table Rock Lake is again impounded by Powersite Dam near Forsyth, MO, and forms Lake Taneycomo. The river flow takes a southerly turn and flows back into Arkansas where it has again been impounded by Bull Shoals Dam near Cotter, Marion County. The White River flows towards the southeast from Bull Shoals Dam. The White river exits the

Ozark Plateau and enters the Mississippi Alluvial Plain near Newport, AR. The White River continues to flow in a southerly direction from where it enters the delta until its confluence with the Mississippi River near Montgomery Point, AR, some 720 miles from its origin.

The original focus of the White River Minimum Flow Reallocation Study was to look at the five USACE reservoirs and associated tailwaters (TW). The TW below Beaver is considered as White River Mile (WRM) 609.0–604.5, Bull Shoals WRM 418.6–329.1, Table Rock WRM 528.7–506.0, below Norfork, North Fork River mile (NRM) 4.75 to 0.0, and the Buffalo National River enters at WRM 387.8 and the Norfork enters at WRM 376.4. The Greers Ferry TW Little Red River mile (LRRM) 78.7–48.7 is below Greers Ferry dam.

Background: The Department of the Army, Corps of Engineers, published a Notice of Intent in the **Federal Register** (65 FR 51299), August 23, 2000, stating its intent to prepare an EIS for a proposed water storage reallocation for the 5 White River lakes.

The Corps was directed to complete a study and report to determine if minimum flow reallocations adversely affect other authorized purposes under Section 374 of the Water Resources Development Act (WRDA) 1999 and Section 304 of WRDA 2000.

Under the original authorization, water levels were managed primarily for flood control and hydroelectric power generation at four of the White River Reservoirs as well as water supply at Beaver Lake. WRDA 1999 and 2000 provided minimum flows necessary to sustain tailwater trout fisheries by reallocating the following recommended amounts of project storage: Beaver Lake, 1.5 feet; Table Rock Lake, 2 feet; Bull Shoals Lake, 5 feet; Norfork Lake, 3.5 feet; and Greers Ferry Lake, 3 feet. The Act further stated that no funds may be obligated to carry out work on the modification under subsection (a) until the Chief of Engineers, through completion of a final report, determines that the work is technically sound, environmentally acceptable, and economically justified.

Subsequent to the completion of the Draft Environmental Impact Statement (DEIS), Section 132 of the FY 2006 Energy and Water Resources Development Act (Pub. L. 109–103) authorized the implementation of plans BS–3 at Bull Shoals and NF–7 at Norfork lakes, as described in the Reallocation Report, at full Federal expense in accordance with section 906(e) of WRDA 86. Section 132 did not authorize implementation of Minimum Flows at Beaver, Norfork, and Greers Ferry Lakes. Also, Section 132 repealed the previous project authorities in WRDA 99 and WRDA 00, resulting in a new project.

The SDEIS analyzed the impacts to the five White River Reservoirs, however; emphasis is placed on Bull Shoals and Norfork Lakes due to the changes made with the FY 2006 Energy and Water Resources Development Act (Pub. L. 109–103). Previous study efforts evaluating the other lakes are included in the interest of full disclosure.

Proposed Action and Alternatives: WRDA 1999 and 2000 authorized the Little Rock District Corps of Engineers to reallocate specific ''feet'' of storage from each of the five White River reservoirs. WRDA did not specify which storage zone to take the ''feet'' of storage. Currently the lakes are divided into two zones, flood pool and conservation pool. The volume of storage provided by reallocating ''feet'' of storage from conservation pool is less than the volume of storage provided by the same ''feet'' of storage from the flood pool.

The White River Reallocation Study completed in 2004 and the DEIS evaluated three reallocation plans at each reservoir, (1) Reallocation from the flood pool, (2) reallocation from the conservation pool and, (3) splitting the reallocation 50:50 from each pool. The study also looked at different methods of water release such as through existing station service units and siphons, new station service units, through the main turbines, or through siphons only.

After the submittal of the 2004 reallocation study, authorization was included in the FY 2006 Energy and Water Resources Development Act (EWRDA) that selected alternatives BS3 (reallocation at Bull Shoals Lake from the flood pool released through an existing hydropower main turbine) and NF7 (reallocation from a 50:50 split between the flood pool and the conservation pool with releases through existing station service units and siphons). These alternatives were designated the ''preferred alternative'' and as such comply with Congressional directives and provide compensation to the hydropower users and affected facilities.

SDEIS Availability: The SDEIS will be available for public review at the following locations:

U.S. Army Corps of Engineers, 700 West Capital Avenue, ATTN: CESWL–PE, Room 7500, Little Rock, AR 72203.

U.S. Army Corps of Engineers, Beaver Lake Project Office, 2260 N. 2nd Street, Rogers, AR 72756.

U.S. Army Corps of Engineers, Table Rock Lake Project Office, 3530 U.S. Highway 165, Branson, MO 65616.

U.S. Army Corps of Engineers, Mountain Home Project Office, 324 W. 7th Street, Mountain Home, AR 72653.

U.S. Army Corps of Engineers, Greers Ferry Project Office, 700 Heber Springs Road North, Heber Springs, AR 72543.

City of Forsyth Public Library, 162 Main St, Forsyth, MO 65653.

Baxter County, Main Library, 424 West 7th Street, Mountain Home, AR 72653.

Baxter County, Gassville Branch, 6469 Highway 62 SW., Gassville, AR.

Taney Hills Community Library, 200 S 4th St, Branson, MO 65616.

Central Arkansas Main Library, 100 Rock Street, Little Rock, AR 72201.

Central Arkansas Roosevelt Thompson Library, 38 Rahling Circle, Little Rock, AR 72223.

Commenting: Comments received in response to this SDEIS, including names and addresses of those who comment will be considered part of the public record. Comments submitted anonymously will also be accepted and considered. Pursuant to Title 7 of the CFR 1.27(d), any person may request that the Corps withhold a submission from the public record if he or she can demonstrate that the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the Corps will return the submission with notification that the comments may be resubmitted either with or without the commentor's name and address.

Affected local, State, or Federal agencies, affected American Indian tribes, and other interested private organizations and parties may participate in the review process by forwarding written comments to the address given previously or by attending the public meetings.

Donald E. Jackson, Jr.,

Colonel, U.S. Army, District Commander.

[FR Doc. E8–18018 Filed 8–5–08; 8:45 am]

BILLING CODE 3710–57–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Expansion of an Operating Open Pit Taconite Mine and Expansion of an Operating Taconite Ore Processing Facility Proposed by U.S. Steel—Minnesota Ore Operations Near Keewatin in Itasca County and St. Louis County, MN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: U.S. Steel—Minnesota Ore Operations (U.S. Steel) has applied to the St. Paul District, Corps of Engineers (Corps) for a Clean Water Act Section 404 permit to discharge fill material into jurisdictional wetlands to facilitate the expansion of an operating open pit taconite mine and expansion of an operating taconite ore processing facility near Keewatin in Itasca County and St. Louis County, MN. Tailings would be discharged into an existing, operating tailings basin. The proposed project is known as the Keetac Expansion Project. Iron ore mining and taconite pellet production have been on-going at the Keetac site since 1967, when the original Phase I taconite processing plant began operation. In 1977, the Phase II expansion added a second grate-kiln pellet line. The Phase I facility was idled in December 1980, leaving the Phase II facility as the only operating pellet production line. U.S. Steel now proposes to increase the capacity at the Keetac facility by restarting the Phase I line and upgrading the mining, concentrating, and agglomerating processes. The restart would involve the installation of energy-efficient technologies in addition to new emission controls. The expansion would increase the project impact area by approximately 1,272 acres to a total of approximately 12,864 acres. The project would continue to operate 24 hours per day; 365 days per year. Taconite pellet production output would increase by 3.6 million tons to a total output of 9.6 million tons per year. The mining process would require the construction of overburden, waste rock, and lean ore stockpiles adjacent to the open pit mine. There is currently adequate ore crushing capacity for the proposed expansion. The existing tailings basin would be expanded slightly in order to reinforce the dikes so that the height of the tailings can be increased. The currently permitted mine could also be used to provide ore for the proposed expanded operation, but this would reduce the life of the mine and therefore an expansion of the mine is proposed to maintain twenty-five years of permitted capacity.

The project would require the discharge of fill material into approximately 620 acres of wetlands. While some of the wetlands may be isolated, the majority of the wetlands are abutting or adjacent to an unnamed tributary to Welcome Creek, which is a tributary to O'Brien Creek, which is a tributary to the Swan River, which is a tributary to the Mississippi River, which is a navigable water of the United States. U.S. Steel proposes to utilize approximately 395 acres of wetlands that have been restored and are being monitored adjacent to the existing tailings basin to compensate for the first five years of lost wetland functions and values that would be caused by the proposed project. Those restored wetlands have been identified as being suitable for wetland banking. In addition, U.S. Steel will submit a compensatory wetland mitigation plan to identify compensation for the remainder of the proposed wetland impacts. The discharge of dredged or fill material into waters of the United States requires a permit issued by the Corps under Section 404 of the Clean Water Act. The Final Environmental Impact Statement (FEIS) will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

ADDRESSES: Questions concerning the Draft Environmental Impact Statement (DEIS) can be addressed to Mr. Jon K. Ahlness, Regulatory Branch, by letter at U.S. Army Corps of Engineers, 190 Fifth Street East, Suite 401, St. Paul, MN 55101–1638, by telephone or by e-mail at *jon.k.ahlness@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. Jon K. Ahlness, (651) 290–5381.

SUPPLEMENTARY INFORMATION: The Corps and the State of Minnesota will jointly prepare the DEIS. The Corps is the lead federal agency and the Minnesota Department of Natural Resources (MnDNR) is the lead state agency. To determine issues to be addressed in the DEIS, a public scoping process will be conducted. The MnDNR, with assistance from the Corps, will prepare and release to the public a Draft Scoping Decision Document (Draft SDD) and a Scoping Environmental Assessment Worksheet (SEAW). Federal, state, and local agencies; the general public; interested private organizations and parties; and affected Native American tribes will have 30 days to provide comments on those two documents. During the 30-day public comment period, the Corps and the MnDNR will jointly conduct a public scoping meeting. The meeting will be held on Wednesday, October 1, 2008, from 6:30 p.m. to 9 p.m. at the Nashwauk-Keewatin High School gymnasium at 400 2nd Street, Nashwauk, MN. The MnDNR, with assistance from the Corps, will prepare and release to the public a Final SDD based upon the comments received during the scoping process. Significant issues and resources identified in the Final SDD will be addressed in the DEIS.

The DEIS will assess impacts of the proposed action and reasonable alternatives, identify and evaluate mitigation alternatives, and discuss potential environmental monitoring. Anyone who has an interest in participating in the development of the DEIS is invited to contact the St. Paul District, Corps of Engineers. Major issues identified to date for discussion in the DEIS are the impacts of the proposed project on:

1. Fish, wildlife, and ecologically sensitive resources.
2. Water resources, including: surface and groundwater resources; waters of the U.S., including wetlands; and receiving stream geomorphology.
3. Water quality, including: surface water runoff; and storm water management.
4. Air quality.
5. Cumulative impacts, including: Wildlife habitat loss/fragmentation and habitat corridor obstruction/landscape barriers; wetlands in the Swan River watershed; air quality in federally-administered Class I areas; and water quality and flow in Swan Lake and the Swan River.

Additional issues of interest may be identified through the public scoping process. We anticipate that the DEIS will be available to the public in April of 2009.

Issuing a permit for the expansion of an open pit taconite mine and expansion of a taconite ore processing facility is considered to be a major Federal action that may have a significant impact on the quality of the human environment. The project: (1) Would have a significant adverse effect on wetlands (which are special aquatic sites), and (2) has the potential to significantly affect water quality, groundwater, air quality, fish, and wildlife. Our environmental review will be conducted to meet the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council of

Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, and other applicable laws and regulations.

Dated: July 30, 2008.

Jon L. Christensen,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. E8–18019 Filed 8–5–08; 8:45 am]

BILLING CODE 3710–CY–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to OMB for extension under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection package requests a three-year extension of, OMB Control Number 1910–0600, entitled ''Industrial Relations.'' This information collection package covers information necessary for collection of Human Resource information from major Department contractors for contract management, administration, and cost control.

DATES: Comments regarding this collection must be received on or before September 5, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to

Robert M. Myers, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1615, 202–287–1584, or by fax at 202–287–1656 or by e-mail at *robert.myers@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Myers at the address listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1910–0600;

(2) *Information Collection Request Title:* Industrial Relations;

(3) *Purpose:* This information is required for management oversight for the Department of Energy's Facilities Management Contractors and to ensure that the programmatic and administrative management requirements of the contract are managed efficiently and effectively;

(4) *Estimated Number of Respondents:* 316;

(5) *Estimated Total Burden Hours:* 8,140;

(6) *Number of Collections:* The information collection request contains 8 information and/or recordkeeping requirements.

Statutory Authority: The basic authority for collection of this data is the statute establishing the Department of Energy (''Department of Energy Organization Act,'' Public Law 95–91, of Aug 4, 1977, 42 U.S.C. 7101 *et seq.*). It vests the Secretary of Energy with the executive direction and management function, authority, and responsibilities for the Department, including contract management. The provisions of 42 U.S.C. 7254 state that ''The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.''

Issued in Washington, DC on July 30, 2008.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management.

[FR Doc. E8–18034 Filed 8–5–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for Office of Management and Budget review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will be used to assess the organizational climate and Safety Conscious Work Environment as part of the Office of Civilian Radioactive Waste Management's desire to continuously improve performance and comply with the employee protection requirements of 10 CFR 63.9, *Employee protection*, and Section 211 of the *Energy Reorganization Act of 1974*, as amended (42 U.S.C. 5851).

DATES: Comments regarding this collection must be received on or before September 5, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to Mark Van Der Puy, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, M/S 523 1551 Hillshire Drive, Suite A, Las Vegas, NV 89134.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Van Der Puy, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, M/S 523 1551 Hillshire Drive, Suite A, Las Vegas, NV 89134. Or telephone at: 1–800–225–6972.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* {''New''}; (2) *Information Collection Request Title:* Organization Climate and Safety Conscious Work Environment; (3) *Type of Request:* New collection; (4) *Purpose:* The proposed collection will be used to assess the organizational climate and Safety Conscious Work Environment as part of the Office of Civilian Radioactive Waste Management's (OCRWM) desire to continuously improve performance and comply with the employee protection requirements of 10 CFR 63.9, *Employee protection*, and Section 211 of the *Energy Reorganization Act of 1974,* as amended (42 U.S.C. 5851; (5) *Type of Respondents:* Federal, national laboratory, and other contractor employees supporting the OCRWM mission; (6) *Estimated Number of Respondents:* 1,750; and (7) *Estimated Number of Burden Hours:* 1,000.

Statutory Authority: 10 CFR 63.9, *Employee protection*, and Section 211 of the *Energy Reorganization Act of 1974,* as amended (42 U.S.C. 5851).

Issued in Washington, DC, on July 31, 2008.

Alan B. Brownstein,

Chief Operating Officer, Office of Civilian Radioactive Waste Management.

[FR Doc. E8–18037 Filed 8–5–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; comment request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the form OE–417, ''Electric Emergency Incident and Disturbance Report'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)). The OE–417 data is used in EIA's *Electric Power Monthly.*

DATES: Comments must be filed by September 5, 2008. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Nathan_J._Frey@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7345. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form OE–417, ''Electric Emergency Incident and Disturbance Report.''

2. Office of Electricity Delivery and Energy Reliability/OE.

3. OMB Number 1901–0288.

4. Revision and three-year extension.

5. Mandatory.

6. Form OE–417 collects information on electric emergency incidents and disturbances for DOE's use in fulfilling its overall national security and other energy management responsibilities. The information will also be used by DOE for analytical purposes. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority functions, will be required to supply information when an incident or disturbance meets a reporting threshold.

Since the pre-survey consultation notice was published, **Federal Register** notice 73 FR 15498, the proposal for an ''N–3 contingency event'' has been withdrawn and the proposed criterion will not be added to the form.

7. Business or other for-profit; State, local or tribal government.

8. 3,919 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 30, 2008.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E8–18038 Filed 8–5–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06–22–003]

Mandatory Reliability Standards for Critical Infrastructure Protection; Notice of Filing

July 31, 2008.

Take notice that on July 30, 2008, The North American Electric Reliability Corporation filed a supplemental filing to include Violation Risk Factors for nine requirements or sub-requirements in the Critical Infrastructure Protection Reliability Standards CIP–002–1 through CIP–009–1 that have been approved by the Commission, pursuant to the directives in paragraphs 751 and 757 of the Commission's January 18, 2008, Order No. 706.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18010 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 30, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–114–000.

Applicants: GSC Acquisition Company, GSCAC Holdings I LLC, GSCAC Holdings II LLC, GSCAC Merger Sub LLC, Complete Energy Holdings, LLC, LSP Energy Limited Partnership, La Paloma Generating Company, LLC.

Description: Joint Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act of GSC Acquisition Company.

Filed Date: 07/25/2008.

Accession Number: 20080725–5041.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–022.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Substitute First Revised Sheet.

Filed Date: 07/24/2008.

Accession Number: 20080725–0118.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER98–4400–010.

Applicants: Pittsfield Generating Company, L.P.

Description: Pittsfield Generating Company, LP submits Appendix as a revised table of all generation assets controlled by it and its affiliates grouped by balancing authority area.

Filed Date: 07/23/2008.

Accession Number: 20080725–0076.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER01–1526–010.

Applicants: Newington Energy, L.L.C.

Description: Newington Energy, LLC submits a non-material change in status.

Filed Date: 07/23/2008.

Accession Number: 20080728–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER01–3001–021; ER03–647–012.

Applicants: New York Independent System Operator, Inc.

Description: Compliance Filing of The New York Independent System Operator, Inc.

Filed Date: 07/25/2008.

Accession Number: 20080725–5083.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER02–2559–008; ER02–669–008; ER00–2391–009; ER00–3068–008; ER98–3511–012; ER02–1903–009; ER99–2917–010; ER98–3566–015; ER98–3563–012; ER98–3564–013; ER02–2120–006; ER05–714–003; ER03–623–008; ER04–290–004; ER04–187–006; ER01–1710–011; ER01–2139–012; ER02–2166–008; ER05–236–006; ER02–1838–008; ER03–1375–005.

Applicants: Backbone Mountain Windpower LLC; Bayswater Peaking Facility, LLC; Doswell Limited Partnership; FPL Energy Cape, LLC; FPL Energy Maine Hydro, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy MH 50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPLE Rhode Island State Energy, L.P; Gexa Energy LLC; Jamaica Bay Peaking Facility, LLC; Meyersdale Windpower, LLC; Badger Windpower, LLC; North Jersey Energy Associates, a L.P.; Mill Run Windpower, LLC; Somerset Windpower, LLC; Pennsylvania Windfarms, Inc.; Northeast Energy Associates, LP; FPL Energy Seabrook, LLC; Waymart Wind Farm L.P.;

Description: FPLE Companies submits revised tariff sheets in compliance with the two orders.

Filed Date: 07/24/2008.

Accession Number: 20080725–0116.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER06–1331–003; ER01–2543–005; ER01–2544–005; ER01–2545–005; ER01–2546–005; ER01–2547–005; ER08–110–003.

Applicants: CalPeak Power LLC; CalPeak Power-Panoche LLC; CalPeak Power-Vaca Dixon LLC; CalPeak Power-El Cajon LLC; CalPeak Power-Enterprise LLC; CalPeak Power-Border LLC; Starwood Power-Midway, LLC.

Description: The California Generators submit a non-material change in status in compliance with Order 652.

Filed Date: 07/24/2008.

Accession Number: 20080728–0044.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER01–1071–011; ER06–9-006; ER05–1281–006; ER03–34–010; ER06–1261–005; ER03–1104–007; ER03–1105–007; ER06–1392–004; ER07–904–002; ER07–1157–003; ER07–174–005; ER07–875–002.

Applicants: Badger Windpower, LLC, FPL Energy Burleigh County Wind, LLC; FPL Energy Duane Arnold, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Mower County, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind II, LLC; FPL Energy Oliver Wind, LLC; FPL ENERGY POINT BEACH, LLC; Logan Wind Energy LLC; Osceola Windpower, LLC; Peetz Table Wind Energy, LLC.

Description: FPLE Companies submits notice of change in status and Substitute First Revised Sheet 3 in compliance with FERC's Order 697 and 697–A.

Filed Date: 07/24/2008.

Accession Number: 20080728–0138.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER02–1785–017.

Applicants: Thermo Cogeneration Partnership LP.

Description: Thermo Cogeneration Partnership, LP submits a notice of non-material change in status and revised tariff in compliance with Order 687–A.

Filed Date: 7/24/2008.

Accession Number: 20080728–0042.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER02–1903–008.

Applicants: FPL Energy Marcus Hook, L.P.

Description: FPL Energy Marcus Hook, LP requests that the Commission accept the 6/6/08 change in status and tariff changes in conjunction etc.

Filed Date: 07/24/2008.

Accession Number: 20080725–0119.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER04–230–037.

Applicants: New York Independent System Operator, Inc.

Description: The New York Independent System Operator, Inc submits Second Revised Sheet 424 et al. to FERC Electric Tariff, Original Volume 2.

Filed Date: 07/24/2008.

Accession Number: 20080724–0030.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER05–1178–013; ER05–1191–013.

Applicants: Gila River Power, L.P.; Union Power Partners, L.P.

Description: Gila River Power, LP *et al.* submits Substitute First Revised Sheet 1 *et al.* to FERC Electric Tariff, First Revised Volume 1 in compliance with Order 697–A.

Filed Date: 07/23/2008.

Accession Number: 20080724–0168.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 4, 2008.

Docket Numbers: ER06–738–011; ER06–739–011.

Applicants: Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, L.L.C.

Description: Cogen Technologies Linden Venture LP *et al.* submits First Revised Volume 1 to the aforementioned tariffs.

Filed Date: 07/24/2008.

Accession Number: 20080725–0117.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER06–739–016; ER06–738–016; ER03–983–013; ER07–501–014; ER02–537–018; ER07–758–010; ER08–649–006.

Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Co. LLC; Shady Hills Power Company; Birchwood Power Partners, L.P.; Inland Empire Energy Center, L.L.C.; EFS Parlin Holdings, LLC.

Description: Notice of Non-Material Change in Status of General Electric Companies.

Filed Date: 07/28/2008.

Accession Number: 20080728–5109.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER07–501–012; ER98–1767–012; ER99–1695–013; ER99–2984–011.

Applicants: Birchwood Power Partners; Tenaska Frontier Parters, Ltd.; Elwood Energy, LLC; Green County Energy, LLC.

Description: J-Power North America Holdings, Ltd requests that FERC accept its notice of non-material change in status, to be effective as of 9/18/07.

Filed Date: 07/23/2008.

Accession Number: 20080725–0071.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER07–1372–010.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits proposed clarifications and revisions to the Open Access Transmission.

Filed Date: 07/23/2008.

Accession Number: 20080725–0070.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–54–005.

Applicants: ISO New England Inc.

Description: The Participating Transmission Owners Administrative Committee submits amendments to the ISO Tariff to comply with FERC's Order 890.

Filed Date: 07/25/2008.

Accession Number: 20080728–0034.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–371–002.

Applicants: Cooperative Energy Incorporated.

Description: Cooperative Energy Incorporated submits its FERC Rate Schedule 1, Substitute Original Sheet 1 attached as Appendix A to comply with Order 697.

Filed Date: 07/24/2008.

Accession Number: 20080725–0120.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER08–506–000; ER08–506–001.

Applicants: Southern Company Services.

Description: Motion to withdraw filing and terminate proceeding of Southern Company Services, Inc.

Filed Date: 07/25/2008.

Accession Number: 20080728–0137.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–876–001; ER08–1006–001; ER08–1078–001; ER08–1079–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc responds to FERC's 6/23/08 data request.

Filed Date: 07/23/2008.

Accession Number: 20080725–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–1025–002.

Applicants: The Connecticut Light and Power Company.

Description: Northeast Utilities Service Company submits an Interconnection Agreement that contains the updated versions of Schedules D and E.

Filed Date: 07/25/2008.

Accession Number: 20080728–0046.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1164–001.

Applicants: Escanaba Paper Co.

Description: Escanaba Paper Co. submits clarification on future PURPA sales and revised tariff sheets.

Filed Date: 07/24/2008.

Accession Number: 20080728–0043.

Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER08–1172–001.

Applicants: Grand Ridge Energy LLC.

Description: Grand Ridge Energy LLC submits a supplement to the market-based rate application filed on 6/30/08.

Filed Date: 07/23/2008.

Accession Number: 20080725–0069.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–1286–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Revised Rate Schedule 114 with the City and County of San Francisco.

Filed Date: 07/22/2008.

Accession Number: 20080723–0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–1287–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits an executed Agreement for Dynamic Scheduling of the Apex Generating Station between Nevada Power Company and Las Vegas Power Company.

Filed Date: 07/22/2008.

Accession Number: 20080723–0032.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–1288–000.

Applicants: Wapsipinicon Wind Project LLC.

Description: Wapsipinicon Wind Project, LLC submits its market-based rate application.

Filed Date: 07/22/2008.

Accession Number: 20080725–0073.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–1293–000.

Applicants: Crystal Lake Wind, LLC.

Description: Crystal Lake Wind, LLC submit its application for Market-based rates.

Filed Date: 07/25/2008.

Accession Number: 20080729–0137.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1296–000.

Applicants: Osceola Windpower II, LLC.

Description: Osceola Windpower II, LLC's CD containing the FPL MISO Wind Workpapers to their request for authorization to sell energy and capacity at market-based rates and waiver of the 60-day notice requirement.

Filed Date: 07/25/2008.

Accession Number: 20080725–4005.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1297–000.

Applicants: Ashtabula Wind, LLC.

Description: Ashtabula Wind LLC's CD containing the FPL MISO Wind Workpapers to their application for market based rate authority.

Filed Date: 07/25/2008.

Accession Number: 20080725–4004.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1301–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement.

Filed Date: 07/24/2008.
Accession Number: 20080728–0041.
Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER08–1302–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an Amended and Restated Generator Interconnection Agreement.
Filed Date: 07/24/2008.
Accession Number: 20080728–0040.
Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: ER08–1303–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc on behalf of the Southern Companies submits a rollover network integration transmission service agreement.
Filed Date: 07/25/2008.
Accession Number: 20080728–0033.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1304–000.
Applicants: Northeast Utilities Service Company.
Description: Public Service Co of New Hampshire submits the executed Design, Engineering and Procurement Agreement for Noble Granite Reliable Wind Park.
Filed Date: 07/25/2008.
Accession Number: 20080728–0032.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1305–000.
Applicants: Northeast Utilities Service Company.
Description: Public Service Co. of New Hampshire submits the executed Design, Engineering and Procurement Agreement for Indeck Energy Alexandria, LLC.
Filed Date: 07/25/2008.
Accession Number: 20080728–0031.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1306–000.
Applicants: Southwest Power Pool Inc.
Description: Southwest Power Pool Inc. submits an executed Service Agreement for Network Transmission Service etc.
Filed Date: 07/25/2008.
Accession Number: 20080729–0001.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1307–000.
Applicants: Southwest Power Pool.
Description: Southwest Power Pool Inc. submits an executed Service Agreement for Network Integration Transmission Service with Southwestern Public Service Company as Network etc.
Filed Date: 07/25/2008.
Accession Number: 20080729–0003.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–37–002.
Applicants: E. ON U.S. LLC.
Description: E.ON U.S. LLC on behalf of Louisville Gas and Electric Co *et al.* submits revisions to the Open Access Transmission Tariff in compliance with Order 890.
Filed Date: 07/24/2008.
Accession Number: 20080728–0045.
Comment Date: 5 p.m. Eastern Time on Thursday, August 14, 2008.

Docket Numbers: OA08–22–001.
Applicants: Florida Power Corporation.
Description: Compliance Filing re rollover rights of Florida Power Corp. d/b/a Progress Energy Florida, Inc.
Filed Date: 07/25/2008.
Accession Number: 20080725–5033.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–18041 Filed 8–5–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG08–53–000, etc.]

Wessington Wind I, LLC, et al.; Notice of Effectiveness of Exempt Wholesale Generator Status

July 31, 2008.

	Docket No.
Wessington Wind I, LLC	EG08–53–000
Airtricity Pyron Wind Farm, LLC	EG08–54–000
Airtricity Indale Wind Farm, LLC	EG08–55–000
Airtricity Panther Creek Wind Farm, LLC	EG08–56–000
Wolf Ridge Wind, LLC	EG08–57–000
West Valley Leasing Company LLC	EG08–58–000
Winnebago Windpower LLC	EG08–59–000

	Docket No.
Sheldon Energy LLC	EG08–60–000
Gunsight Mountain Wind Energy, LLC	EG08–61–000
Willow Creek Energy, LLC	EG08–62–000
Valencia Power, LLC	EG08–64–000
CER Generation II, LLC	EG08–65–000
Tvolumne Wind Project, LLC	EG08–66–000
CPV Maryland, LLC	EG08–67–000
Montgomery L'Energia Power Partners LP	EG08–68–000
Silver Star I Power Partners, LLC	EG08–69–000

Notice of Effectiveness of Exempt Wholesale Generator Status

Take notice that during the month of June 2008, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18006 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4468–001]

Puget Sound Energy, Inc; Notice of Filing

July 31, 2008.

Take notice that on April 30, 2008, Puget Sound Energy, Inc. filed a voluntary refund report.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on August 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18008 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2329–007]

Central Vermont Public Service Corporation; Notice of Filing

July 31, 2008.

Take notice that on June 19, 2008, Central Vermont Public Service Corporation filed an updated market power analysis (Exh. CV–2 at 102), and Appendix B list of generation and transmission assets (Exh. CV–4), and revisions to its market-based rate power sales tariff, pursuant to Commission Order No. 697.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18009 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1175–001]

Niagara Mohawk Power Corporation; Notice of Filing

July 31, 2008.

Take notice that on July 18, 2008, Niagara Mohawk Power Corporation filed an amendment to its June 26, 2008 filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Comment Date: 5 p.m. Eastern Time on August 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18007 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–99–000, etc.]

Regional Transmission Organizations, et al.; Notice

July 31, 2008.

	Docket No.
Regional Transmission Organizations	RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003.
Bangor Hydro-Electric Company, *et al.*	RT01–86–000, RT01–86–001 and RT01–86–002.
New York Independent System Operator, Inc., *et al.*	RT01–95–000, RT01–95–001 and RT01–95–002.
PJM Interconnection, L.L.C., *et al.*	RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003.
PJM Interconnection, L.L.C.	RT01–98–000.
ISO New England, Inc. New York Independent System Operator, Inc.	RT02–3–000.

Notice

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites information updating their progress on the resolution of RTO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure Docket No. RT01–99–000, *et al.*

(18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18005 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–5161–000]

Western Area Power Administration; Notice of Filing

July 31, 2008.

Take notice that on July 16, 2008, the Deputy Secretary of the Department of Energy approved and confirmed Rate Order No. WAPA–136 on an interim basis, effective August 1, 2008, and Rate Schedule SNF–7, for a non-firm power formula rate from the Washoe Project, Stampede Division and submitted for conformation and approval on a final basis, under the authority vested in the Commission by Delegation Order No. 00–037.00, Rate Order No. WAPA–136 and Rate Schedule SNF–7, effective August 31, 2008, and ending July 31, 2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18011 Filed 8–5–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8376–5]

Access to Confidential Business Information by Computer Sciences Corporation's Identified Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized a subcontractor, of its prime contractor Computer Sciences Corporation (CSC) of Chantilly, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than August 13, 2008.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *scott.sherlock@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, contractor CSC of 15000 Conference Center Dr., Chantilly, VA, and its subcontractor KForce of 12010 Sunset Hills Rd., Suite 200, Reston, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites, located in Washington, DC. CSC and its subcontractor will also assist in maintaining and operating the EPA CBI computer facilities located in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, CSC and its subcontractor will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CSC and its subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CSC and its subcontractor access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Research Triangle Park, NC facilities.

CSC and its subcontractor will be authorized access to TSCA CBI at EPA Headquarters and the Research Triangle Park, NC facilities under the EPA *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until September 30, 2008. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CSC and its subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential Business Information.

Dated:July 28, 2008.

Brion Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–17933 Filed 8–5–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0541; FRL–8374–8]

Cancellation of Pesticides for Non-Payment of Year 2008 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for 221 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 221 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: John Jamula, Office of Pesticide Programs (7504P), Environmental Protection

Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0541. Publicly available docket materials are available either in the electronic docket at*http://regulations.gov* or in hard copy at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m to 4 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. Introduction

Section 4(i)(5) of FIFRA as amended in October 1988 (Pub. L. 100–December, 1991 (Pub. L. 102–237), and again in August 1996 (Pub. L. 104–170) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when the Administrator determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 164 minor agricultural use registrations at the request of the registrants.

In fiscal year 2008, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Renewal Act (PRIRA) was passed by Congress in October 2007. PRIRA authorized the Agency to collect $22 million in maintenance fees in fiscal year 2008. In late December 2007, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,116 section 3 registrations, or about 96% of the registrations on file in December. Fees have been paid for about 2,212 section 24(c) registrations, or about 88% of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 191 section 3 registrations and about 30 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2009, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled, and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the section 24(c) registrations, and Table 2 lists all of the section 3 registrations which were canceled for non-payment of the 2008 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN No.	Product Name
067690 AZ–03–0003	Talus Insect Growth Regulator
059623 CA–02–0018	GF-120 NF Naturalyte Fruit Fly Bait
071962 CA–03–0011	Agri-Fos Systemic Fungicide
059623 CA–07–0008	Spinosad Gf-120 Nf Naturalyte Fruit Fly Bait
011649 CA–78–0131	Avitrol Mixed Grains
011649 CA–78–0132	Avitrol Mixed Grains
060255 CA–85–0006	Thuricide (r) 32lv

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN No.	Product Name
060256 CA–97–0011	Temik Brand 15g Aldicarb Pesticide
071512 ID–06–0011	Ranman 400SC
055467 KS–04–0010	Weed Pro Atrazine 4L Herbicide
071512 ME–06–0001	Ranman 400SC
071512 MN–06–0002	Ranman 400SC
004787 MS–02–0006	Glyfos AU Herbicide
075095 MS–04–0012	Grandslam 4XS Herbicide
055467 MS–05–0013	Buccaneer Plus Glyphosate Herbicide
075338 MT–07–0003	CFT Legumine
056907 NC–95–0002	8.5% Ethylene Oxide & Carbon Dioxide Sterilizing Gas
071512 ND–06–0001	Ranman 400SC
008996 NV–06–0001	Chlorine Liquified Gas Under Pressure
069691 OH–06–0001	Mushroom Supplement Preservative
067751 OR–94–0001	Select 2ec Herbicide
075451 PR–02–0001	Avitrol Powder Mix
068222 SC–94–0006	Bayleton 50% Wettable Powder
013808 SD–05–0001	Zinc Phosphide Prairie Dog Bait
067690 TX–04–0021	Talusa Insect Growth Regulator
004564 TX–07–0006	Tolcide PS200 (or Bt-20)
000550 UT–01–0004	Masterline Kontrol 4-4 for Mosquitoes, Flies and Gnats
004787 WA–00–0019	Declare
073637 WA–01–0022	Ro-Neet 6-E Selective Herbicide
011678 WA–03–0026	Thionex 50w Insecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration No.	Product Name
000099–00024	Watkins Pine Oil Disinfectant
000358–00105	Nott Chew-Not
001124–00030	Sentinel
001190–00024	Pepcocide Odorless Disinfectant and Sanitizer
001475–00040	Enoz No Clinging Odor Moth Cake
001757–00066	Biosperse 240
001757–00099	Biosperse 3202
002398–00007	Pronto Lice, Tick and Flea Killing Spray
002686–00008	Multiquat No. 455
002686–00009	Sodium Chlorite Solution 25%
003008–00085	NW 200

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration No.	Product Name
003276–00021	Al - San
003468–00009	Supreme Oil Insecticide
003536–00004	H.K Mouse & Rat Bait
004564–00014	Tolcide MW-10
004787–00038	Cyren RT
004787–00044	Atrapa 5E
005042–00031	RCO Mole Bait
006390–00017	Vikol Frm Mildew Retardant
006552–00014	Kay Dee Rabon Block 10 with Rabon Oral Larvacide
007173–00232	Maki Mini Paraffin Blocks
007173–00248	Maki Mini Paraffin Block II
007173–00249	Maki Paraffin Block II
007211–00010	Pheneen Solution
007946–00019	Abacide
008002–00001	Liquinox Start
008325–00018	Heavy Duty Cleaner & Disinfectant
008576–00012	Lynx Sanitizer-Pro
008576–00013	Lynx Sanitizer
008654–00009	Solucide-02
009367–00039	10% Sanitizer
009630–00008	M-Gard W112
009630–00031	M-Gard S510
009647–00036	Myco Sanitizer 64
009754–00004	Weed-Go Non-Select Weed and Grass Killer
009754–00006	Sunbugger #6 Spray Concentrate
010292–00029	STA-PUT 1500 Weed Killer
010807–00106	Quat-22
011623–00054	Apollo Cik (Crawling Insect Killer) Spray II
011649–00010	Avitrol Concentrate
011649–00011	Avitrol Powder Mix
011656–00051	Poly-Sul Fungicide-Insecticide-Miticide
012005–00004	CW-903
015300–00001	Chemical Treatment Cl-2151
015567–00018	Pronto Non-Acid Disinfectant Bowl and Bathroom Cleaner
032240–00005	Crop Cure L-Ii Hay Preservative
033677–00004	Tolcide Mw-10
033907–00002	Comfort Zone

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration No.	Product Name
034797–00032	Insect Repellent 100
034797–00082	Qualis Insecticide Concentrate #4
034810–00001	Wex-San
034910–00002	Chlorine Liquefied Gas Under Pressure
034910–00006	Sodium Hypochlorite 10%
034910–20001	Sodium Hypochlorite 12.5%
034910–20004	Sodium Hypochlorite 5.25%
036638–00024	Nomate Tpw Fiber
038235–00001	Agri-Sul 95
038635–00002	L-3 Liquid Algaecide
038811–00005	Muskol Insect Repellent
038811–00006	Muskol Insect Repellent Spray
038811–00007	Muskol Ultra Insect Repellent Spray
040810–00022	Irgaguard B502 J
041260–00026	Camp Algaegone Liquid
041260–00046	Sunshine Swimming Pool Algaecide
041934–20004	Sodium Hypochlorite Solution 5.25%
044446–00009	Zot Wasp Spray Formula 2
048867–00001	Agri-Chlor #1
049517–00006	Leafex 2
049517–00007	Leafex-3
050830–00003	Powderdeet 25
054089–00001	M7 Roach Killer Mop-On Insecticide
054089–20203	M5 Boraplus Roach Kill
056159–00009	Reppers Repellent Grains (Shun Repellent Grain)
056970–00001	Shipbottom Antifouling Bottom Paint Horizon Blue
057586–20001	Kenwood Chlor
058035–00013	Rejex-It Ag-145
058190–00003	Alfa-Save Special
058616–00003	Pct 3024
059588–00002	Culbac Foli-Veg
059894–00004	GKN-O
059894–00007	Bactron K-86 Microbiocide
059906–00004	Syn Tech 2.5% + 10% Insecticide
061667–00001	Chlorine Liquified Gas Under Pressure
062575–00011	Global Suffa
062577–00005	Echols Roach, Ant and Waterbug Killer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration No.	Product Name
063305–00001	Chromium Trioxide, Anhydrous
064240–00007	Combat Total Release Fogger III
064240–00011	Combat Ant and Roach Killer V
064240–00026	Combat Ant and Roach Killer 8
064240–00043	Combat Ips
064864–00048	Pacrite Sodium Hypochlorite 12.5%
064864–00054	Foamex
065072–00005	3540
065072–00006	KP 3510
065072–00007	KP 3515
065072–00009	9035
067470–00001	Oxyfume 20
067470–00002	Oxyfume 80 Sterilant Gas
067470–00003	Oxyfume 12
067470–00004	Carboxide Sterilant-Fumigant Gas
067470–00005	Oxyfume 30
067471–00003	Pacific Sailor Vinco 42 Antifouling Paint
067471–00005	Pacific Sailor Vinco 65 Antifouling Paint
067508–00001	Ronstar 1% with Fertilizer
067649–20002	Hypo 100
067649–20003	Hypo 90
068086–00005	Roach Enderzzz
068265–00001	Xinix
068506–00003	Uvaspec Grape Guard
068543–00028	Bengal Insecticide Granules
068566–00001	Sodium Hypochlorite Solution
068708–00005	EC6116a
068708–00007	EC6108a
069529–00009	Borasol 45 Liquid
069787–00001	Super Pepper Guard
070204–00001	TCI 3100
070204–00002	TCI-5000
070515–00002	Lpe E94T
070515–00003	Signafresh 10ec
071245–00001	Brawn Anti-Bacterial Multi-Purpose Cleaner
071245–00002	Spray Disinfectant A
071245–00003	Spray Disinfectant “b”

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration No.	Product Name
071332–00003	Microbloc (models 7700,7701,is,1m)
071532–00006	LG Permethrin 3.2 MUP
071532–00013	LG Permethrin 41% Manufacturing Concentrate
071532–00014	LG 0.25% Permethrin Granules
071532–00016	LG Permethrin 0.5% Lawn Insect Granules
071532–00017	LG Permethrin 0.5% Insect Granules
071537–00001	C-Pool Natural Balance
071567–00001	R & M Lawn Spray Concentrate #1
071771–00002	Messenger T & O
071771–00005	EBC-353 Seed Treatment
071771–00006	EBC-354 Seed Treatment
071771–00008	EBC-281
071771–00009	EBC-282
072113–00001	Aggreszor 75 WSP
072113–00002	Aggreszor 2F
072113–00003	Aggreszor Perimeter Granules
072113–00004	Aggreszor 4F
072500–00008	Kaput-D Mole Gel Bait
074602–00001	Verox-25
074602–00002	Verox-5HM
074602–00003	Verox-8
074602–00005	Verox-CD40
074602–00006	Verox-TS31
074602–00007	Verox-QA2525
074602–00008	Verox-12.5
074621–00001	Bug Stomper
074785–00002	Ant & Roach Protection/Flea & Tick Spray
074986–00001	Selective Micro Clean-A
075131–00001	Poultry Miticide Tags
075361–00001	Bromo-Chloro-Dimethylhydantoin
075675–00001	Blue Control US
075851–00001	Thrive Alive B-1
075851–00002	Rootech Cloning Gel
079427–00001	Wellcare Adm Masterbatch
079442–00004	Exosex - GBM
079442–00005	Exosex - PTB
079442–00008	Exosex-OLR

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration No.	Product Name
079442–00009	Exosex-Now
080224–00003	Ovocontrol G
080518–00001	Rouse
082075–00002	PS Disinfecting Bathroom Foam
082075–00003	PS Disinfecting Surface Cleaner
082308–00002	Alenza Aquatic Glyphosate
082308–00003	Glyphosate 2% RTU
082803–00001	Lastcall Eucosmak
082961–00001	Zenda Spud
083031–00001	La's Totally Awesome Bleach
083222–00006	Bifen Ag 2EC
083278–00005	Pre-Amine 0.58% Plus
083399–00001	SVP4
083399–00002	SVP3
083399–00003	SVP2
083451–00005	WTB-28 Microbiocide-Algicide
083587–00001	Smartsilver Nylon Fiber
083875–00001	Novacide-25
083875–00002	Novacide-50
083884–00006	Mitin FF Liquid
083893–00001	Greenleaf Fertilizer with Weed Control
083893–00002	Greenleaf Lawn Fertilizer with Weed Control
083893–00003	Greenleaf Lawn Insect Killer Granules (2% Sevin)
083893–00009	Greenleaf Lawn & Garden 5% Dust
083893–00010	Greenleaf Lawn & Garden 10% Dust
083893–00012	Greenleaf Insecticide Granules (Permethrin 0.25%)
083893–00014	Greenleaf Grub Killer
083893–00019	Greenleaf Grub Killer II
083893–00020	Greenleaf Lawn Insect Control Granules
083997–00003	10-9-0 Green F.O. Wood Preservative
084215–00001	Protex AG Fiber
084517–00002	Brite 1500

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Regulatory Public Docket, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection.

Dated: July 25, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–17928 Filed 8–5–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0037; FRL–8374–9]

Chitin/Chitosan and Farnesol/Nerolidol Registration Review Proposed Final Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decisions for the pesticides cases Chitin/Chitosan and Farnesol/Nerolidol and opens a public comment period on the proposed registration review decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPP–2007–0566 for Chitin and Chitosan, and EPA–HQ–OPP–2006–0569 for Farnesol and Nerolidol, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID numbers and the regulatory contacts listed under Table 1 for each of the cases to which you are submitting a comment. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the biopesticides included in this document, contact the specific Regulatory contact, as identified in the Table in Unit II.A. for the biopesticide of interest. The mailing address and additional contact information is Biopesticides and Pollution Prevention Division, (7511P); Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308–8712; fax number: (703) 308–7026.

For general questions on the registration review program, contact Peter Caulkins, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–6550; fax number: (703) 308–8090; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

This notice opens a 60–day public comment period on the subject proposed registration review decisions. The Agency is proposing registration review decisions for the pesticide cases shown in the following Table.

Table 1.—Registration Review Dockets - Proposed final decisions

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
Chitin and Chitosan; Case 6063	EPA–HQ–OPP–2007–0566	Chris Pfeifer (703) 308–0031 pfeifer.chris@epa.gov
Case 6061; Farnesol and Nerolidol; Case 6061	EPA–HQ–OPP–2007–0569	Russell Jones (703) 308–5071 jones.russell@epa.gov

The dockets for registration review of these pesticide cases include earlier documents related to the registration review of the subject cases. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan (PWP), for public comment. A Final Work Plan (FWP) was posted to the docket following public comment on the initial docket. The documents in the initial docket described the Agency's rationales for not conducting new risk assessments for the registration review of Chitin/Chitosan (Case 6063) or Farnesol/Nerolidol (Case 6061). These proposed registration review decisions now included in the dockets continue to be supported by those rationales included in documents in the initial dockets. Following public comment, the Agency will issue a final registration review decision for each case.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1996 required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006 and appears at 40 CFR 155.40 et seq. The Pesticide Registration Improvement Act of 2003 (''PRIA'') was amended and extended in September 2007. FIFRA as amended by PRIA in 2007 requires EPA to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. The registration review final rule provides for a minimum 60–day public comment period for all proposed registration review decisions.

This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision(s). All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for Chitin/Chitosan and Farnesol/Nerolidol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Dockets and www.regulations.gov. The final registration review decisions will explain the effect that any comments have had on the decisions. Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration__review/*. Quick links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm/*. Additional information about biopesticides can be obtained by an alphabetical search of the Biopesticide Active Ingredient Fact Sheets on *http://www.epa.gov/oppbppd1/biopesticides/ingredients/index.htm.*

B. What is the Agency's Authority for Taking this Action?

FIFRA Section 3(g) and 40 CFR 155.40 provide authority for this action.

List of Subjects

Environmental protection, registration review, pesticides, and pests.

Dated:July 25, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–17930 Filed 8–5–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket No. II–2005–07; FRL–8701–3]

Clean Air Act Operating Permit Program—Petition for Objection to State Operating Permit for Pouch Terminal Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision concerning State operating permit.

SUMMARY: This document announces the EPA Administrator's decision, responding to a petition submitted by the office of James P. Molinaro, President of the Borough of Staten Island, New York, requesting that EPA object to an operating permit issued by the New York State Department of Environmental Conservation (NYSDEC) to the New York Power Authority's Pouch Terminal plant. The petition, requesting an objection to the issuance of the Pouch Terminal title V permit is denied.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of any portions of the petition which EPA denied, in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and all relevant information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Pouch Terminal plant is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On October 26, 2005, the EPA received a petition from the office of James P. Molinaro, President of the Borough of Staten Island, New York, requesting that EPA object to the issuance of the title V operating permit for the Pouch Terminal facility based on the following allegations: (1) NYPA performed an environmental impact statement (EIS) for the site only because a lawsuit was brought against it by the community, and ignored the Sun Chemical company in performing the EIS; (2) statements made by applicant, regarding the facility's projected hours of operation, are conflicting; (3) NO_X and CO emission limits originally pledged by NYPA are absent in the permit; (4) the public was not informed of the facility's documented air emission violations until after the public hearing; (5) amendment of the title V application to include ''less restrictive'' air emissions limitations was effected without any public involvement, and enforcement action against the facility, through two consent orders, involved no public participation; (6) DEC ignored the known industry fact that startups and shutdowns are the worst case situations; (7) acknowledgment by DEC of the facility's air emissions violations was due to the fact that this information was about to be divulged in the newspaper; (8) eighteen months passed before a DEC enforcement action was instituted for the violations to the facility's operating air permit; (9) the community living across the street from the plant should receive any and all information on environmental violations occurring at the facility; (10) in response to the facility's 18-month violations, NYPA provided no explanation why it stated ''No Action is Needed''; (11) the air emissions under the proposed draft title V permit were less stringent than those under the state facility air permit; (12) it took a long time, 22 months, following the public hearing/comment period, before DEC released its Responsiveness Summary; and (13) DEC allowed more than 18 months, too long a time span, for the ''shakedown'' period. The Petitioner has requested that EPA object to the issuance of the Pouch Terminal permit, pursuant to CAA section 505(b)(2) and 40 CFR 70.8(d), for any or all of the above reasons.

On June 23, 2008, the Administrator issued an order denying the petition on the Pouch Terminal plant. The order explains EPA's reasons for denying petitioner's claims.

Dated: July 25, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–18141 Filed 8–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8701–2]

Request for Nominations for 2008 Clean Air Excellence Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations for Clean Air Excellence Awards.

SUMMARY: EPA established the Clean Air Excellence Awards Program in February, 2000. This is an annual awards program to recognize outstanding and innovative efforts that support progress in achieving clean air. This notice announces the competition for the Year 2008 program.

SUPPLEMENTARY INFORMATION: Awards Program Notice: Pursuant to 42 U.S.C. 7403(a)(1) and (2) and sections 103(a)(1) and (2) of the Clean Air Act (CAA), notice is hereby given that the EPA's Office of Air and Radiation (OAR) announces the opening of competition for the Year 2008 ''Clean Air Excellence Awards Program'' (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to the United States. There are five general award categories: (1) Clean Air Technology; (2) Community Action; (3) Education/Outreach; (4) Regulatory/Policy Innovations; (5) Transportation Efficiency Innovations; and two special awards categories: (1) Thomas W. Zosel Outstanding Individual Achievement Award, and (2) Gregg Cooke Visionary Program Award. Awards are given on an annual basis and are for recognition only.

Entry Requirements: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the Clean Air Act Advisory Committee (CAAAC) Web site at: *http://www.epa.gov/oar/caaac* by clicking on Awards Program or by

contacting Mr. Pat Childers, U.S. EPA at 202–564–1082 or 202–564–1352 Fax, mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The entry form is a simple, three-part form asking for general information on the applicant and the proposed entry; asking for a description of why the entry is deserving of an award; and requiring information from three (3) independent references for the proposed entry. Applicants should also submit additional supporting documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package.

Judging and Award Criteria: Judging will be accomplished through a screening process conducted by EPA staff, with input from outside subject experts, as needed. Members of the CAAAC will provide advice to EPA on the entries. The final award decisions will be made by the EPA Assistant Administrator for Air and Radiation. Entries will be judged using both general criteria and criteria specific to each individual category. There are four (4) general criteria: (1) The entry directly or indirectly (i.e., by encouraging actions) reduces emissions of criteria pollutants or hazardous/toxic air pollutants; (2) The entry demonstrates innovation and uniqueness; (3) The entry provides a model for others to follow (i.e., it is replicable); and (4) The positive outcomes from the entry are continuing/sustainable. Although not required to win an award, the following general criteria will also be considered in the judging process: (1) The entry has positive effects on other environmental media in addition to air; (2) The entry demonstrates effective collaboration and partnerships; and (3) The individual or organization submitting the entry has effectively measured/evaluated the outcomes of the project, program, technology, etc. As previously mentioned, additional criteria will be used for each individual award category. These criteria are listed in the 2008 Entry Package.

DATE: All submission of entries for the Clean Air Excellence Awards Program must be postmarked by September 19, 2008.

ADDRESSES: Clean Air Excellence Awards submissions should be sent to Clean Air Excellence Awards, Attn Mr. Pat Childers, U.S. EPA, Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Concerning the Clean Air Excellence Awards Program please use the CAAAC Web site and click on Awards Program or contact Mr. Pat Childers, U.S. EPA, at 202–564–1082 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by telephoning 202–260–7548; Fax 202–260–4400.

Dated: August 1, 2008.

Patrick Childers,

Designated Federal Official for Clean Air Act Advisory Committee.

[FR Doc. E8–18140 Filed 8–5–08; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 14, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 10, 2008

B. New Business

- Fall 2008 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and the Fall 2008 Regulatory Performance Plan
- Equal Employment Opportunity and Diversity Policy Statement

C. Reports

- Office of Management Services Quarterly Report

Dated: August 1, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–18122 Filed 8–4–08; 9:15 am]

BILLING CODE 6705–01–P

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.: 011409–017.

Title: Transpacific Carrier Services Inc. Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; CMA CGM S.A.; COSCO Container Lines Company, Ltd.; Evergreen Lines Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment would add China Shipping Container Lines (Hong Kong) Co., Ltd. and China Shipping Container Lines Co., Ltd. as parties to the agreement.

Agreement No.: 011546–004.

Title: Wallenius Wilhelmsen Lines/NYK Space Charter Agreement.

Parties: Nippon Yusen Kaisha and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment revises the agreement to provide for reciprocal chartering of space.

By Order of the Federal Maritime Commission.

Dated: August 1, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–18114 Filed 8–5–08; 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

Alcon Express Corp., 71–41 Kessena Blvd., 2nd Floor, Flushing, NY 11367, Officer: Alan C. Wang, President, (Qualifying Individual).

Logicargo ASL Int'l Corp, 7707 NW. 46 Street, Doral, FL 33166, Officer: Soraya Carrillo, Ocean Freight Manager, (Qualifying Individual).

Katoen Natie Tank Operations, Inc., 10925 Hwy 225, LaPorte, TX 77571, Officer: Misty Martinez, Treasurer, (Qualifying Individual).

Stolt-Nielsen USA Inc., 15635 Jacintoport Boulevard, Houston, TX 77015, Officer: Michael W. Kramer, Sen. Vice President, (Qualifying Individual).

Overseas Shipping and Shopping, Inc., 10302 NW. South River Drive, Bay 11, Medley, FL 33178, Officers: Devon A. Henry, President, (Qualifying Individual), Marlene M. Henry, Director.

World Wide Cargo Partners, LLC, 4244 Garibaldi Place, Pleasanton, CA 94566, Officers: Bruce Joder, Manager, (Qualifying Individual), Daniel D'Souza, Member.

RCF International, Inc., 3625 NW. 82nd Avenue, Ste. 103, Miami, FL 33168, Officer: Fernando A. Jimenez, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Global Logistical Connections, Inc., 14908 S. Figueroa Street, Gardena, CA 90248, Officer: Derek Scarbrough, President, (Qualifying Individual).

The Janel Group of Georgia, Inc., 5651 Old Dixie Road, Ste. 120, Forest Park, GA 30050, Officers: Vincent J. Iacopella, Vice President, (Qualifying Individual), Phillip Castagna, President.

The Janel Group of Illinois, Inc., 2567 Greenleaf Avenue, Village, IL 60007, Officers: Vincent J. Iacopella, Vice President, (Qualifying Individual), Willian Lally, President.

Wastaki Freight International Inc., 10049 NW. 89 Avenue, Miami, FL 33178, Officers: Patrick A. Walters, President, (Qualifying Individual), Joy Campbell, Vice President.

ATC Logistics, Inc., 1490 Beachey Place, Carson, CA 90746, Officer: Paul Kang, President, (Qualifying Individual).

Chemlogix Global LLC, 1777 Sentry Parkway West, Blue Bell, PA 19422, Officers: William R. Spiro, Vice President, (Qualifying Individual), Edward R. Hildebrandt, President.

Salviati & Santori Ocean, Inc., 10 E. Merrick Road, Ste. 210, Valley Stream, NY 11580, Officer: Richard Cazan-Cassini, Vice President, (Qualifying Individual).

The Janel Group of New York Inc., 150–14 132nd Avenue, Jamaica, NY 11434, Officer: Eugene Limongelli, Vice President, (Qualifying Individual).

T.E.E. Transportation Services, LLC, 4027 Joe Street, Charlotte, NC 28206, Officer: Marsha F. Howard, Int'. Opera. Manager, (Qualifying Individual).

East International Holdings LLC, 3411 Ellamont Road, Ste. 101, Baltimore, MD 21215, Officers: Alfred M. Nkere, President, (Qualifying Individual).

Agents' House International, Inc., 2120 Dennis Street, Jacksonville, FL 32204, Officer: Lucius Leverette, Vice President, (Qualifying Individual).

IVI International Corp. dba IVI International Freight Forwarders, 10250 NW. 89th Ave., Bay #10, Miami, FL 33178, Officer: Ivan Israel Chavarria, President, (Qualifying Individual).

Glodex, Corp., 7235 NW. 54th Street, Miami, FL 33166, Officer: Antonia Cabaleiro, President, (Qualifying Individual).

Paramount Transportation Logistics Services, L.L.C., 15971 McGregor Boulevard, Fort Myers, FL 33908, Officer: Lori J. Crawford, Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

S. Cubed Pacorini Logistics, LLC, 5240 Coffee Drive, New Orleans, LA 70115, Officer: Jeanne Shows-Andre, Managing Member, (Qualifying Individual).

Ely Forwarding L.L.C., 3214 Ole Miss Drive, Kenner, LA 70065, Officer: Elizabeth A. Ramos, President, (Qualifying Individual).

BDP Projects Logistics, LLC, 510 Walnut Street, 13th Fl., Philadelphia, PA 19106, Officers: Luc Van Heygen, Managing Director, (Qualifying Individual), Michael Andaloro, Director.

Gruden USA, Inc., 51 Newark Street, Ste. 302, Hoboken, NJ 07030, Officers: William Kreutzer, Vice President, (Qualifying Individual), Luca De Pieri, President.

Dated: August 1, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–18110 Filed 8–5–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 20, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Charles I. Moyer Revocable Trust, Charlotte L. Moyer Family Trust, and Charlotte L. Moyer Marital Trust, Charles I. Moyer, trustee, all of Phillipsburg, Kansas; C. Bryant Moyer, Topeka, Kansas; Clinton I. Moyer, Borger, Texas, all as members of the Moyer Family Group; and Jaret Moyer,

Emporia, Kansas, individually and as a member of the Moyer Family Group; to acquire control of Woodbine Agency, Inc., and thereby indirectly acquire control of The Citizens State Bank and Trust Company, both in Woodbine, Kansas.

Board of Governors of the Federal Reserve System, July 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–18049 Filed 8–5–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. EdBancorp, Inc., and Educational Services of America, Inc., both of Knoxville, Tennessee, to become bank holding companies by acquiring 100 percent of the outstanding shares of Community Bank of the Cumberlands, Jamestown, Tennessee.

In connection with this application, Educational Services of America, Inc., also has applied to acquire 100 percent of the outstanding shares of EdSouth Funding, LLC, Knoxville, Tennessee, and thereby engage in making, acquiring, and brokering loans, or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

2. First Freedom Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of First Freedom Bank, both of Lebanon, Tennessee.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Premier Bancorp of Illinois, Inc., Farmer City, Illinois; to retain 20.8 percent of the voting shares of FM Bancorp, Inc., Paxton, Illinois, and thereby indirectly retain voting shares of Farmers–Merchants National Bank of Paxton, Paxton, Illinois.

In connection with this application, the applicant also has applied to retain a 40 percent ownership in TriCapital, L.L.C., Indianapolis, Indiana, and thereby engage in making, acquiring, brokering loans, or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–18048 Filed 8–5–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0057

Information Collection; Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property

AGENCY: Federal Acquisition Service, GSA.

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property. The clearance currently expires on September 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Iris Wright-Simpson, Property Disposal Specialist, Property Management Division, at (703) 605–2912 or via email at *iris.wright-simpson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form (SF) 150 is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 1000.
Responses Per Respondent: 1.
Total Responses: 1000.
Hours Per Response: .25.
Total Burden Hours: 250.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

Dated: July 31, 2008.

Casey Coleman,

Chief Information Officer.

[FR Doc. E8–18113 Filed 8–5–08; 8:45 am]

BILLING CODE 6820–89–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Information Collection; Federal Management Regulation; Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property

AGENCY: Federal Acquisition Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property. A request for public comments was published at 72 FR 20052, April 14, 2008. No comments were received. This OMB clearance expires on September 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 5, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Iris Wright-Simpson, Property Marketing Specialist, Sales Branch, by telephone at (703) 605–2912 or via email to *iris.wright-simpson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jasmeet Seehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0058; Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 151 is used by bidders participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of deposit.

B. Annual Reporting Burden

Respondents: 250
Responses Per Respondent: 1
Total Responses: 250
Hours Per Response: .25
Total Burden Hours: 62.5
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0058; Standard Form 151, Deposit Bond, Annual Sale of Government Personal Property.

Dated: July 31, 2008.

Casey Coleman,

Chief Information Officer.

[FR Doc. E8–18116 Filed 8–5–08; 8:45 am]

BILLING CODE 6820–89–S

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0235

General Services Administration Acquisition Regulation; Information Collection; Price Reductions Clause

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the GSAR Price Reductions Clause. The clearance currently expires on October 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900 or via e-mail to *warren.blankenship@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0235, Price Reductions Clause, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at GSAR 552.238–75, Price Reductions, used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Number of Respondents: 16,680.
Total Annual Responses: 33,360.
Average hours per response: 7.5 hours.
Total Burden Hours: 250,200.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0235, Price Reductions Clause, in all correspondence.

Dated: July 31, 2008

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. E8–17981 Filed 8–5–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Foster Care, Independent Living Services and Adoption Assistance under Title IV–E of the Social Security Act.

OMB No.: 0980–0141.

Description: A State plan is required by sections 471 and 477(b)(2), part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, independent living services and adoption assistance under the Act. The State plan is a comprehensive narrative description of the nature and scope of

a State's programs and provides assurances the programs will be administered in conformity with the specific requirements stipulated in title IV–E. The plan must include all applicable State statutory, regulatory, or policy references and citation for each requirement as well as supporting documentation. A State may use the pre-print format prepared by the Children's Bureau of the Administration for Children and Families or a different format on the condition that the format used includes all of the title IV–E State plan requirements of the Act.

Respondents: State and Territorial Agencies (State Agencies) administering or supervising the administration of the title TV–B program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses	Average burden hours per response	Total burden hours
Title IV–E State Plan	13	1	15	195

Estimated Total Annual Burden Hours: 195.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 30, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–17869 Filed 8–5–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0202] (formerly Docket No. 2008N–0009)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Customer/Partner Service Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 10, 2008 (73 FR 19510), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assignedOMB control number 0910–0360. The approval expires on July 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–17906 Filed 8–5–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0451] (formerly Docket No. 2007N–0321)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Evaluation of the Impact of Distraction on Consumer Understanding of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Broadcast Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 5, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Experimental Evaluation of the Impact of Distraction on Consumer Understanding of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Broadcast Advertisements.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Evaluation of the Impact of Distraction on Consumer Understanding of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Broadcast Advertisements

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the act.

FDA regulations require that advertisements that make claims about a prescription drug include a ''fair balance'' of information about the benefits and risks of advertised products, in terms of both content and presentation. Ads can present information in ways that can optimize or skew the relative balance of risks and benefits. Both healthcare providers and consumers have expressed concerns to FDA about the effectiveness of its regulation of manufacturers' Direct-to-Consumer (DTC) prescription drug advertising, especially as it relates to assuring balanced communication of risks compared with benefits.

One characteristic of DTC television broadcast ads is the use of compelling visuals. Many assert that the visuals present during the product risk presentation are virtually always positive in tone and often depict product benefits. A consistently raised question is if advertising visuals of benefits interferes with consumers' understanding and processing of the risk information in the ad's audio or text.

The manner in which required risk information is presented in DTC ads has been recently addressed in the Food and Drug Administration Amendments Act of 2007 (FDAAA). Section 901(3) states that the major statement in DTC broadcast ads ''shall be presented in a clear, conspicuous and neutral manner.'' Further, the Secretary of Health and Human Services ''shall establish standards for determining whether the major statement is presented in such a manner.'' FDAAA does not define how the objective of ''clear, conspicuous, and neutral'' is to be achieved.

The purpose of the proposed study is, in part, to determine whether the use of competing, compelling visual information about potential drug benefits interferes with viewers' processing and comprehension of risk information about drugs in DTC advertising or with their cognitive representations of the drugs. Positive visual images could influence the processing of risk-related information and the final representation of the advertised drug in multiple ways. First, compelling visuals could simply distract consumers from carefully considering and encoding the risk information. To the extent that compelling visuals cause them to attend to or to process risk information less, participants exposed to risk information with simultaneous compelling positive visuals should recall fewer risks (and perhaps fewer benefits) than do participants exposed to the risk information without the positive visuals. Second, compelling visuals may affect the way consumers think about the brand, specifically their attitudes toward the advertised brand. An attitude is simply an association between an object and a degree of positivity or negativity. Thus, the impact of varying visual displays during the presentation of audio risks may be manifested in varying attitudes toward the brand. This is important because brand attitudes may be an important determinant of future behavior toward the brand. In contexts where product information is complex, initial impressions based on more subtle processes may have as significant an impact on behavioral tendencies as impressions based upon more ''cognitively-effortful'' factual information. Since visual cues are typically easier to process than verbal information, initial attitudes for this group are likely to be greatly influenced by these cues. Under many circumstances, people rely much less on facts that they know, such as the number of risks associated with, for example, ibuprofen, and much more on general feelings they have, such as strong positivity toward a brand, such as the Advil brand of ibuprofen. Compelling visuals during the audio risk presentation of DTC broadcast advertisements have the potential to lead a consumer to form a positive opinion of a drug for no other reason than that it is presented in the same context as positive images.

Another purpose of the present study is to examine the role of textual elements in the processing of risk information. Sponsors often place superimposed text (''supers'') onto the screen to clarify spoken information or to provide extra information that is not included in the audio. For example, information that fulfills certain requirements (such as adequate provision statements, for example ''See our ad in * * *'') and limits claims of product use may appear. Providing verbatim text repetition of the risks required to be in the audio portion in broadcast ads may facilitate processing the risks, but only if viewers pay attention to the text. Viewers' attention may be affected by both the prominence of the textual information and the combined effects of text prominence and different visual information. The proposed study examines these associations.

A final purpose of this study is to provide FDA with information on defining the presentation of the major statement as ''clear, conspicuous, and neutral'' as required by FDAAA. We have limited data about how consumers perceive risk and benefit information in DTC broadcast ads as a function of exposure to different content and presentations. Therefore, we do not fully understand the influence of visual and textual factors on the conveyance of a balanced or ''neutral'' picture of the product.

This study will investigate the impact of visual distraction and the interplay of different sensory modalities (oral, visual) used to present risk and benefit information during a television prescription drug advertisement. Data from this study will provide useful information for FDA as it considers whether it is appropriate to develop guidance to help improve how broadcast ads present a prescription drug's risks and benefits. This study will also provide preliminary data on how FDA might interpret the ''clear, conspicuous, and neutral'' standard. The data should help us plan whether additional research is needed to develop the standards called for in FDAAA.

Overview: To investigate the overall and interactive role of visual images and text presentations during the audio presentation of risk information in television DTC ads, we will create a variety of ads for a new (fictitious) brand of high blood pressure medication. The ads will vary only in the type of information shown on screen during the presentation of required risk information (the ''major statement''). We will conduct pretesting to determine whether participants will view one version of the test ad two times or if the test ad will be viewed in the context of other ads (''clutter reel''). Respondents

will answer questions about the test ad, including information about product risks and benefits, whether they intend to ask the doctor about the product, basic comprehension of the risk and benefit information, and their general attitudes toward the product. This experimental design will allow for comparisons between conditions in a controlled presentation where only the visual information varies.

Design: The study includes two primary designs that, taken together, investigate three different variables.

A one-way, 5 condition design will examine the impact of degree of consistency between visuals presented during orally presented (audio) risk information. The visuals will be either very consistent, somewhat consistent, neutral, somewhat inconsistent, or very inconsistent with the audio risk information. The consistent conditions will visually reinforce the product risks by presenting the words of the risks on the screen as they are being spoken. The inconsistent conditions will reinforce the product's benefits by presenting visuals that suggest blood pressure being decreased from high to normal levels. The degree or magnitude of consistency will be manipulated by including fewer pieces of information, interspersed with images of the fictitious drug logo. A control or ''neutral'' condition will consist of showing the brand logo during the entire audio risk presentation.

The second design will be a two-way factorial design combining each level of one independent variable with each level of a second independent variable. The first variable consists of three levels of visual ''tone''—neutral, mildly positive, and highly positive. The second variable consists of three levels of prominence of ''supers''—level one, level two, and no SUPER (control).

Because the control cell in each of the 2 designs will overlap (neutral, no SUPERs), both designs together will amount to a total of 13 separate ''cells,'' and corresponding versions of advertisements for the fictitious brand.

In a separate sub-experiment, 5 selected cells taken from across the two designs will assess implicit attitudes using the Attitude Misattribution Procedure (AMP). The questions asked of the participants in the AMP conditions will be reduced in number to account for the additional time needed to administer the AMP.

Eligible participants for the study (n= 2,400, following pretesting) will be recruited from Synovate Inc.'s online Internet panel. They will be 40 years of age or older to increase the likelihood of including members of the population most likely to have high blood pressure. At least 30% of the recruited sample within each of the designs will have equal to or less than a high school education. The composition of participants in each format condition will be balanced with respect to gender (50% female, +/- 10%). Panel members who meet age and education requirements will not be screened further for disease condition.

Dependent Measures: The primary dependent variables are recall and comprehension of risk and benefit information. We will also investigate behavioral intention and attitudes toward the fictitious brand. In a separate sub-experiment using only five cells throughout both designs, we will use the AMP, in addition to some explicit measures, to collect implicit attitude measures that should not be affected by social desirability biases.

In the **Federal Register** of August 22, 2007 (72 FR 47051), FDA published a 60-day notice requesting public comment on the information collection provisions. Thirty commenters responded. In total, this amounted to approximately 29 distinct comments that specifically referenced the study. Of these, 12 were not PRA related. As a result of the comments that were PRA-related, FDA made extensive modifications to the study's methodology and design. As reflected in these modifications, we agreed to: (1) Change from a mall-intercept to an Internet administered procedure, (2) limit use of the AMP to a sub-experiment consisting of only five of the experimental conditions, (3) add questions addressing the advertised (fictitious) drug's benefits, and (4) make certain changes to the wording of the questions. Changing the administration procedure also allows us to double our sample size and test more conditions. In response to comments received both by the commenters and by our peer reviewers, we also decided to conduct significantly more pretesting than originally planned to address the suggestion that the test ad should be embedded in a clutter reel of other ads and to test the validity of the stimulus manipulations (the mocked up advertisements). We disagreed, primarily because of time and complexity constraints, with suggestions to: (1) Add more independent variables, (2) recruit a different set of participants, (3) change the use of Chinese characters in the (now more limited) AMP-measured conditions, (4) add certain additional dependent measures, (5) increase or decrease the number of behavioral intention questions (both were requested), (6) control for baseline attitudes (because this is not needed in an experimental design and we are using a fictitious drug for the stimulus materials), or (7) get industry approval and public comment on the mocked up ads.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
21 U.S.C. 393(b)(2)(c) Screener, pretesting	1,600	1	1,600	.03	48
21 U.S.C. 393(b)(2)(c) Questionnaire, pretesting	800	1	800	.16	128
21 U.S.C. 393(b)(2)(c) Screener, study	4,800	1	4,800	.03	144
21 U.S.C. 393(b)(2)(c) Questionnaire, study	2,400	1	2,400	.25	600
Total					930

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–18091 Filed 8–5–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0462]

Printing of Coast Guard Light Lists

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard publishes Light List Volumes 1–4 and 6–7 annually; with Volume 5 being published biennially. In order to adjust to a new printing cycle, the Coast Guard will not publish the 2008 editions of the Light Lists as required by 33 CFR 72.05–1 (50 FR 50904), except for Light List Volume 5 (Mississippi River System). The Coast Guard is changing the publication cycle of the Light List so that annual editions are available early in each calendar year. Since the printing of the 2007 editions occurred in November 2007, they will remain effective for approximately 14 months.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, e-mail Mr. Frank Parker, U.S. Coast Guard Headquarters, at *frank.parker@uscg.mil* call or telephone him at 202–372–1551.

SUPPLEMENTARY INFORMATION: Between the printing of editions, each Light List is required to be kept up-to-date every week by applying corrections published in the applicable Coast Guard Local Notices to Mariners or the National Geospatial-Intelligence Agency's (NGA) Weekly Notice to Mariners. The requirement to apply corrections is stated in each volume. By applying the corrections, mariners are able to maintain up-to-date publications regardless of the frequency of newly printed editions. With the cost of each Light List being between $35–$50, mariners will not have to incur the costs of the new editions in 2008. The 2009 editions of Volumes 1–4 and 6–7 will be published in early 2009.

To ensure ample and adequate notification is made to the mariner, the Coast Guard will publish information regarding this temporary change to the printing cycle in the notices to mariners, on the Coast Guard's Navigation Center (NAVCEN) Web site (*http://www.navcen.uscg.gov*), and other forms of communications. Coast Guard inspectors will also be informed of this temporary change.

Dated: July 23, 2008.

James A. Watson,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E8–18084 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new collection, 1660–NW32; FEMA Form 90–152.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the FEMA Public Assistance Program Customer Satisfaction Survey results to measure program performance.

SUPPLEMENTARY INFORMATION: Executive Order 12862 requires that all Federal agencies survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) requires agencies to set missions and goals, and measure performance against them. FEMA will fulfill these requirements by collecting customer satisfaction with service and program evaluation information through administration of surveys of the Disaster Assistance Directorate (DAD) external customers.

Collection of Information

Title: FEMA Public Assistance Program Customer Satisfaction Survey.

Type of Information Collection: New.

OMB Number: 1660–NW32.

Form Numbers: FEMA Form 90–152, FEMA Public Assistance Program Customer Satisfaction Survey.

Abstract: The purpose of the FEMA Public Assistance Program Customer Satisfaction Survey is to measure program performance against standards for performance and customer service: measure achievement of GPRA objectivities: and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

Affected Public: Business or other for-profit, Not-for-profit, Farms, Federal Government, State, Local and Tribal Government.

Estimated Total Annual Hour Burden: 1,920 hours.

ANNUAL HOUR BURDEN

Project/activity (survey, form(s), focus group, worksheet, etc.)	No. of respondents (A)	Frequency of responses (B)	Hour burden per response (hours) (C)	Annual responses (D) = (A x B)	Total annual hour burden (hours) (E) = (C x D)
PA Mailed Survey	3,200	1	0.3	3,200	960
PA Focus Groups	80	1	12	80	960
Total	3,280			3,280	1,920

Estimated Cost: The estimated annual cost to the Federal Government is $348,678.57.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments must be submitted on or before October 6, 2008.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Marie O. Randle, Emergency Management Specialist, Disaster Assistance Directorate, Program Coordination and Planning, 202–646–3649 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: July 22, 2008.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–17993 Filed 8–5–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–639, Extension of an Existing Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form G–639, Freedom of Information/Privacy Act request; OMB Control No. 1615–0102.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 22, 2008, at 73 FR 29774 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 5, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov* .

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0102 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection*: Extension of a currently approved information collection.

(2) *Title of the Form/Collection*: Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection*: Form G–639. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 100,000 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: August 1, 2008.

Stephen Tarragon,

Management Analyst, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–18087 Filed 8–5–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–22]

Notice of Proposed Information Collection: Comment Request; Loss Mitigation Evaluation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 6, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Jim Hass, Housing Program Specialist, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) XXX–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loss Mitigation Evaluation.

OMB Control Number, if applicable: 2502–0523.

Description of the need for the information and proposed use: This information is needed to ascertain whether the mortgagee performed adequate and prudent loan servicing. If a mortgagee submits a claim for FHA insurance benefits, this information will be subject to postclaim review under the Department's lender monitoring activities. Mortgagees/servicers must consider the comparative effects of their elective servicing actions, and must take those appropriate actions that can reasonably be expected to generate the smallest financial loss to HUD.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 116,784. The number of respondents is 600, the number of responses is 467,135, the frequency of response is on occasion, and the burden hour per response is .25.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 28, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing and Deputy Federal Housing Commissioner.

[FR Doc. E8–17959 Filed 8–5–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Consent Decree Under CERCLA

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *Converters Ink Company, et al.* (Civil Action No. 08CV4298), which was lodged with the United States District Court for the Northern District of Illinois on July 30, 2008.

This proposed Consent Decree was lodged simultaneously with the Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended (''CERCLA''), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the IWI, Inc. Site, in Summit, Cook County, Illinois (''the Site''). Under the settlement, the Defendants, generators of hazardous waste disposed of at the IWI Site, will pay $2,099,852.40 to reimburse the United States for the costs of cleaning up the contaminated Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Converters Ink Company, et al.,* D.J. Ref. 90–11–3–09355.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html* . A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–18043 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 30, 2008, a proposed consent decree in *United States* v. *Morrison Enterprises, LLC, and Cooperative Producers, Inc.,* Civil Action No. 8:08–00332–JFB–TDT, was lodged with the United States District Court for the District of Nebraska.

In this action, the United States sought an order requiring defendants to perform the Environmental Protection Agency's (EPA) selected environmental remedy and to reimburse the United States for costs incurred and to be incurred, in response to releases and threatened releases of hazardous substances into the environment at and from the FAR–MAR–CO Subsite of the Hastings Ground Water Contamination Site in Hastings, Nebraska. The Subsite consists of a grain operations facility, where ground water is contaminated by carbon tetrachloride and ethylene dibromide. The Consent Decree provides that defendants will perform the remedial action at the Site, pay $32,287 in past response costs, which represents 100% of EPA's past costs, and pay future response costs.

For thirty (30) days after the date of this publication, the Department of

Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *Morrison Enterprises, LLC, and Cooperative Producers, Inc.,* Civil Action No. 8:08–00332–JFB–TDT, D.J. Ref. No. 90–11–3–431/2.

The decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska, 68102. During the comment period, the Consent Decree may be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decrees.html* . A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $38.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–18044 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on May 27, 2008, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (January 25, 2007), comments and requests for hearing on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 5, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17975 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 11, 2008, Almac Clinical Services Inc. (ACSI), 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than September 5, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted

in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17976 Filed 8–4–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on June 2, 2008, Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for sale to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 5, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17977 Filed 8–4–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on March 26, 2008, BA Research International LLC, 10550 Rockley Road, Suite 150, Houston, Texas 77099–0000, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4-Methylaminorex (cis isomer) (1590).	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Cannabidiol (7372)	I
Mescaline (7381)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Peyote (7415)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Etorphine (except HCL) (9056)	I
Heroin (9200)	I
Normorphine (9313)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Levorphanol (9220)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import analytical reference standards for analytical testing of blood samples from clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive,

Springfield, Virginia 22152; and must be filed no later than September 5, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18045 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on June 5, 2008, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA. 22152; and must be filed no later than September 5, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18055 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 10, 2008 and published in the **Federal Register** on March 19, 2008, (73 FR 14839), Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Alphamethadol (9605)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Roche Diagnostics Operations, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Operations, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18064 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 12, 2008 and published in the **Federal Register** on February 21, 2008, (73 FR 9591), United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
Codeine-n-oxide (9053)	I
Heroin (9200)	I
Amphetamine (1100)	II

Drug	Schedule
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to import reference standards for sale to researchers and analytical labs.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of United States Pharmacopeial Convention to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated United States Pharmacopeial Convention to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17965 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 9, 2008 and published in the **Federal Register** on April 16, 2008, (73 FR 20715), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexy]piperidine (7470).	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473).	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663).	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4,5-Trimethoxyamphetamine (7390).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3-Methylfentanyl (9813)	I
3-Methylthiofentanyl (9833)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
4-Methylaminorex (cis isomer) (1590).	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
Acetorphine (9319)	I
Acetyl-alpha-methylfentanyl (9815).	I
Acetyldihydrocodeine (9051)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alpha-ethyltryptamine (7249)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Alpha-methylfentanyl (9814)	I
Alpha-methylthiofentanyl (9832)	I
Alpha-methyltryptamine (7432)	I
Aminorex (1585)	I
Benzethidine (9606)	I
Benzylmorphine (9052)	I
Betacetylmethadol (9607)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Beta-hydroxyfentanyl (9830)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Bufotenine (7433)	I
Cathinone (1235)	I
Clonitazene (9612)	I
Codeine methylbromide (9070)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Diethyltryptamine (7434)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dimethyltryptamine (7435)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Drotebanol (9335)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etorphine except HCl (9056)	I
Etoxeridine (9625)	I
Fenethylline (1503)	I
Furethidine (9626)	I
Gamma Hydroxybutyric Acid (2010).	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Hydroxypethidine (9627)	I
Ibogaine (7260)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Mecloqualone (2572)	I
Mescaline (7381)	I
Methaqualone (2565)	I
Methcathinone (1237)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morpheridine (9632)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
N,N-Dimethylamphetamine (1480)	I
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (9834).	I
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (9818).	I
N-Benzylpiperazine (7493)	I
N-Ethyl-3-piperidyl benzilate (7482).	I
N-Ethylamphetamine (1475)	I
N-Ethyl-l-phenylcyclohexylamine (7455).	I

Drug	Schedule
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
N-Methyl-3-piperidyl benzilate (7484).	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Normorphine (9313)	I
Norpipanone (9636)	I
Para-Fluorofentanyl (9812)	I
Parahexyl (7374)	I
Peyote (7415)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenomorphan (9647)	I
Phenoperidine (9641)	I
Pholcodine (9314)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Racemoramide (9645)	I
Tetrahydrocannabinols (7370)	I
Thebacon (9315)	I
Thiofentanyl (9835)	I
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Bezitramide (9800)	II
Carfentanil (9743)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Etorphine Hcl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphacetylmethadol (9648)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, granulated (9640)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17966 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 19, 2008 and published in the **Federal Register** on March 28, 2008, (73 FR 16719), Sigma Aldrich Research Biochemicals, Inc., 4–3 Strathmore Road, Natick, Massachusetts 01760–2447, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphet-amine (MDMA) (7405).	I
1-[1-(2-Thienyl)cyclohexyl]piper-idine (TCP) (7470).	I
1-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Sigma Aldrich Research Biochemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical

security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18065 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 3, 2008, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 28, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17955 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 2008, Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17961 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 3, 2008, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17962 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 2008, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Methadone (9250)	II

Drug	Schedule
Methadone intermediate (9254)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17963 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 11, 2008, American Radiolabeled Chemical, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Dimethyltryptamine (7435)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Metazocine (9240)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances as radiolabeled compounds for biochemical research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17971 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 23, 2008, Austin Pharma, LLC., 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Nabilone (7379)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

Any other such applicant, and any person who is presently, registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator/Deputy Chief of Operation, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18046 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 27, 2008, Cody Laboratories, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II

Drug	Schedule
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 6, 2008.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18047 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 9, 2008, and published in the **Federal Register** on April 16, 2008, (73 FR 20718), Aldrich Chemical Company, Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Normethadone (9635)	I
Norpipanone (9636)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Aldrich Chemical Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Aldrich Chemical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17956 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 12, 2008 and published in the **Federal Register** on February 21, 2008, (73 FR 9593), Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (THC) (7370).	I
Alphamethadol (9605)	I
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Roche Diagnostics Operations, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Operations, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection

and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17958 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 19, 2008, and published in the **Federal Register** on March 28, 2008, (73 FR 16711), Penick Corporation, 33 Industrial Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers for further manufacture or to manufacture pharmaceutical dosage forms.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 29, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17964 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 28, 2008, and published in the **Federal Register** on April 4, 2008 (73 FR 18570), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17972 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 2008, and published in the **Federal Register** on April 2, 2008 (73 FR 18001), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk products for finished dosage units and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lonza Riverside to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17973 Filed 8–4–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 28, 2008, and published in the **Federal Register** on April 4, 2008 (73 FR 18570), Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 28, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–17974 Filed 8–4–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 10, 2008 and published in the **Federal Register** on March 19, 2008 (73 FR 14840), Mallinckrodt, Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Mallinckrodt, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18039 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 11, 2008 and published in the **Federal Register** on March 19, 2008 (73 FR 14841), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc. to manufacture the listed

basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18042 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 9, 2008, and published in the **Federal Register** on April 16, 2008, (73 FR 20718), Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine and marihuana derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–18067 Filed 8–5–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Work Experience and Career Exploration (WECEP) Regulations, 29 CFR 570.35a. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 6, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. *Background:* The Fair Labor Standards Act (FLSA) section 3(l), 29 U.S.C. 203(l), establishes a minimum age of 16 years for most nonagricultural employment but allows the employment of 14- and 15-year olds in occupations other than manufacturing and mining or deemed hazardous, if the Secretary of Labor determines such employment is confined to (1) periods that will not interfere with the minor's schooling and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c), 29 U.S.C. 211(c), requires all employers covered by the FLSA to make, keep and preserve records of their employees' wages, hours and other conditions and practices of employment. Regulations issued by the Secretary of Labor prescribe the recordkeeping and reporting requirements for these records. Subpart C of Regulations, 29 CFR Part 570, Child Labor Regulations, Orders, and Statements of Interpretation, sets forth the employment standards for 14- and 15-year olds (CL Reg. 3). Regulations 29 CFR 570.35a contains the requirements and criteria for the use of 14- and 15-year olds and the occupations permitted for them, and the conditions of employment that allow for the employment of 14- and 15-year olds, pursuant to a school-supervised and school-administered WECEP—under the conditions CL Reg. 3 otherwise prohibits. In order to utilize the CL Reg. 3 WECEP provisions, Regulations 29 CFR 570.35a(b)(2) requires a state educational agency to file an application for approval of a state WECEP program as one not interfering with schooling or with the health and well-being of the minors involved. Regulations 29 CFR 570.35a(b)(3)(vi) requires the preparation of a written training agreement for each student participating in a WECEP and that such agreement be signed by the teacher-coordinator, employer, and student. The regulation also requires the student's parent or guardian to sign or otherwise consent to the agreement in order for it to be valid. Regulations 29 CFR 570.35a(b)(4)(ii) requires state education agencies to keep a record of the names and addresses of each school enrolling WECEP students and the number of enrollees in each unit. The state or local educational agency office must keep a copy of the written training agreement for each student participating in the WECEP. The records and copies must be maintained for three (3) years from the date of each student's enrollment in the

program. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to ensure compliance with the youth employment provisions of the FLSA and its regulations. Without this information, the Administrator would have no means to determine if the proposed program meets the regulatory requirements.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Work Experience and Career Exploration Programs (WECEP) Regulations, 29 CFR 570.35a.

OMB Number: 1215–0121.

Affected Public: State, Local, or Tribal Government.

Frequency: Biennially.

Total Respondents: 37.

Total Annual Responses: 14,287.

Average Time Per Response:

Reporting:

WECEP Application—2 hours.

Written Training Agreement—1 hour.

Recordkeeping:

WECEP Program Information—1 hour.

Filing of WECEP Record and Training Agreement—One-half minute.

Total Burden Hours: 14,145.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3.15.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 31, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–18021 Filed 8–5–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Notice of Final Payment or Suspension of Compensation Benefits (LS–208). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 6, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in adjoining areas customarily used by an employer in loading, unloading, repairing or building a vessel. In addition, several acts extend Longshore Act coverage to certain other employees. Pursuant to section 914(g) of the Longshore Act, and 20 CFR 702.235, once an employer has made a final payment on a compensation claim, he/she shall file with the district director in the affected compensation district on or before the sixteenth day after the final payment has been made, a notice, in accordance with a form prescribed by the Secretary, stating the amount, type and dates of compensation paid on the claim. Form LS–208 has been designated for this purpose. Form LS–208 is used by insurance carriers and self-insured employers to notify that payment under the Longshore Act and extensions has been terminated. The information is used by OWCP district offices to determine the return-to-work status of a claimant. This information collection is currently approved for use through February 28, 2009.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Agency Numbers: LS–208.

Affected Public: Business or other for-profit.

Total Respondents: 500.

Total Annual Responses: 15,000.

Estimated Total Burden Hours: 4,950.

Estimated Time per Response: 20 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $11,550.00

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 31, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–18022 Filed 8–5–08; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

The Impact of Free Access to Public Access Computers and the Internet at Public Libraries Study, Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and Humanities.

ACTION: Submission to OMB for review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Associate Deputy Director for Research and Statistics, Carlos Manjarrez at (202) 653–4671. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 653–4614. This study is to examine the use of public access computers in public libraries; undertake an analysis of the impact on individuals, families, and communities of the provision of public access computers and access to the Internet in public libraries; and identify and disseminate indicators of impact within communities for public libraries to use for future assessments.

DATES: Comments must be received by September 5, 2008. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Lesley Langa, Research Specialist, Office of Policy, Planning, Research & Communication, Institute of Museum and Library Services, 1800 M St., NW., 9th floor, Washington, DC 20036, by telephone (202) 653–4760 or by e-mail *llanga@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized under 20 U.S.C Chapter 72. IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The Museum and Library Services Act includes a strong emphasis on encouraging and assisting museums in their educational role as core providers of learning and in conjunction with schools, families, and communities, and strengthening library services to the public. This study will assist IMLS in understanding the use, impact, and measureable effect public access computers in public libraries provides. A final report will be widely disseminated to assist policy makers and prospective funding for public access computers in public libraries.

20 U.S.C. 9108 authorizes the Director of the Institute of Museum and Library Services to carry out and publish analyses that shall identify national needs for, and trends of, museum and library services; report on the impact and effectiveness of programs conducted with funds made available by the Institute, and identify, and disseminate information on the best practices of such programs.

This study is to examine the use of public access computers in public libraries; undertake an analysis of the impact on individuals, families, and communities of the provision of public access computers and access to the Internet in public libraries; and identify and disseminate indicators of impact within communities for public libraries to use for future assessments.

Agency: Institute of Museum and Library Services.

Title: The Impact of Free Access to Public Access Computers and the Internet in Public Libraries.

OMB Number: None.

Agency Number: 3137.

Frequency: Once.

Affected Public: Library staff, users of public access computers, local officials, and library directors.

Number of Respondents: 1,550,811.

Estimated Time per Respondent: Various.

Total Burden Hours: 387,790 hours.

Total Annualized capital/startup costs: N/A.

Total Annual Costs: $961,273.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Dated: July 29, 2008.

Lesley Langa,

Research Specialist.

[FR Doc. E8–17983 Filed 8–5–08; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

DATES: The meeting will be held Monday, August 11, 2008, at 9 a.m.–3 p.m.

ADDRESSES: The meeting will be held in Room M–07 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the Humanities Panel is to solicit and collect advice and comments on the Endowment's EDSITEment program. EDSITEment is an online educational partnership between the Endowment and the Verizon foundation, Thinkfinity.org and can be accessed at *http://edsitement.neh.gov/*. The meeting is open to the public. A 10-minute time slot is reserved for public comments at the end of the meeting.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–17982 Filed 8–5–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Request for Public Comment on Use of Cost Sharing in National Science Foundation-Funded Activities

ACTION: Notice; request for public comment.

SUMMARY: On August 9, 2007, the America COMPETES Act directed the National Science Board (Board) of the National Science Foundation (NSF) to ''evaluate the impact of its [2004] policy to eliminate cost sharing for research grants and cooperative agreements for existing programs that were developed around industry partnerships and historically required industry cost sharing, such as the Engineering Research Centers [ERCs] and Industry/University Cooperative Research Centers [I/UCRCs].'' The Act directed that the Board ''also consider the impact that the cost sharing policy has on initiating new programs for which industry interest and participation are sought.''

In fall 2007, the Board charged a Task Force on Cost Sharing to evaluate the impacts of its 2004 policy on the ERC and I/UCRC programs and also on the Experimental Program to Stimulate Competitive Research (EPSCoR), another NSF program with capacity-building goals. On February 8, 2008, the Board issued a report to Congress containing several recommendations regarding mandatory cost sharing policy at NSF (*http://www.nsf.gov/nsb/publications/2008/rprt_congress_cs_policy.pdf*). The Board is continuing its study, focusing now on voluntary cost sharing and the impact of both mandatory and voluntary cost sharing on broadening the participation of traditionally underrepresented groups and organizations in federally sponsored research. The Board's intent is to release a second, more comprehensive report on NSF cost sharing policy in early 2009. Qualitative input from the research community for this report will be drawn in part from responses to this notice and from two public roundtable discussions held in Arlington, VA on July 9 and 10, 2008.

The Board is soliciting public comment regarding community experiences in cost sharing with emphasis on the following: (1) The relationship between cost sharing and NSF program goals; (2) the relationship between cost sharing and institutional competitiveness in NSF grant funding; (3) the role of cost sharing in the NSF merit review process; (4) the importance of types, sources, and timing of voluntary cost sharing; (5) effort associated with tracking and reporting cost-shared resources; (6) the relationship between cost sharing and institutional strategic investment; (7) options for ensuring equity in NSF grant funding when cost sharing is either required or volunteered; (8) research resources from state providers; and (9) research resources from industry providers.

Full text of questions can be found at *http://www.nsf.gov/nsb/committees/cs/comment.jsp*. Additional background material about the Task Force can be found at *http://www.nsf.gov/nsb/committees/tskforce_cs.jsp*.

DATES: Comments must be received by October 1, 2008.

ADDRESSES: Comments should be addressed to Jennifer Richards, Executive Secretary, Task Force on Cost Sharing, National Science Board Office, National Science Foundation, 4201 Wilson Boulevard, Suite 1220, Arlington, VA 22230; telephone (703) 292–7000; FAX (703) 292–9008; e-mail *nsbcostsharing@nsf.gov*. Due to potential delays in NSB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''Cost Sharing'' in the subject line of the e-mail message, and your name, title, organization, postal address, telephone number, and e-mail address in the text of the e-mail message. Please also include the full body of your comments in the text of the e-mail message and as an attachment.

FOR FURTHER INFORMATION CONTACT: Jennifer Richards at the addresses noted above.

Ann Ferrante,

Writer-Editor, National Science Board Office.

[FR Doc. E8–18023 Filed 8–5–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028]

South Carolina Electric and Gas Company as Itself and Acting as Agent for the South Carolina Public Service Company (Also Referred to as Santee Cooper) Acceptance for Docketing of an Application for Combined License for Virgil C. Summer Nuclear Station Units 2 and 3

By letter dated March 27, 2008, South Carolina Electric and Gas Company (SCE&G), acting for itself and as an agent for South Carolina Public Service Company (also referred to as Santee Cooper) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for two AP1000 advanced passive pressurized water reactors in accordance with the requirements contained in 10 CFR 52, ''Licenses, Certifications and Approvals for Nuclear Power Plants.'' These reactors will be identified as Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 and located on the existing VCSNS site in Fairfield County, South Carolina. A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 39339) on July 9, 2008.

The NRC staff has determined that VCSNS has submitted information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 52 that is acceptable for docketing. The docket numbers established for the VCSNS Units 2 and

3 COL application are 52–027 and 52–028, respectively.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Informal Hearing Procedures for NRC Adjudications,'' of 10 CFR Part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will publish in the **Federal Register** a notice of hearing, which will notice the opportunity to petition to intervene.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html*. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 1st day of August 2008.

For the Nuclear Regulatory Commission.

Brian Hughes,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–18004 Filed 8–5–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of New Reactors;

Interim Staff Guidance on Evaluation and Acceptance Criteria for 10 CFR 20.1406 to Support Design Certification and Combined License Applications

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on its Proposed Interim Staff Guidance (ISG) DC/COL–ISG–06 (ADAMS Accession No. ML081850160). This ISG is to clarify the U.S. Nuclear Regulatory Commission (NRC) position on what is an acceptable level of detail and content for demonstrating compliance with Title 10 of the *Code of Federal Regulations* Section 20.1406 (10 CFR 20.1406). Regulatory Guide (RG) 4.21, ''Minimization of Contamination and Waste Generation: Life Cycle Planning,'' provides an acceptable method of demonstrating compliance. This ISG provides further clarification on the evaluation and acceptance criteria that will be used by NRC staff in reaching a reasonable assurance finding that a Design Certification (DC) or Combined License (COL) applicant has complied with the requirements of 10 CFR 20.1406. The NRC staff issues DC/COL–ISGs to facilitate timely implementation of the current staff guidance and to facilitate activities associated with review of applications for DC and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISG–006 into the next revision of the Standard Review Plan and related guidance documents.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register** . Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted to: Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

Comments should be delivered to: 11545 Rockville Pike, Rockville, Maryland, Room T–6D59, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Persons may also provide comments via e-mail to Timothy J. Frye at *timothy.frye@nrc.gov.* The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Frye, Chief, Health Physics Branch, Division of Construction, Inspection, & Operational Programs, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–3900 or e-mail at *timothy.frye@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

The NRC staff is issuing this notice to solicit public comments on the proposed COL/DC–ISG–006. After the NRC staff considers any public comments, it will make a determination regarding the proposed COL/DC–ISG–006.

Dated at Rockville, Maryland, this 31st day of July 2008.

For the Nuclear Regulatory Commission,

William D. Reckley,

Branch Chief, Rulemaking, Guidance and Advanced Reactors Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–18012 Filed 8–5–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of August 4, 11, 18, 25, September 1, 8, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 4, 2008

There are no meetings scheduled for the week of August 4, 2008.

Week of August 11, 2008—Tentative

Tuesday, August 12, 2008

1:30 p.m.

Meeting with FEMA and State and Local Representatives on Offsite Emergency Preparedness Issues (Public Meeting) (Contact: Lisa Gibney, 301 415–8376).

This meeting will be Web cast live at the Web address—*http:* //www.nrc.gov.

Thursday, August 14, 2008

1:30 p.m.

Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Andrea Jones, 301 415–2309).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Week of August 18, 2008—Tentative

There are no meetings scheduled for the week of August 18, 2008.

Week of August 25, 2008—Tentative

There are no meetings scheduled for the week of August 25, 2008.

Week of September 1, 2008—Tentative

There are no meetings scheduled for the week of September 1, 2008.

Week of September 8, 2008—Tentative

There are no meetings scheduled for the week of September 8, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 31, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–17988 Filed 8–1–08; 10:02 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

Board meeting: September 24, 2008—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review Board will meet to discuss Department of Energy plans for preclosure operations related to a proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on Wednesday, September 24, 2008. At the meeting, the Board will review U.S. Department of Energy (DOE) activities related to designing and operating a waste management system in connection with the proposed repository for spent nuclear fuel and high level radioactive waste (HLW) at Yucca Mountain in Nevada. Among the issues that will be discussed are acceptance of spent nuclear fuel or HLW at commercial reactors or defense facilities; packaging of commercial spent nuclear fuel in transportation, aging, and disposal (TAD) canisters; transportation of the waste, including construction of a Nevada rail line; throughput of the waste at repository surface facilities; and plans for prototyping and testing of waste management equipment and facilities. The Board was charged in the Nuclear Waste Policy Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of DOE activities related to the implementation of the Nuclear Waste Policy Act, including disposing of, packaging, and transporting spent nuclear fuel and HLW.

The Board meeting will be held at the Suncoast Hotel & Casino, 9090 Alta Drive, Las Vegas (Summerlin), Nevada 89145; (tel) 702–636–7111, (toll free) 877–677–7111.

A meeting agenda will be available on the Board's Web site, *http://www.nwtrb.gov*, approximately one week before the date of the meeting. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

Board Chairman B. John Garrick will call the meeting to order at 8 a.m. Dr. Garrick's remarks will be followed by a DOE program overview and project status report. DOE then will make a presentation on issues related to waste acceptance, followed by a utility perspective on the same subject. After a break for lunch, the implications of TAD utilization for transportation and repository site operations will be discussed. A presentation on integrated systems' operations will follow. The last presentation of the day will be on DOE's prototyping and testing program for waste management equipment and facilities.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff no later than October 20, 2008.

A block of rooms has been reserved for meeting attendees at the Suncoast Hotel & Casino. When making a reservation, please state that you will be attending the Nuclear Waste Technical Review Board meeting, Group Code: NWTRBO8. Reservations should be made by August 29, 2008, to ensure receiving the meeting rate. To make reservations, call 866–636–7111 or access hotel reservations online at *http://www.suncoastcasino.com*.

For more information, contact Karyn Severson, NWTRB External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: July 31, 2008.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. E8–17945 Filed 8–5–08; 8:45 am]

BILLING CODE 6820–AM–P

DEPARTMENT OF STATE

[Public Notice 6311]

Determination Related to North Korea

Pursuant to the authority vested in me by the laws of the United States, including the Supplemental Appropriations Act, 2008 (Pub. L. 110–252), Chapter 4 of the Report on Six-Party Commitments, I hereby determine that North Korea continues to fulfill its commitments under the February 13, 2007, and October 3, 2007, Six-Party agreements, and that North Korea continues to make progress toward full implementation of the September 2005 Joint Statement.

This Determination shall be published in the **Federal Register** and copies shall be provided to the appropriate committees of the Congress along with the related report on North Korea's activities.

Dated: July 7, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–18115 Filed 8–5–08; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF STATE

[Public Notice 6293]

Public Meeting of the Advisory Committee on Persons With Disabilities

SUMMARY: A working group of the Advisory Committee on Persons with Disabilities of the U.S. Department of State and the U.S. Agency for International Development (Committee) will conduct a public meeting on Wednesday, August 13, 2008 from 9 a.m.–1 p.m. in the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. For directions, see, *http://www.itcdc.com/index.php.*

The Working Group of the Committee is reviewing the National Council on Disability (NCD) September 9, 2003 Report entitled, ''Foreign Policy and Disability: Legislative Strategies and Civil Rights Protections to Ensure Inclusion of People with Disabilities'' (*http://www.ncd.gov/newsroom/publications/2003/foreign03.htm*). At this meeting, the Working Group will discuss its assessment of the progress being made in addressing the conclusions of the NCD Report and will discuss recommendations to be made to the Committee.

Attendees must have valid, government-issued photo identification, such as a Driver's License or passport, in order to enter the building. Attendees requiring reasonable accommodation should indicate their requirements at least one week prior to the event to Sylvia Thomas at *thomassl@state.gov.* There will be a limited amount of time for comments from the public.

Established on June 23, 2004, the Advisory Committee serves the Secretary and the Administrator in an advisory capacity with respect to the consideration of the interests of persons with disabilities in the formulation and implementation of U.S. foreign policy and foreign assistance. The Committee is established under the general authority of the Secretary and the Department of State as set forth in Title 22 of the United States Code, Sections 2656 and 2651a, and in accordance with the Federal Advisory Committee Act, as amended.

Dated: July 28, 2008.

Stephanie Ortoleva,

Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. E8–18111 Filed 8–5–08; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Wake & Durham Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, the Triangle Parkway, which begins at NC 540 in Wake County and ends at I–40 in Durham County. The Triangle Parkway is also known as State Transportation Improvement Program Project U–4763B. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 2, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418, Telephone: (919) 747–7022; e-mail: *george.hoops@fhwa.dot.gov.* FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority (NCTA), 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612, Telephone: (919) 571–3004; e-mail: *jennifer.harris@ncturnpike.org.* NCTA's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: The Triangle Parkway, a 3.4-mile long, multi-lane, fully access-controlled, new location roadway. The project is also known as State Transportation Improvement Program (STIP) Project U–4763B. The project would run generally in a north-south direction, roughly parallel to NC 55, Davis Drive, and NC 54. On the south, the project begins at NC 540 in Wake County; on the north, it ends at I–40 in Durham County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the February 20, 2008–Environmental Assessment (EA), the July 29, 2008–FHWA Finding of No Significant Impact (FONSI), and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or NCTA at the addresses provided above. The EA and FONSI can be viewed at the offices of the North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612.

This notice applies to all Federal agency actions and decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and

Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287); Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O.13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: July 31, 2008.

George Hoops,

Major Projects Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. E8–17986 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28055]

Demonstration Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of demonstration project.

SUMMARY: FMCSA announces the extension of the demonstration project allowing up to 100 Mexico-domiciled motor carriers to operate beyond the U.S. border commercial zones, and the same number of U.S. carriers to operate in Mexico, from one year to the full three years allowed by statute, 49 U.S.C. 31315. Reciprocally, Mexico has agreed to allow U.S.-domiciled motor carriers in the demonstration project to continue to operate in Mexico for up to three years.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Division Chief, North American Borders Division, Federal Motor Carrier Safety Administration, Telephone (202) 366–4049; e-mail *milt.schmidt@dot.gov.*

SUPPLEMENTARY INFORMATION: Secretary of Transportation Mary E. Peters and Mexico's Secretary of Communications and Transportation Luis Tollez Kuenzler announced a demonstration project to implement certain trucking provisions of the North American Free Trade Agreement (NAFTA) in February 2007. The project was expected to last one year. FMCSA's notice inaugurating the project stated that ''[t]he demonstration project has a one-year limit'' (72 FR 23883, 23884, May 1, 2007).

Shortly thereafter Congress required the Department of Transportation (DOT) to satisfy a series of new conditions before starting the demonstration project. *See* section 6901 of the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' [hereafter: ''Iraq Supplemental''], Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007. Section 6901 imposed limits on DOT's use of appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the border commercial zones. In particular, section 6901(a) required that the granting of such authority be tested as part of a pilot program meeting the requirements of 49 U.S.C. 31315(c) and that the pilot program also comply with the requirements of section 350 of Public Law 107–87 (115 Stat. 833, 864, December 18, 2001). Section 350, enacted by the 2002 DOT Appropriations Act and reenacted in every subsequent annual DOT appropriations act, set forth additional requirements FMCSA must meet as a condition of granting Mexico-domiciled motor carriers authority to operate in the United States. A pilot program under § 31315(c) must include, among other things, a ''scheduled life * * * of not more than 3 years.''

As demonstrated in the **Federal Register** notices of June 8 and August 17, 2007 (72 FR 31877 and 72 FR 46263, respectively), FMCSA met all of the conditions established by section 6901 of the Iraq Supplemental, including compliance with section 350. The demonstration project was initiated on September 6, 2007, after Secretary Peters submitted to Congress the Department's response to the report by the DOT Office of Inspector General verifying compliance with section 350, as required by section 6901(b)(1) and (b)(2)(A). FMCSA issued provisional operating authority to the first Mexico-domiciled motor carrier the same day. However, uncertainties concerning the length and viability of the demonstration project may have deterred a significant number of carriers, both from Mexico and the United States, from seeking to participate in the project. For example, many Mexico-domiciled motor carriers who previously expressed an interest in operating beyond the border commercial zones have not pursued such authority through the demonstration project. Additionally, we have been advised that other Mexico-domiciled carriers who received approval for project participation are not participating because they are reluctant to incur substantial costs related to obtaining insurance to operate in the United States and developing a customer base for long-haul operations, in the face of these uncertainties. The result is that the number of Mexico-domiciled carriers operating under the

demonstration project is smaller than expected: currently, 27 carriers are operating 107 trucks. Although these carriers have made 9,983 trips into the United States, most of these carriers had destinations in the commercial zones; they have performed 1,272 long-haul trips beyond the border zones. Concurrently, many U.S.-domiciled motor carriers have expressed concern at the high cost of maintaining an official legal representative in Mexico, especially due to their belief that a minimum of two years is needed to develop sustainable business relationships with Mexican shippers. This has resulted in a limited number of U.S. carriers participating in the demonstration project. At the moment, only 10 U.S. carriers are participating and they are operating only 55 vehicles. They have made 2,245 trips across the Mexican border.

In order to ensure the demonstration project can be reviewed and evaluated on the basis of a more comprehensive body of data, FMCSA has decided to extend the project from one year up to the full three years allowed by statute. The U.S. and Mexico will continue to limit the project to a maximum of 100 of each other's motor carriers and will provide for reciprocal authority. In addition, the U.S. will require participating Mexican carriers and drivers to comply with all applicable U.S. laws and regulations. The extension will enable FMCSA to collect and analyze a larger volume of safety and operational data, which is the fundamental goal of the demonstration project. We believe an extension will provide non-participating motor carriers, both in Mexico and the United States, added incentives to join the project, knowing that their investment in long-haul foreign operations will have more time to mature and become profitable.

Issued on: July 31, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–17946 Filed 8–4–08; 9:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2008–0002]

National Transit Database: Amendments to Urbanized Area Annual Reporting Manual

Provider: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Amendments to 2008 National Transit Database Urbanized Area Annual Reporting Manual.

SUMMARY: This notice announces the adoption of certain amendments for the Federal Transit Administration's (FTA) 2008 National Transit Database (NTD) Urbanized Area Annual Reporting Manual (Annual Manual). On February 7, 2008, FTA published a notice in the **Federal Register** (73 FR 7361) inviting comments on proposed amendments to the 2008 Annual Manual. This notice provides responses to those comments, and announces the adoption of certain amendments for the 2008 Annual Manual, as well as the adoption of some amendments to take effect for the 2009 Report Year.

DATES: *Effective Date:* August 6, 2008.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry. Recipients of FTA's Urbanized Area Formula Program (Section 5307) and Other Than Urbanized Area Formula Program (Section 5311) are required by statute to submit data to the NTD. These data are used to ''help meet the needs of * * * the public for information on which to base public transportation service planning * * * '' (49 U.S.C. 5335). Other transit providers in urbanized areas report to the NTD under these requirements on a voluntary basis for purposes of including their data in the apportionment of Urbanized Area Formula Grants. FTA details the NTD reporting requirements for urbanized area transit providers in the NTD Urbanized Area Annual Reporting Manual (Annual Manual).

Currently, over 650 transit providers in urbanized areas report to the NTD through an Internet-based reporting system. Each year, performance data from these submissions are used to apportion over $5 billion of FTA funds under the Urbanized Area Formula and the Fixed-Guideway Modernization Grants Programs. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act.

In an ongoing effort to improve the NTD Internet reporting system and to be responsive to the needs of transit providers reporting to the NTD, and to the needs of the transit data user community, FTA annually refines and clarifies reporting requirements to the NTD. This notice announces the adoption of certain amendments for the 2008 Annual Manual, as well as the adoption of some amendments to take effect for the 2009 Report Year.

II. Comments and FTA Response to Comments

On February 7, 2008, FTA published a notice in the **Federal Register** (73 FR 7361) inviting comments on proposed amendments to the 2008 Annual Manual. FTA received responses from seven commenters. Three of the commenters made comments on the set of amendments as a whole. One expressed support for the package of amendments as a whole and two commenters suggested that most of the proposed amendments should not take effect until the 2009 Report Year, in order to give reporters sufficient time to prepare reports under the new requirements. FTA agrees with the commenters and will therefore delay many of the proposed amendments until the 2009 Report Year, particularly those that impact relationships with purchased transportation providers. FTA will respond to all comments based on each proposed amendment.

(a) Contractual Relationship (B–30) Form

FTA proposed to revamp this form to allow reporters to clearly report three separate types of relationships: (1) Traditional purchased transportation contracts; (2) taxicab contracts for demand response service; and (3) pass-through relationships. Under this proposal, taxicab contracts for demand response service would become a third type of service under the NTD, with reduced reporting requirements on the S–10, and no reporting requirements for the A–10 (asset inventory) form. FTA received one comment in support of the proposed changes.

FTA Response: Based on the above comments requesting that changes impacting the reporting requirements for purchased transportation services be delayed until the 2009 Report Year, FTA agrees to delay implementation of this amendment until the 2009 Report Year. The above requirements will be reflected in the 2009 Annual Manual.

To support the transition to reduced reporting requirements for taxicab demand response contracts in 2009, FTA will request that the following data elements on the S–10 form be reported separately for taxicab demand response services from all other purchased transportation demand response services: *Vehicles Operated in Maximum Service, Vehicles Available for Maximum Service, Vehicle Revenue Miles, Vehicle Revenue Hours, Unlinked Passenger Trips, ADA Unlinked Passenger Trips,* and *Passenger Miles Traveled.* FTA will automatically grant a waiver from this requirement for the 2008 Report Year to any transit provider with both taxicab demand response services and regular purchased transportation demand response services that is unable to report these data separately for the taxicab demand response services in 2008.

FTA received one other comment, objecting to the reporting of contract administration costs on the B–30.

FTA Response: FTA has long required the reporting of contract administration costs under the label of ''other costs incurred by buyer.'' This is not a new reporting requirement. The reporting of contract administration costs is essential for understanding the true costs of purchased transportation services relative to directly operated services. In response to this comment, FTA will amend the titles and definitions on the B–30 form to make the reporting of information more intuitive, but without altering or increasing the existing reporting requirements.

(b) Funds Expended and Earned (F–10) Form

FTA proposed to only require transit providers to separate funds earned and spent on operations from funds earned and spent on capital in the context of fare revenues, other directly-generated revenues (e.g. parking and advertising revenues), contributed services (e.g. services provided directly by another government body), the various sources of Federal funds, total state government revenues, total local government revenues, and total revenues from independent political entities. FTA proposed to retain the requirement to continue to report total funds earned from each separate type of tax at the local and state levels.

Two commenters voiced support for this proposal, proposing that FTA go further and consolidate expenditure reporting for the different categories of directly-generated revenues (e.g. fares, advertising, or concessions.)

FTA Response: FTA agrees with the above comments and will adopt the suggestion to consolidate expenditure reporting for the different categories of directly-generated revenues on the F–10 Form. FTA will defer implementation of this amendment until the 2009 Report Year. The above requirements will be reflected in the 2009 Annual Manual.

(c) Bonds and Loans

FTA proposed to eliminate the requirement to report Bond and Loan Payments separately for each category of funding. Instead, FTA proposed simplified bond and loan reporting that would require transit providers to report: (1) Year-beginning principal outstanding; (2) new bonds and loans (new principal and interest); (3) total interest paid; (4) total principal repaid; and (5) total year-end principal and interest outstanding.

FTA received one comment in support of this proposal. Another commenter objected only to the proposal to eliminate the source of funds used to repay the bonds and loans. A third commenter objected to reporting interest expenses on the F–10 Form instead of on the F–40 Form.

FTA Response: FTA adopts the suggestion to retain the reporting of the source of funds used to repay bonds and loans. FTA does not adopt the suggestion to continue the reporting of interest on the F–40 Form. FTA believes that it would be much easier and more convenient to have all reporting related to bonds and loans in a single place. Based on the above comments, FTA will also defer implementation of this amendment until the 2009 Report Year. The above requirements will be reflected in the 2009 Annual Manual.

(d) Uses of Capital (F–20) Form

FTA proposed to reduce the reporting requirements by combining the categories for *Fare Revenue Collection Equipment* and *Communication and Information Systems* into a single category for *Intelligent Transportation Systems (ITS.)*

FTA received one comment in support of this proposal, and two comments objecting to this proposal that it was insufficiently defined.

FTA Response: FTA understands the comments that the proposed *Intelligent Transportation Systems (ITS)* category is insufficiently defined and therefore withdraws the above proposal. FTA will reconsider its definitions for capital expenditure reporting, and provide a more comprehensive proposal for public comment in a future report year.

(e) Operating Expenses (F–30) Form

FTA proposed to combine the object classes for *Fuels and Lubricants* and *Tires and Lubes*, as well as the object classes for *Taxes* and *Miscellaneous Expenses*. FTA also proposed to: (1) Eliminate the reporting of *Fuels and Lubes* object classes under the *Non-Vehicle Maintenance* and *General Administration* operating functions; (2) eliminate reporting of the *Utilities* object class under the *Non-Vehicle Maintenance* operating function; and (3) only permit the *Casualty and Liability* and *Miscellaneous Expenses* object classes to be reported under the *General Administration* operating function.

FTA received three comments, all objecting to various parts of the proposal that would have unintended consequences. Two of the comments specifically recommended that *Fuels and Lubricants* be retained as a separate object class. One of the comments noted that restricting the reporting of *Casualty and Liability* object class to the *General Administration* function was in conflict with the guidance in the Uniform System of Accounts (USOA). One comment suggested that all object classes for which there is not a specific interest should be consolidated into a single object class for *Other Expenses*.

FTA Response: FTA withdraws its proposal for combining object classes. FTA will evaluate the suggestion to consolidate unneeded object classes into a single object class for *Other Expenses*, and consider proposing it as an amendment for public comment in a future report year. FTA will also only restrict certain object classes to being reported under certain functions to the extent that those restrictions are explicitly defined in the Uniform System of Accounts.

(f) Operating Expenses Summary (F–40) Form

FTA proposes to eliminate collecting *Funds Not Applied, Depreciation, Amortization of Intangibles, Interest Expenses, Leases*, and *Reconciling Items*. FTA received two comments objecting to these changes. Both comments suggested that these items should be retained, along with a requirement that these lines must be used to reconcile a transit provider's NTD report with their audited, published accounts.

FTA Response: FTA agrees with the commenters and withdraws its proposal. FTA will consider proposing an amendment to require the use of the F–40 Form to reconcile a reporter's NTD reports and their audited published accounts for a future report year.

(g) Operator's Wages (F–50) Form

FTA proposed to discontinue this form, and received one comment in favor of this proposal.

FTA Response: FTA adopts the proposal. The F–50 form will be eliminated for the 2008 Report Year.

(h) Service (S–10) Form

FTA proposed to replace the reporting of *Total Actual Hours* and *Total Actual Miles* with the reporting of *Deadhead Hours* and *Deadhead Miles.* Additionally, FTA proposed to eliminate the reporting of *Charter Service Hours* and of *School Bus Hours* and to add the reporting of *Other Hours* and *Other Miles.*

FTA received one comment in support of these changes. Another comment supported the proposal, but recommended that *Other Hours* and *Other Miles* be dropped from the form entirely, as this information was unnecessary. One comment from a very large transit provider objected that the reporting of *Deadhead Hours* and *Deadhead Miles* would be overly burdensome, and recommended retaining the reporting of *Total Actual Hours* and *Total Actual Miles.*

FTA Response: FTA agrees with the last commenter, and will retain the reporting of *Total Actual Hours* and *Total Actual Miles.* In order to facilitate FTA's desire to reduce the confusion surrounding the definition of *Total Actual Hours* and *Total Actual Miles* on the S–10 Form, FTA will add auto-calculated lines for *Deadhead Hours* and *Deadhead Miles* on the S–10 Form for the 2008 Report Year. This will not impact reporting burden, and will clarify the relationship between *Revenue Hours* and *Total Actual Hours* and between *Revenue Miles* and *Total Actual Miles.* FTA withdraws its proposal to replace *Charter Hours* and *Schoolbus Hours* with *Other Hours* and *Other Miles.*

FTA also proposed to eliminate collecting information on *Deadhead Hours, Deadhead Miles, Time Service Begins* and *Time Service Ends* for vanpool, jitney, and público services. FTA also proposed to drop reporting of peak data on service times and vehicles in operation for ferryboat, aerial tramway, jitney, and público services. Finally, FTA proposed to exempt rail systems with 9 or fewer rail vehicles operated in maximum service (peak hour service) from the requirement to report Average Weekday Unlinked Passenger Trips and Actual Passenger Car Revenue Miles by four time categories: Weekday AM Peak, Weekday Midday, Weekday PM Peak and Weekday Other.

FTA received no comments on these proposals.

FTA Response: FTA adopts the above proposals. These requirements will appear in the 2008 Annual Manual.

(i) Employee Resources (R–10) Form

FTA proposed to add reporting of *Paid Non-Work Hours* to this form. This data was previously reported on the F–50 Form, which is being dropped.

FTA received two comments objecting to this proposal, arguing that the proposal is burdensome and that there is no compelling interest in collecting data on pay for work hours vs. non-work hours.

FTA Response: FTA withdraws this proposal.

(j) Maintenance Performance (R–20) Form

FTA proposed to drop the reporting requirement for *Total Labor Hours for Inspection and Maintenance,* as this information is already reported in the R–10 Form. FTA also proposed to require that this form be completed by transit providers for purchased transportation service, as it is currently only required for directly operated services. FTA received two comments in favor of this proposal.

FTA Response: FTA adopts the proposal to eliminate the reporting requirement for *Total Labor Hours for Inspection and Maintenance* for the 2008 Report Year. FTA defers adopting the proposal to make this form required for purchased transportation services until the 2009 Report Year. This guidance will be reflected in the 2008 Annual Manual and the 2009 Annual Manual, respectively.

(k) Energy Consumption (R–30) Form

FTA proposed to drop the lines on this form for certain rarely-used fuels, specifically, *Methanol, Bunker Fuel,* and *Grain Additive.* These fuels would still be reportable under the *Other Fuels* category. FTA also proposed to require that this form be completed for purchased transportation services (it is currently only required for directly operated services).

FTA received one comment in support of this proposal, with the caveat that it should not be made effective until the 2009 Report Year.

FTA Response: FTA agrees to adopt the above proposal, effective in the 2009 Report Year. This guidance will be reflected in the 2009 Annual Manual.

(l) Stations and Maintenance Facilities (A–10) Form

FTA proposed to require expanded reporting of the multi-modal nature of transit stations. FTA also proposed to require motorbus, trolleybus, and light rail services to report the number of stops and shelters in their systems.

FTA received two comments objecting to the above proposal as being overly burdensome, and as raising a number of difficult issues in defining exactly what facilities should be reported.

FTA Response: FTA withdraws this proposal. FTA will re-evaluate the concerns regarding definitions of this proposal and ways to minimize the reporting burden of this proposal for a future report year.

(m) Transit Way Mileage (A–20) Form

FTA proposed to merge this form with the Fixed Guideway Segments Form (S–20 Form). FTA received two comments objecting that although the forms both collect data on fixed guideways, merging the different data elements of the two forms would create a significant increase in reporting burden. Additionally, while a large number of fixed guideways are included on both forms, some fixed guideways (e.g. sidings and parallel tracks) only appear on the A–20 Form, whereas other fixed guideways (e.g. HOV lanes) only appear on the S–20 Form.

FTA Response: FTA withdraws this proposal. FTA will re-evaluate ways to eliminate the duplicate data collections on the A–20 and S–20 forms while minimizing reporting burden for a future report year.

(n) Revenue Vehicle Inventory (A–30) Form

FTA proposed to simply collect whether the vehicles are compliant with the Americans with Disabilities Act (ADA Accessible), and to not separately collect those vehicles that are ADA Accessible by virtue of having lifts and those that are ADA Accessible by virtue of having ramps or low floors. FTA also proposed to stop collecting *Total Miles on Active Vehicles During this Time Period,* as this information is infrequently used, is duplicative of information on total miles collected on the S–10 Form, and cannot be used as a measure of total miles from the previous year. FTA noted that it was retaining collection of *Average Lifetime Miles per Active Vehicle* as a measure of asset condition and age.

FTA received two comments in support of this proposal. A third comment also asked FTA to consider allowing reporters to estimate the *Average Lifetime Miles per Active Vehicle* when the vehicles have been acquired through a merger with a private operator, and the actual mileage is not available.

FTA Response: FTA adopts its proposal, but will defer implementation until the 2009 Report Year. This guidance will appear in the 2009 Annual Manual. FTA also adopts the commenter's suggestion for allowing estimation of *Average Lifetime Miles per Active Vehicle* in the case described. That guidance will appear in the 2008 Annual Manual.

Federal Funding Allocation (FFA–10) Form

FTA proposes to make this form required for all transit providers serving more than one urbanized area, or an urbanized area and a non-urbanized area in order to support the apportionment of Small Transit-Intensive Cities (STIC Grants.)

FTA received two comments in support of this proposal.

FTA Response: FTA adopts this proposal for the 2008 Report Year. This guidance will appear in the 2008 Annual Manual.

Issued in Washington, DC, this 1st day of July, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–18090 Filed 8–5–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–515 (Sub-No. 2); STB Finance Docket No. 35160]

Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR; Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing concerning the abandonment and feeder line applications in the respective above-titled dockets. The purpose of the hearing will be to allow interested persons to comment on the applications. On the same day, immediately prior to the hearing, Board staff will hold a public information session concerning the Board's procedures for adjudicating abandonment and feeder line cases.

Date/Location: The public hearing will take place on August 21, 2008, beginning at 9:30 a.m., at the Wayne L. Morse U.S. Courthouse, 405 East Eighth Avenue, Eugene, Oregon, in Room 2200 (the Jury Assembly Room). Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, identifying (1) the party represented, (2) the proposed speaker, and (3) the number of minutes requested. Notices of intent to participate should be filed as soon as possible, but no later than August 11, 2008. Following receipt of notices of intent, the Board will release a schedule of speakers for the hearing.

The public information session will be held on August 21, 2008 from 8:15–9:15 a.m., in Room 1702 (the GSA Conference Room) of the Wayne L. Morse U.S. Courthouse, 405 East Eighth Avenue, Eugene, Oregon. At that session, Board staff will discuss, and be available to answer questions regarding, the procedures the Board uses in processing abandonment and feeder line cases. No notice of intent to participate in the public information session is necessary.

The Wayne L. Morse U.S. Courthouse is open Monday through Friday from 8 a.m. to 5 p.m. All visitors must present a valid form of government-issued photo identification and pass screening before being granted access into the building. Cameras are not permitted in the building. Visitors will have access to public areas only.

ADDRESSES: Notices of intent to participate in the hearing may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send the filing to: Surface Transportation Board, Attn: STB Docket No. AB–515 (Sub-No. 2) and STB Finance Docket No. 35160, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: A decision served in STB Docket No. AB–515 (Sub-No. 2) on July 29, 2008, provided that a public meeting will be held to permit interested persons to express their views about the application filed under 49 U.S.C. 10903 by Central Oregon & Pacific Railroad, Inc. (CORP) on July 14, 2008, for permission to abandon and discontinue service over portions of a line of railroad known as the Coos Bay Subdivision. CORP seeks authority to abandon certain portions of the Coos Bay Subdivision that it owns, namely the line extending from milepost 669.0 near Vaughn, OR, to milepost 763.13 near Cordes, OR, a distance of 94.13 miles. CORP also seeks authority to discontinue service over the portions of the Coos Bay Subdivision that it leases: (1) The Coquille Branch extending from milepost 763.13 near Cordes to milepost 785.5 near Coquille, OR, a distance of 22.37 miles, in Coos County, OR, and (2) the LPN Branch extending between CORP milepost 738.8 and LPN Branch milepost 2.0, a distance of 2.0 miles.

Additionally, a decision served in STB Finance Docket No. 35160 on August 1, 2008, accepted a feeder line application under 49 U.S.C. 10907 filed by the Oregon International Port of Coos Bay on July 11, 2008, to acquire approximately 111.016 miles of CORP's rail line between milepost 763.130, near Cordes, and milepost 652.114, near Danebo, OR. In that decision, the Board also announced a procedural schedule for the proceeding. Notice of the Board's acceptance of the application will be published in the **Federal Register** by August 8, 2008.

At the hearing, the Board will hear testimony in both the abandonment proceeding and the feeder line proceeding. Speakers at the hearing may, but are not required to, bring written copies of their testimony to the hearing and offer those statements for the record in the proceedings. Speakers who wish to enhance their presentation by using projector-adaptable visual displays and/or handouts may do so. Any projector-adaptable visual displays must be submitted to the Board in electronic form by August 15, 2008. Interested persons should also consult the procedural schedules in the feeder line and abandonment dockets for other opportunities to submit written comments in those proceedings. Live audio/video streaming of the hearing will not be available.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: August 1, 2008.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–18108 Filed 8–5–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35160]

Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of acceptance of feeder line application and setting of procedural schedule.

SUMMARY: The Surface Transportation Board has accepted for consideration the Oregon International Port of Coos Bay's (the Port's) feeder line application under 49 U.S.C. 10907, and has set the procedural schedule for the proceeding. The Port seeks to acquire approximately 111.016 miles of Central Oregon & Pacific Railroad, Inc.'s (CORP's) Coos Bay Line (the Line) between milepost 763.130, near Cordes, OR, and milepost 652.114, near Danebo, OR.

DATES: Competing applications by other parties seeking to acquire all or any portion of the Line sought in the initial application are due by August 8, 2008. Any supplement by the Port to its application is due by August 8, 2008. The Board, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than August 22, 2008. Verified statements and comments addressing both the initial and competing applications must be filed by August 29, 2008. Verified replies by applicants and other interested parties must be filed by September 12, 2008.

ADDRESSES: Send an original and 10 copies of any competing applications, supplements, verified statements, comments, and verified replies referring to STB Finance Docket No. 35160 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, send one copy of any competing applications, supplements, verified statements, comments, and verified replies to (1) applicant's representative: Sandra L. Brown, Esq., Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004; and (2) CORP's representative: Terence M. Hynes, Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On July 11, 2008, the Port filed an application under the feeder line provision at 49 U.S.C. 10907 to acquire the Line from CORP. The Port offers $9,811,100 for the Line, its estimate of the Line's net liquidation value. The Port asserts that the Line has no going concern value.

Under 49 U.S.C. 10907(b)(1), the Board is authorized to require the sale of a rail line to a financially responsible person if the public convenience and necessity require or permit the sale. The Port contends that the proposed sale is required or permitted under the public convenience and necessity criteria, 49 U.S.C. 10907(c)(1)(A)–(E), and that it is a financially responsible person willing to pay not less than the constitutional minimum value of the Line.

Acceptance of the Port's Application. Under 49 CFR 1151.2(b), the Board, through the Director of the Office of Proceedings, must accept a complete application, or reject one that is incomplete, no later than 30 days after the application is filed. Notice of an acceptance must be published in the **Federal Register** . 49 CFR 1151.2(b)(1). An application is complete if it has been properly served and contains substantially all information required by section 1151.3, except as modified by advance waiver. *Id.* The notice also provides a procedural schedule for the proceeding. *Id.*

The Port's application contains sufficient information to be accepted for consideration. However, because the Port forecasts that the Line will require extensive rehabilitation and that rail service will incur substantial losses, the Port is encouraged to supplement the information it has provided thus far with regard to section 1151.3(a)(7), which addresses the proposed operator of the line; section 1151.3(a)(9), which addresses any preconditions that would be placed on shippers in order for them to receive service, including shipper subsidies; and section 1151.3(a)(10), which addresses the sources of other subsidies the applicant would receive. Any such supplement must be filed by August 8 so that those responding to the application will have ample time to review the supplement.

Procedural Schedule. The Board has determined that it is in the interest of the public, the Port, and CORP to complete the feeder line proceeding in an expedited manner. Specifically, the procedural schedule described above was adopted based in part on the procedural schedule of CORP's pending abandonment application, which is being processed by the Board concurrently in a separate docket.[1]

Lastly, on July 29, 2008, the Board served a decision in the CORP abandonment proceeding granting requests for a public hearing, which is being set for August 21, 2008 in Eugene, OR.[2] Because the Port is seeking to acquire a rail line that includes the line that CORP is seeking to abandon, and because both applications were filed at approximately the same time, the Port, CORP and other interested parties may address issues relevant to both proceedings at that hearing. Details about the public hearing, including how to participate, can be found in a separate decision that is being served on August 1, 2008, in this proceeding and in the CORP abandonment proceeding.

Copies of the application and any supplement filed by the applicant may be obtained free of charge by contacting applicant's representative. Alternatively, the application and any supplement filed may be inspected at the offices of the Surface Transportation Board, Suite 131, during normal business hours, or copies may be obtained from the Board's Web site at *http://www.stb.dot.gov.*

To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov* or call the Board's Information Officer at (202) 245–0245. [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

Decided: July 31, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–18183 Filed 8–5–08; 8:45 am]

BILLING CODE 4915–01–P

[1] On July 14, 2008, in *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR,* STB Docket No. AB–515 (Sub-No. 2), CORP filed for authority, under 49 U.S.C. 10903, to abandon the Coos Bay Branch between milepost 669.0 near Vaughn, OR, and milepost 763.13 near Cordes, OR, and to discontinue service over the segments of the Coos Bay Subdivision that are leased by it, including: (1) The Coquille Branch between milepost 763.13 near Cordes, OR, and milepost 785.5 near Coquille, OR, which is leased from the Union Pacific Railroad Company; and (2) the LPN Branch between CORP milepost 738.8 and LPN Branch milepost 2.0, which is leased from Longview, Portland & Northern Railway Company. The **Federal Register** notice of CORP's abandonment application is being published August 1, 2008.

[2] *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR,* STB Docket No. AB–515 (Sub-No. 2) (STB served July 29, 2008).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 19 additional entities and individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the six entities and thirteen individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on July 31, 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 on 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

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 31, 2008, OFAC designated six additional entities and thirteen additional individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Entities:

1. CAMBIOS EURO LTDA, Carrera 7 No. 115–60 Local F–109, Bogota, Colombia; NIT # 830102482–6 (Colombia); (ENTITY) [SDNTK].
2. COLCHONES SUNMOONS LTDA, Carrera 50 No. 37–45 Sur, Bogota, Colombia; NIT # 830073142–1 (Colombia); (ENTITY) [SDNTK].
3. COMUNICACIONES UNIDAS DE COLOMBIA LTDA (f.k.a. RADIO COMUNICACIONES SUR DEL GUAVIARE LTDA); Calle 38 No. 33 72 Oficina 202, Villavicencio, Colombia; NIT # 822000712–8 (Colombia); (ENTITY) [SDNTK].
4. DIZRIVER Y CIA. S. EN C., Carrera 68B No. 78–24 Unidad 23 Interior 5 Apartamento 402, Bogota, Colombia; NIT # 900013642–1 (Colombia); (ENTITY) [SDNTK].
5. LA MONEDITA DE ORO LTDA, Carrera 7 No. 115–60 Local C227, Bogota, Colombia; NIT # 800149502–9 (Colombia); (ENTITY) [SDNTK].
6. EXCHANGE CENTER LTDA; Avenida Carrera 19 No. 122–49, Local 13, Bogota, Colombia; Calle 183 No. 45–03, Local 328, Bogota, Colombia; NIT #830003608–2 (Colombia) (ENTITY) [SDNTK].

Individuals:

1. CONDE RUBIO, Nancy (a.k.a. ''Doris Adriana''; a.k.a. ''Alexandra Rubio Silva''; a.k.a. ''Maritza''; a.k.a. ''Luz Dary''); Colombia; DOB 02 Sep 1972; Alt. DOB 19 Nov 1973; POB Bogota, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 20645502 (Colombia); (INDIVIDUAL) [SDNTK].
2. CORREDOR IBAGUE, Jose Maria (a.k.a. ''Boyaco''; a.k.a. ''Chepe''; a.k.a. ''Jose Gilberto RODRIGUEZ PEREZ''; a.k.a. ''Jose LEONEL''; a.k.a. ''Hector Jaime SANCHEZ''; a.k.a. ''Angel ORTIZ''; a.k.a. ''Carlos Alberto HENAO''; a.k.a. ''Jose Adrian RODRIGUEZ BUITRAGO''); Colombia; DOB 17 Dec 1966; POB Santana, Boyaca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 4241983 (Colombia); (INDIVIDUAL) [SDNTK].
3. CUESTA LEON, Carlos Pompeyo, c/o COLCHONES SUNMOONS LTDA, Bogota, Colombia; DOB 29 Nov 1965; POB Ubala, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 80375525 (Colombia); (INDIVIDUAL) [SDNTK].
4. CUESTA LEON, Josue (a.k.a. ''El Viejo''; a.k.a. ''Don Julio''); Colombia; DOB 26 Jan 1970; POB Ubala, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 97610086 (Colombia); (INDIVIDUAL) [SDNTK].
5. CULMA SUNZ, Bladimir (a.k.a. CULMAN SANZ, Bladimir; a.k.a. ''Vladimir''); Colombia; DOB 23 Sep 1979; POB El Castillo, Meta, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 86068233 (Colombia); (INDIVIDUAL) [SDNTK].
6. DIAZ OREJUELA, Miguel Angel, c/o CAMBIOS EURO LTDA, Bogota, Colombia; c/o DIZRIVER Y CIA. S. EN C., Bogota, Colombia; DOB 15 May 1963; POB Bogota, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 17412428 (Colombia); Passport AI481119 (Colombia); (INDIVIDUAL) [SDNTK].
7. FARFAN SUAREZ, Alexander (a.k.a. ''Enrique Gafas''); Colombia; DOB 12 Feb 1973; POB San Jose del Guaviare, Guaviare, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 86007030 (Colombia); (INDIVIDUAL) [SDNTK].
8. GALLEGO RUBIO, Maribel (a.k.a. ''Maritza''; a.k.a. ''Mery''); Colombia; DOB 09 Apr 1984; POB Acacias, Meta, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 30946062 (Colombia); Passport AJ834783 (Colombia); (INDIVIDUAL) [SDNTK].
9. GUTIERREZ VERGARA, Luz Mery, Colombia; DOB 26 Apr 1977; POB Ubala, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 40442724 (Colombia); (INDIVIDUAL) [SDNTK].
10. MORALES LOAIZA, Edilma (a.k.a. ''Maria Ofelia''; a.k.a. ''Marucha''; a.k.a. ''Carolina''; a.k.a. ''Gladys Gomez Solano''); Colombia; DOB 29 Dec 1974; POB Lejanias, Meta, Colombia; Citizen Colombia;

Nationality Colombia; Cedula No. 40356505 (Colombia); (INDIVIDUAL) [SDNTK].

11. PENA AREVALO, Ana Isabel (a.k.a. ''Dona Chava''; a.k.a. ''Dona Isa''; a.k.a. ''Dona Elisa''; a.k.a. ''Isabela''); Colombia; DOB 24 Aug 1962; POB Pacho, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 20794356 (Colombia); (INDIVIDUAL) [SDNTK].
12. RUEDA GIL, Camilo (a.k.a. ''El Primo''; a.k.a. ''El Paisa''; a.k.a. ''Muneca''); Colombia; DOB 03 Aug 1969; POB Bogota, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 79499884 (Colombia); Passport AJ520060 (Colombia); (INDIVIDUAL) [SDNTK].
13. TORRES, Ana Leonor (a.k.a. ''Juliana''; a.k.a. ''Catalina''; a.k.a. ''Cata''; a.k.a. ''Maria''); Colombia; DOB 05 Sep 1961; POB Puerto Lopez, Meta, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 21243624 (Colombia); (INDIVIDUAL) [SDNTK].

Dated: July 31, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–17978 Filed 8–5–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Traffickers Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of six individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of six individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on July 31, 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 October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 31, 2008, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers six individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

1. DALE DE MOR, Maria Elena, c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o KARIAN LIMITADA., Bogota, Colombia; DOB 11 May 1945; POB Bogota, Colombia; Cedula No. 41326059 (Colombia); Passport AG035322 (Colombia) (individual) [SDNT].
2. FANDINO ARBELAEZ, Francisco Jose, c/o DURATEX S.A., Bogota, Colombia; c/o KARIAN LIMITADA, Bogota, Colombia; DOB 6 Jul 1940; POB Colombia; Cedula No. 17032032 (Colombia); Passport AF325976 (Colombia) (individual) [SDNT].
3. MOR DALE, Jaime Enrique, c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o KARIAN LIMITADA, Bogota, Colombia; DOB 22 Feb 1971; POB Bogota, Colombia; Cedula No. 80420773 (Colombia); Passport AG035370 (Colombia) (individual) [SDNT].
4. MOR DALE, Jorge Dib, c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o KARIAN LIMITADA, Bogota, Colombia; DOB 20 Mar 1963; POB Bogota, Colombia; Cedula No. 79264955 (Colombia); Passport A1758932 (Colombia) (individual) [SDNT].
5. MOR NASSAR, Jorge, c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; DOB 10 Oct 1939; POB Ubate, Cundinamarca, Colombia; Cedula No. 310935 (Colombia); Passport AG035369 (Colombia) (individual) [SDNT].
6. MOR DALE, Ricardo Alberto, c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o KARIAN LIMITADA, Bogota, Colombia; DOB 10 Jun 1964; POB Bogota, Colombia; Cedula No. 79301217 (Colombia) (individual) [SDNT].

Dated: July 31, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–17979 Filed 8–5–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Interagency Bank Merger Act Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS

is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 5, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Interagency Bank Merger Act Application.

OMB Number: 1550–0016.

Form Number: N/A.

Description: The Office of Thrift Supervision, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Board of Governors of the Federal Reserve System each use the Interagency Bank Merger Act Application form to collect information for bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for every merger transaction involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset transfers between or among two or more institutions. The information collected by the remaining notifications and forms assist the regulatory agency in fulfilling their statutory responsibilities as supervisors. The regulatory agency uses the information to evaluate the controlling owners, senior officers, and directors of the insured depository institutions subject to their oversight.

Type of Review: Revision of a currently reviewed.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 17.

Estimated Number of Responses: 17.

Estimated Burden Hours per Response: 30 hours.

Estimated Frequency of Response: Other: As required.

Estimated Total Burden: 510 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 1, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–18101 Filed 8–5–08; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
August 6, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Cirsium loncholepis (La Graciosa Thistle); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–0078; 99210–1117–0000–B4]

50 CFR Part 17

RIN 1018–AV03

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Cirsium loncholepis (La Graciosa Thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the currently designated critical habitat for *Cirsium loncholepis* (La Graciosa thistle) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 38,447 acres (ac) (15,559 hectares (ha)) fall within the boundaries of this proposed revised critical habitat designation. The proposed revision is to critical habitat located in San Luis Obispo and Santa Barbara Counties, California.

DATES: We will accept comments from all interested parties until October 6, 2008. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 22, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [FWS-R8–ES–2008–0078]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003 (telephone 805/644–1766; facsimile 805/644–3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent;

(2) Specific information on:

- The amount and distribution of *Cirsium loncholepis* habitat,
- The importance of including habitat that provides connectivity between extant populations of *C. loncholepis* to the species' conservation and recovery, and the amount and distribution of such habitat;
- Which areas within the geographical area occupied at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- Which areas not within the geographical area occupied at the time of listing that are essential for the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other relevant impacts resulting from the proposed revised designation, and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) This proposed designation's revised criteria for determining essential features and critical habitat boundaries; and

(6) The existence of any conservation or management plans being implemented by California State Parks, Oceano Dunes State Vehicular Recreation Area; Vandenberg Air Force Base; County of Santa Barbara, Rancho Guadalupe Dunes County Park; Guadalupe-Nipomo Dunes National Wildlife Refuge; or other public or private land management agencies or owners that we should consider for exclusion from the designation pursuant to section 4(b)(2) of the Act. Please include information on any benefits (educational, regulatory, etc.) of including or excluding lands from this proposed revised designation.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments;

(8) Whether there are areas that were previously designated as critical habitat that we are now removing from designation in this proposed rule, that should remain as critical habitat in the rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Background

It is our intent to discuss only those topics directly relevant to this proposed revised designation of critical habitat. Additional background information covering the general ecology of *Cirsium loncholepis* was published in the final listing rule on March 20, 2000 (65 **Federal Register** (FR) 14888), the proposed rule to designate critical habitat published on March 30, 1998 (63 FR 15164), and the final designation of critical habitat for *C. loncholepis* on March 17, 2004 (69 FR 12553).

Species Description and Reproduction

Cirsium loncholepis is a biennial to short-lived monocarpic perennial (a plant that blooms once, then dies) (Hendrickson 1990, pp. 20–22; Teed 2003, p. 1). It is a spreading, mound-like or erect plant in the Asteraceae (sunflower family) that is well armored with spines on the leaves and flower heads. The plants range from 4 to 39 (occasionally up to 59) inches (in) (10 to 100 (occasionally up to 150) centimeters (cm)) tall, with one or more stems. The lower leaves are 4 to 12 in (10 to 30 cm) long, with spiny petioles (leaf stalks), and are usually deeply lobed with secondary lobes or teeth. The leaves are wavy-margined. The leaf bases of the middle and upper leaves form short, spiny wings along the petiole. Flowering heads are 0.8 to 1.6 in (2 to 4 cm) wide in tight clusters at the tips

of the stems. The corollas (flowers) are 1 to 1.2 in (25 to 30 millimeters (mm)) long and are nearly white with a purplish tube containing purple anthers. The achenes (fruit) are 0.01 to 0.02 in (3 to 4 mm) long and topped by an umbrella of long awns (0.6 to 1.0 in (15 to 25 mm)) that are ideal for wind dispersal (Keil and Turner 1993, pp. 232–239). Large individuals produce more flowering heads and more seeds per head (average = 473 seeds per plant) than smaller individuals (average = 168 seeds per plant), and therefore contribute disproportionately to the future seedbank of the population (Lea 2001a, unpaginated).

Taxonomy

In 2006, Dr. David Keil revised the treatment for the genus *Cirsium* in North America for the Flora of North America north of Mexico by taking a broad view of the genus and the overlap in ranges of variation in morphologic characters (visible plant characteristics) (Keil 2006a, pp. 1, 57, 66, 82, 83, 93, 95–160). Dr. Keil synonymized (lumped) *C. loncholepis* with *C. scariosum* var. *citrinum* (La Graciosa thistle, same common name as the listed entity), a more widespread taxon whose distribution encompasses the following areas: The distribution of the *C. loncholepis*, at the mouth of the Santa Maria River; *C. scariosum* populations in the San Emigdio Mountains (Kern and Ventura Counties); and *C. scariosum* populations in the uplands and lowlands of the Peninsular Ranges of southern California (Riverside and San Diego Counties) that continue down into northern Baja California, Mexico (Keil 2006a, pp. 1, 57, 66, 82, 83, 93, 95–160). Dr. Keil has since informed us that he is re-recognizing *C. loncholepis* as a distinct entity as a subtaxon of *C. scariosum* and that he will publish it in a journal article and in the upcoming second edition of The Jepson Manual: Higher Plants of California. (Keil 2007a, unpaginated; 2007b, unpaginated). We consider this to be the best available scientific and commercial information. Accordingly, we continue to recognize *C. loncholepis* as a distinct entity.

Distribution

Below, we define various terms that are used for different assemblages of plants that we use in discussing the status of *Cirsium loncholepis*. In this rule we use the term ''occurrence'' to be consistent with the definition used by the California Natural Diversity Database (CNDDB): A grouping of plants within 0.25 mile (mi) (0.4 kilometer (km)) of each other (CNDDB 2007, unpaginated). There may be (and occasionally are) one or more discrete polygons of plants within a single ''occurrence.'' We use the term ''population'' to refer to a group of interbreeding individuals, in the biological sense of the word. There may be (and usually are) one or more ''occurrences'' within a single population. Our use of the term ''location'' in previous rules for *C. loncholepis* was interchangeable with ''occurrence'' and ''population.'' In this rule ''location'' refers only to a particular site, area, or region, as in ''at that location,'' with no relation to an assemblage of plants (e.g., polygon, occurrence, population). The terms ''site,'' ''area,'' and ''region'' refer to physical places.

Cirsium loncholepis historically was found in mesic areas (areas with intermediate or medium moisture conditions that are neither very wet nor very dry) in back dune and coastal wetlands along a 32-mi (52-km) stretch of the coastal region of central California between Arroyo Grande Creek in San Luis Obispo County to the north and the Santa Ynez River in Santa Barbara County to the south. In this range, it occurred up to 16 mi (26 km) inland where it was documented at the Cañada de las Flores area on the south side of the Solomon Hills. Most of the known occurrences are associated with mesic sites in two dune complexes (the Santa Maria Valley Dune Complex and the Santa Ynez Valley Dune Complex) and along the drainages and tributaries of four major watersheds in this area (from north to south: Arroyo Grande Creek, Santa Maria River, San Antonio Creek, and Santa Ynez River).

Historically, *Cirsium loncholepis* has been reported or documented from a total of 25 occurrences that are grouped among 11 populations ranging from the dunes near Pismo Beach inland to hillside seeps at Cañada de las Flores south to the floodplains of the Santa Ynez River (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated). These 11 populations are: Oceano, northern Callender Dune Lakes, southern Callender Dune Lakes, Oso Flaco, southern Guadalupe Dunes, Santa Maria River, Guadalupe, La Graciosa (type locality—the geographical location for the collection of the type specimen or the specimen that fixes a name to a species), Cañada de las Flores, San Antonio Terrace, and Santa Ynez River. See: 63 FR 15164, March 30, 1998; 65 FR 14888, March 20, 2000; 66 FR 57560, November 15, 2001; and 69 FR 12553, March 17, 2004; and Hendrickson (1990, pp. 1–25) for more in-depth discussions on the historical habitats, distribution, and range of *C. loncholepis*.

At the time of the listing in 2000, there were 17 recorded occurrences. After reviewing the historical records, we determined that 11 of the 17 occurrences were extant (still in existence). These 11 extant occurrences were distributed among 7 populations. At the time of listing, the extant occurrences ranged from the northern Callender Dune Lakes in the Callender Dunes in the north to the seeps at Cañada de las Flores in the south (65 FR 14888, March 20, 2000; CNDDB 1998, unpaginated). Since the time of listing, *Cirsium loncholepis* has experienced considerable declines throughout its range. Currently, *C. loncholepis* is considered to be extant at seven occurrences that are distributed among four populations: Southern Callender Dune Lakes, Oso Flaco, southern Guadalupe Dunes, and Santa Maria River. The seven extant occurrences consist of five occurrences that were identified in the final listing rule in 2000 as well as two new occurrences that have been identified since that time (CNDDB 2007, unpaginated; Elvin 2006, unpaginated, 2007a, unpaginated). The extant occurrences currently range from the southern Callender Dune Lakes in the north to the Santa Maria River in the south. See Figure 1 for the current versus historical distribution of *C. loncholepis*. The points in this figure represent locations of polygons of *C. loncholepis* plants. Some *C. loncholepis* occurrences contain more than one polygon.

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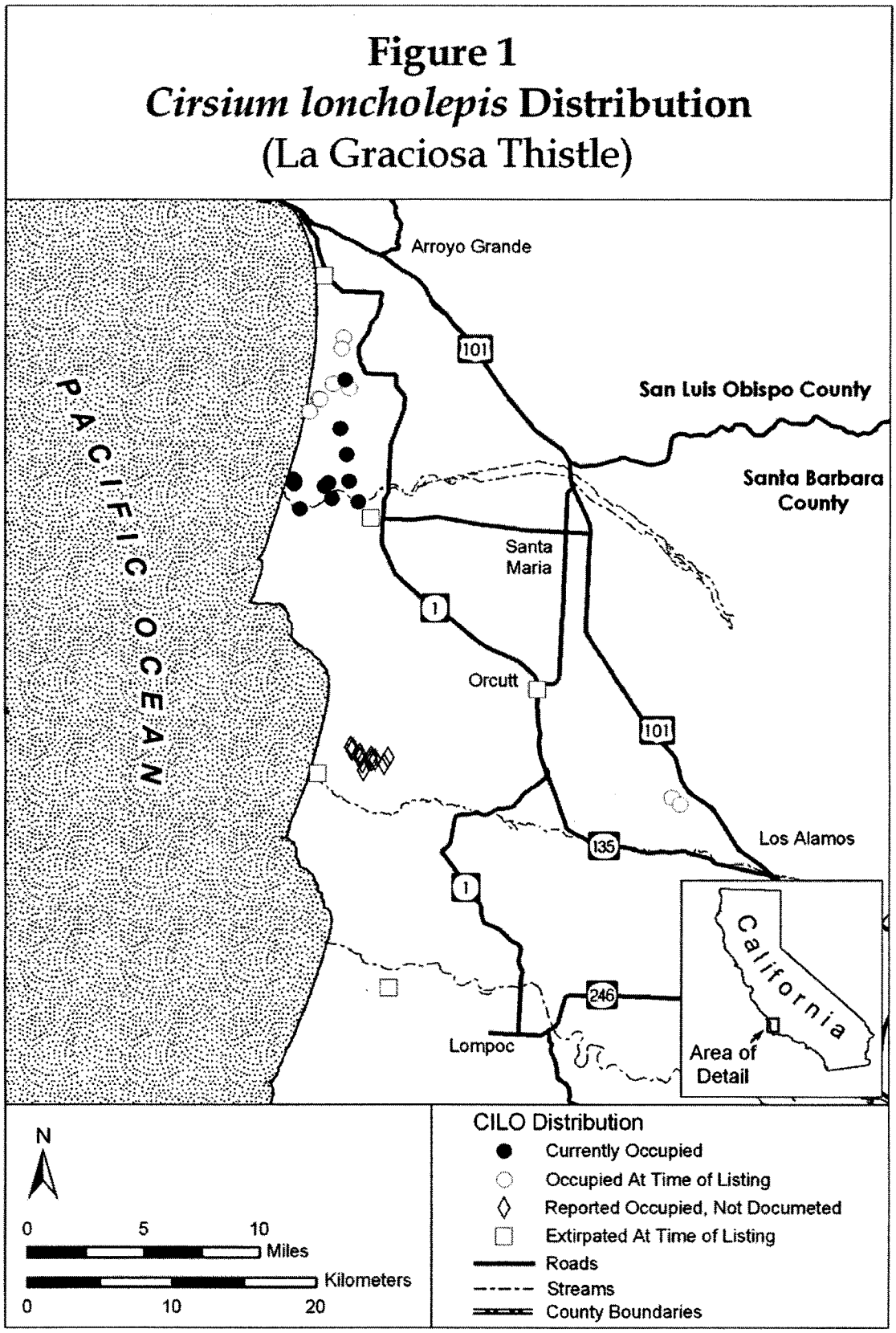

The Service has reviewed the most current information regarding occupancy at *Cirsium loncholepis* historically known to have been occupied, or occupied at time of listing. *Cirsium loncholepis* may still be extant

at Cañada de las Flores. It was last observed at this site in 1989 (Hendrickson 1990, pp. 1–25). Based on this information at the time of listing, we considered Cañada de las Flores to be occupied. Since the time of listing, there have still been no observations of *C. loncholepis* at Cañada de las Flores. No plants were observed during surveys in 1990 (Hendrickson 1990, pp. 1–25), and no plants were observed by Mark A. Elvin and Jeanette Sainz when they visited the site in November 2007. This visit was conducted outside the optimal time of year to observe this plant in a dry year, and it was not an exhaustive survey (Elvin 2007b, unpaginated). While *C. loncholepis* may still be at Cañada de las Flores, we are considering Cañada de las Flores to be unoccupied for the purposes of this rule based on the continued lack of observation of C. loncholepis since 2000. *Cirsium loncholepis* has not been observed at the northern Callender Dune Lakes population (in the dunes just south of Pismo Beach and Oceano) since 1988, but no surveys have been conducted here since 1988 to our knowledge. *Cirsium loncholepis* may still be extant at this population. *Cirsium loncholepis* has not been observed at the Santa Ynez River population since 1958 (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated; Smith 1976, p. 282, 1998, pp. 153–154; Santa Barbara Botanical Garden Herbarium 2007, unpaginated). Surveys were conducted by the Biological Sciences Department at California Polytechnic State University between 1992 and 1994, but no plants were found (Keil and Holland 1998, pp. 83–84); no other surveys are known to have been conducted. Therefore, *C. loncholepis* is not currently known to occur along the Santa Ynez River. San Antonio Terrace is centrally located within the range of *C. loncholepis.* It is south of the Guadalupe and Callender Dune Sheets and the Santa Maria River, west of Cañada de las Flores, and north of the Santa Ynez River. San Antonio Terrace supports numerous dune wetlands and swales and has the same physical and geological features, habitats, and vegetation as the Callender and Guadalupe Dune Sheets (Hunt 1993, pp. 5–72; CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated; Google Earth 2008, unpaginated). *Cirsium loncholepis* is reported from the dune swales on San Antonio Terrace, but it has never been documented here with a voucher specimen (CNDDB 2007, unpaginated; Henningson *et al.* 1980, pp. 15–120; Consortium of California Herbaria 2008, unpaginated). San Antonio Terrace is directly adjacent to the mouth of San Antonio Creek which, according to some researchers, is the most likely site for the type locality for *C. loncholepis* (Keil and Holland 1998, pp. 83–84; Oyler *et al.* 1995, pp. 1–76; Hendrickson 1990, pp. 1–25; Smith 1976, p. 282, 1998, pp. 153–154). The type locality is the geographical location for the collection of the type specimen or the specimen that fixes a name to a species. In the case of *C. loncholepis*, we do not know the exact location of the type locality of ''La Graciosa''. There is a consensus among researchers that La Graciosa was at one of two places, one of which is the mouth of San Antonio Creek and the other along Orcutt Creek (see the final listing rule for a discussion on this location). *Cirsium brevistylum* has been documented at San Antonio Terrace. Some researchers speculate that the reports of *C. loncholepis* from the San Antonio Terrace population were pre-flowering *C. brevistylum* plants, which are very similar to pre-flowering *C. loncholepis* plants (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated; Hendrickson 1990, pp. 1–25; Keil and Holland 1998, p. 82).

In addition to the apparent loss of occurrences and populations, there has been a decline in the status of the species and the number of individuals reported at the remaining extant sites identified in the listing rule (Chesnut 1998a, unpaginated; Chesnut 1998b, pp. 1–40; Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). Most notably, Service staff visited the western portion of the Santa Maria River population in November 2006, and fewer than 10 individuals were observed (Elvin 2006, unpaginated). While this was outside the optimal time of year, *Cirsium loncholepis* was fruiting and observable. This population (which includes two occurrences) was estimated to contain 6,000 individuals in 1986 (CNDDB 2007, unpaginated), more than 50,000 individuals in 1990 (Hendrickson 1990, pp. 1–25), and 500 individuals in the western portion in 2001 (CNDDB 2007, unpaginated). Specific survey conditions are not known for these reports. Reports also indicate declines in status and numbers of individuals at the northern Guadalupe Dunes population with estimates in the 25–50 range for the 1980s and early 1990s down to 7 individuals in 1998 (Chesnut 1998a, unpaginated; Chesnut 1998b, pp. 1–40; Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). Reports for the southern Guadalupe Dunes population have been fluctuating between 30 and 137 individuals with Service staff noting greater than 50 individuals in November of 2006 (CNDDB 2007, unpaginated; Elvin 2006, unpaginated; Hendrickson 1990, pp. 1–25).

In summary, *Cirsium loncholepis* may not currently be present at the Oceano, northern Callender Dune Lakes, Guadalupe, La Graciosa, Cañada de las Flores, San Antonio Terrace, and Santa Ynez River populations. This species has declined from 11 extant occurrences identified at the time of listing to 7 remaining extant occurrences (in 4 populations). The seven extant occurrences consist of five occurrences that were identified in the final listing rule in 2000 as well as two new occurrences that have been identified since that time. We believe that *C. loncholepis* may not persist if the Santa Maria Valley Dune Complex occurrences (including those along the Santa Maria River) are the only ones remaining. However, we believe that *C. loncholepis* could be conserved and recovered if additional populations exist or new populations arise in habitat with features (described below) that allow the populations to remain connected throughout the two dune complexes and four major watersheds where it once was known to occur.

Previous Federal Actions

A proposed rule to list *Cirsium loncholepis* and three other species as endangered was published on March 30, 1998 (63 FR 15164). *Cirsium loncholepis* was listed as endangered under the Act in 2000 due to threats from groundwater pumping, oil field development, oil field remediation, competition from non-native plants, and grazing from cattle (Hendrickson 1990, pp. 1–25; California Department of Fish and Game (CDFG) 1992, pp. 111–112; 65 FR 14888, March 20, 2000). The State of California listed this species as threatened in 1990 (CDFG 1992, pp. 111–112). The proposed rule to designate critical habitat for *C. loncholepis* and two other species was published in the **Federal Register** on November 15, 2001 (66 FR 57560). In August 2002, we received a 1-year extension beyond the statutory time limit on the publication date of a final rule for *C. loncholepis* critical habitat due to its taxonomic uncertainty. In September 2003, we sought an additional extension due, in part, to the continued uncertainty regarding its taxonomic status, but the court denied that request. We published a final rule designating critical habitat for *C. loncholepis* on March 17, 2004 (69 FR 12553), in compliance with the court's order. Please refer to the final listing

rule published in the **Federal Register** on March 20, 2000 (65 FR 14888), and to the final designation of critical habitat published on March 17, 2004 (69 FR 12553), for additional or more complete information on previous Federal actions prior to that time. In the 2004 final critical habitat rule we designated approximately 41,089 acres (ac) (16,628 hectares (ha)) of land in San Luis Obispo and Santa Barbara Counties, California, as critical habitat for *C. loncholepis.* The final critical habitat rule also contains information regarding the litigation history related to the listing and designation of critical habitat for this species (*Southwest Center for Biological Diversity, et al.* v. *U.S. Fish and Wildlife Service et al.* (No. C99–2992 (N.D.Ca.)).

On March 30, 2005, the Homebuilders Association of Northern California, *et al.*, filed a complaint against the Service (*Home Builders Association of N. Cal., et al.* v. *U.S. Fish and Wildlife Service, et al.*, No. 2:05–01363, E.D. Cal.) alleging that the final rule designating critical habitat for *Cirsium loncholepis* (and 26 other species) violated the Act, the Administrative Procedure Act, and the National Environmental Policy Act. In March 2006, a settlement was reached to re-evaluate five final critical habitat designations, which included the 2004 critical habitat designation for *C. loncholepis.* The settlement stipulated that proposed revisions to the *C. loncholepis* designation would be submitted to the **Federal Register** on or before July 27, 2007. On May 17, 2007, the court approved a modification to the settlement timeframe to require that a proposed rule regarding any revisions to the *C. loncholepis* critical habitat designation would be submitted to the **Federal Register** on or before July 27, 2008, and a final decision regarding any proposed rule would be submitted on or before July 27, 2009. This revised proposed rule complies with the May 17, 2007, court order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection. Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining specific areas within the geographical area occupied at the time of listing that contain physical or biological features essential to the conservation of *Cirsium loncholepis* and specific areas outside the geographical area occupied at the time of listing that are essential for the conservation *C. loncholepis.* This includes information from the final listing rule in 2000 and final critical habitat designation in 2004; data from research and survey observations published in peer-reviewed articles; data from research and survey observations included in reports and other manuscripts (i.e., theses, monitoring reports); written and oral communications from species and other physical science experts; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; regional Geographic Information System layers, including soil, species, aerial imagery, and wetlands coverages; information from herbarium specimens at the following institutions: University of California Santa Barbara Herbarium, University of California Berkeley Herbarium, the Jepson Herbarium at the University of California Berkeley, University of Minnesota Saint Paul Herbarium, Rancho Santa Ana Botanic Garden Herbarium, Herbarium of the California Academy of Sciences, California Department of Food and Agriculture Herbarium, Santa Barbara Botanical Garden Herbarium, San Diego Natural History Museum Herbarium, Robert F. Hoover Herbarium at California Polytechnic State University San Luis Obispo, University of California Riverside Herbarium, and University of California Irvine Herbarium; site visits by Service biologists to several population sites of *C. loncholepis* in 2006 and 2007; and data submitted to the CNDDB. We have also reviewed available information that pertains to the ecology, life history, and habitat requirements for this species. This material included information and data in peer-reviewed articles; reports of monitoring and habitat characterizations; reports submitted during section 7 consultations; and information received from local species experts.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing, or development of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PCEs required for the *Cirsium loncholepis* from its biological needs.

Space for Individual and Population Growth

Cirsium loncholepis generally grows in association with mesic areas on the margins of dune swales, dune lakes, marshes, estuaries, coastal meadows, seeps, springs, intermittent streams, creeks, and rivers (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated; Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated). *Cirsium loncholepis* occurs in a series of dynamic systems of dunes and riparian floodplains. *Cirsium loncholepis* can appear and disappear from particular sites appearing to ''move'' from place to place in areas with suitable habitat on a fairly regular basis (this has been observed several times over the past 50 or more years (CNDDB 2007, unpaginated; Chesnut 1998a, unpaginated; Hendrickson 1990, pp. 1–25)). New suitable sites are continuously created throughout the dynamic ecosystems where *C. loncholepis* grows over time (i.e., floods remove vegetation and create new sites; dunes move and suitable sites open up). The conservation of *C. loncholepis* depends not only on maintaining suitable sites for germination and growth as they exist at the present, but it also depends on maintaining the dynamic nature of the habitat (the dune and riparian complexes) where it grows, which will ensure that suitable sites for germination and growth will develop in the future.

Nutritional and Physiological Requirements Including Soils, Communities, and Dispersal

Soils

Soils where *Cirsium loncholepis* are found are somewhat variable, but include a large component of sand. Coastal populations occur on dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils at elevations of less than 31 meters (m) (100 feet (ft)) (Hendrickson 1990, pp. 1–25; CNDDB 2001, unpaginated, 2007, unpaginated). Occasionally, individuals have been found on dune slopes or ridges, rather than in the more typical dune swale habitat; more stable dunes have been shown to act as reservoirs of moisture, and these individuals may be tapping into this moisture (Thomas 2001, unpaginated). Plants at an inland population have been found on Camarillo sandy loam at an elevation of 183 m (600 ft) (CNDDB 2001, unpaginated).

Communities

The vegetation communities associated with *Cirsium loncholepis* are rather diverse and include central dune scrub, coastal dune, coastal scrub, freshwater seeps and springs, coastal and valley freshwater marsh and fen, riparian scrub (*e.g.*, mule fat scrub, willow scrub), riparian forest, chaparral, oak woodland, intermittent streams, and other wetland communities (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). *Cirsium loncholepis* is often growing in and amongst a mat of low-growing, herbaceous, wetland plants including *Juncus* spp. (rush), *Scirpus* spp. (tule), *Carex praegracilis* (sedge), *Distichlis spicata* (salt grass), *Cynodon dactylon* (Bermuda grass), *Trifolium wormskioldii* (clover), *Anemopsis californica* (yerba mansa), *Potentilla anserina* (silverweed), and *Lotus corniculatus* (birdfoot trefoil) (Langford 2001, unpaginated; CNDDB 2007, unpaginated; Chesnut 1998b, pp. 1–40; Elvin 2006, unpaginated, 2007a, unpaginated; Reed 1988, pp. 15–51). Other closely associated riparian plants include *Salix* spp. (willow), *Rubus* (blackberry), and *Baccharis douglasii* (Douglas' baccharis) (CNDDB 2007, unpaginated; Chesnut 1998b, pp. 1–40; Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated; Reed 1988, pp. 15–51). Upland plants that occur adjacent to or nearby include *Toxicodendron diversilobum* (poison oak), *Baccharis pilularis* (coyote brush), *Solidago californica* (California goldenrod), *Isocoma menziesii* (coast goldenbush), and *Corethrogyne filaginifolia* (California aster)

(Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated; Elvin 2006, unpaginated, 2007a, unpaginated, 2007b, unpaginated). Plants at the most inland site for *Cirsium loncholepis* have been found primarily around gently sloping hillside seeps within a grassland community, at the edge of willows around a seep bordering an oak woodland community (Hendrickson 1990, pp. 1–25, Elvin 2007b, unpaginated). *Cirsium loncholepis* does occasionally occur in non-mesic conditions such as on ridges or dune tops such as in the Guadalupe Dunes (Elvin 2006, unpaginated) or throughout meadows (temporally and spatially) on flat valley bottoms, which are rather dry compared to the mesic seeps in these area (Elvin 2007b, unpaginated).

Dispersal

Genetic material can move both within a population or between different populations. In plants this can be accomplished through the movement of pollen, seeds, plants, or plant parts to other plants or sites within the same population or to another population. For *Cirsium loncholepis,* the main agents for gene flow are pollen and seeds. Pollinators move pollen from one flower to another. Most pollinators move pollen within the same population, but it can be moved to another population if it is close enough and the pollinator is capable of moving the pollen across that distance. *Cirsium loncholepis* seeds are capable of being moved within the same population and to another population by animals, wind, and water.

Pollinators: Cirsium loncholepis is capable of both self-fertilization (pollination events on the same individual) and cross-fertilization (pollination events between two individuals). Other similar, riparian, monocarpic *Cirsium* species self- and cross-pollinate (Hamzo and Jolls 2000, pp. 141–153). *Cirsium loncholepis* flowers produce nectar and copious quantities of pollen and are visited by birds and a wide variety of insects (Keil 2008, unpaginated). *Cirsium loncholepis* and other *Cirsium* taxa with similar heads are pollinated by bees (i.e., solitary, mining, (families Andrenidae and Anthophoridae), mason (*Osmia* sp.), carpenter (*Xylocopa* sp.), and leaf cutter bees (family Megachilidae) and the introduced honeybee (*Apis mellifera*)), butterflies (order Lepidoptera), flies (order Diptera), beetles (order Coleoptera (e.g., darkling ground beetles (family Tenebrionidae))), black ants (family Formicidae), and hummingbirds (family Trochilidae) (Keil 2001, unpaginated, 2008, unpaginated; Moldenke 1976, pp. 305–361; Krombein *et al.* 1979, Vol. 2, pp. 1751–2209; Lea. 2001b, unpaginated). Specialist-feeding bees (solitary bees, which are known to visit *Cirsium* species (Krombein *et al.* 1979, Vol. 2 pp. 1751–2209)) commonly develop co-evolutionary relationships with particular host plants (Moldenke 1976, pp. 305–361). While we do not have comprehensive information on the home ranges and species fidelity of these pollinators, we do have some data. A number of the insects noted above that are known to visit *Cirsium* flowers (i.e., ants, some beetles, butterflies, flies, and many bee taxa) live, nest, and reproduce in upland habitats (e.g., coastal dune scrub, coastal scrub, chaparral, oak woodland, grassland) within the range of *C. loncholepis* (Moldenke 1976, pp. 305–361; Hogue 1993, 446 pp.; Krombein *et al.* 1979, Vol. 2 pp. 1751–2209; Thorp *et al.* 1983, pp. 1–79). Alternative pollen source plants may be necessary for the persistence of these insects when *C. loncholepis* is not in flower seasonally or annually because of poor environmental conditions.

The main dispersal vectors for *Cirsium loncholepis* pollen include ants, beetles, butterflies, flies, bees, and hummingbirds. Some of these visitors (e.g., bumble bees, hummingbirds) can fly large distances and are therefore capable of transferring pollen longer distances, from plants in one population to plants in another population. Studies to quantify the distance that bees will fly to pollinate their host plants are limited in number, but the few that exist show that some bees will routinely fly from 328 to 984 ft (100 to 500 m) to pollinate plants (Thorp and Leong 1995, pp. 3–7; Schulke and Waser 2001, pp. 239–245). In a study of experimental isolation and pollen dispersal of *Delphinium nuttallianum* (Nuttall's larkspur), Schulke and Waser (2001, pp. 239–245) report that adequate pollen loads were dispersed by bumblebees within control populations and in isolated experimental ''populations'' from 328 to 1,312 ft (100 m to 400 m) distant from the control populations. One of the several pollinator taxa effective at 1,312 ft (400 m) was *Bombus* (bumblebee), which has also been documented to visit *Cirsium* (Ascher 2006, unpaginated). Studies by Steffan-Dewenter and Tscharntke (2000, pp. 288–296) demonstrated that it is possible for bees to fly as far as 3,280 ft (1,000 m) to pollinate flowers, and at least one study suggests that bumblebees may forage many kilometers from a colony (Sugden 1985, pp. 299–312). Hummingbirds can fly long distances while foraging for nectar or food or migrating. Using area rather than distance, an Anna's hummingbird (*Calypte anna*), for example, will hold a core territory of about 0.25 ac (0.1 ha) and a ''buffer zone'' of variable size, but usually 10–15 ac (4–6 ha) (Russell 1996, pp. 1–13). Hummingbirds are not restricted to these territories, but may venture greater distances crossing through neighboring territories to feed. Additionally, because extant populations of *C. loncholepis* are located within the Pacific flyway for migratory birds, while migrating, hummingbirds could forage in one population one day, and in another population later that day or the next day, thereafter, until either reaching their breeding or wintering grounds, or traveling beyond the range of *C. loncholepis*.

Seed Dispersal Vectors: According to Craddock and Huenneke (1997, pp. 215–219), *Cirsium* seeds are usually wind-dispersed, but birds and small mammals also disperse *Cirsium* seeds (Burton and Black 1978, pp. 383–390; Bent 1940, pp. 332–352, 1968, pp. 447–466). According to Keil and Turner (1993, pp. 232–239), wind is a likely dispersal vector for *C. loncholepis* seeds based on the architecture of their achenes, which are topped by an umbrella of long awns that are ideal for wind dispersal. The distribution of plants within a population (often an elongated pattern) is consistent with seed dispersal caused by the prevailing coastal winds (Lea 2002, pp. 1–84; Teed 2003, pp. 1–58). Additional dispersal vectors for *C. loncholepis* include small mammals and birds. Several small mammals that feed on seed of *Cirsium* species and move them among their seed caches live in the range of *C. loncholepis*. These include such species as kangaroo rats (*Dipodomys* spp.), pocket gophers (*Thomomys bottae*), California ground squirrels (*Spermophilus beecheyi*), and pocket mice (*Perognathus* spp.) (Blecha *et al.* 2007, pp. 1–354; Burton and Black 1978, pp. 383–390). Some small mammals, such as mice, use *Cirsium* tufts or down (the achene and pappus) as nest material (Root 2008, unpaginated). Various mammals such as mule deer (*Odocoileus hemionus*) and cattle occur in the Callender-Guadalupe Dunes and have been documented grazing on thistle here (Nellis and Ross 1969, pp. 191–195; Theo *et al.* 2000, pp. 73–80; Blecha *et al.* 2007, pp. 1–354; Elvin 2007a, unpaginated). Some bird species, such as American Goldfinch (*Carduelis tristis*) and hummingbirds, some of which live within the range of *C.*

loncholepis, use its tufts (or down) for nest construction (Bent 1940, pp. 332–352, 1968, pp. 447–466; Weydemeyer 1923, pp. 117–118; Blecha *et al.* 2007, pp. 1–354).

Water has been shown to be an important dispersal vector for seeds in another thistle, *C. vinaceum*, which also occurs in spring and streamside habitats (Craddock and Huenneke 1997, pp. 215–219). *Cirsium* seeds disperse via water ''considerable distances along streams'' (Craddock and Huenneke 1997, pp. 215–219). *Cirsium loncholepis* populations have been documented from the upper reaches of drainages and watersheds outlined below to suitable sites near the mouths of the rivers and creeks (within 1,000 ft (300 m)) of the Pacific Ocean (CNDDB 2007, unpaginated; Santa Barbara Botanic Garden Herbarium 2007, unpaginated; University of California Santa Barbara Herbarium 2007, unpaginated).

Sites for Reproduction, Population Growth, and Dispersal

Cirsium loncholepis has been reported from one or more polygons within 25 occurrences that are part of 11 populations distributed throughout 2 dune complexes and 4 drainages. All of these groupings are connected to each other in one or more ways. *Cirsium loncholepis* is closely associated with wetlands and mesic sites on the margins along four drainages that end in the Pacific Ocean (Arroyo Grande Creek, Santa Maria River, San Antonio Creek, and Santa Ynez River) (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated). *Cirsium loncholepis* has not been seen along Arroyo Grande Creek since 1910, so this area is not considered to be essential and will not be discussed further in this rule. The dynamic nature of these drainages is an essential part of the life cycle for *C. loncholepis*. The habitat along these creeks and rivers is constantly changing. It is under a constant state of succession and renewal. A mosaic of habitat occurs along these drainages with new suitable sites being created with every storm or flow event. The flows of water are also an important mechanism to move seeds from currently occupied sites to these newly created suitable sites.

Orcutt Creek runs from the southeast to the northwest parallel with wind direction in the area. The headwaters for Orcutt Creek are southeast of the town of Orcutt on the northwest face of Graciosa Ridge. The stretch of Orcutt Creek near the town of Orcutt is one of the two likely sites where the type specimens were collected (see discussion in Background section). Orcutt Creek flows to the northwest and enters into the Santa Maria River near the Pacific Ocean. *Cirsium loncholepis* seeds that are deposited in the waters of Orcutt Creek would flow downstream from Orcutt toward the Santa Maria River. This stretch of the Santa Maria River has historically contained the largest population of *C. loncholepis*. Most of the records for *C. loncholepis* are from within the historical boundaries of the Santa Maria River floodplain.

Graciosa Ridge is the dividing line between the headwaters of Orcutt Creek (in the Santa Maria River watershed) and Cañada de las Flores (in the San Antonio Creek watershed). Because the prevailing winds in this area are from the northwest, *Cirsium loncholepis* seed in the Orcutt area would likely be blown over Graciosa Ridge toward Cañada de las Flores, which is southeast of the headwaters of Orcutt Creek. Cañada de las Flores, which flows south, is the headwaters for one of the tributaries of San Antonio Creek which flows to the Pacific Ocean. The estuary system (lagoon) at the mouth of San Antonio Creek was described by Fray Juan Crespi as La Graciosa in 1769 (Smith 1976, p. 282, 1998, pp. 153–154) and is the other of the two most likely sites where the type specimen of *C. loncholepis* was collected (see discussion in **Background** section).

The Santa Ynez River flows from east to west where it empties into the Pacific Ocean. The prevailing, strong winds in this area, from the west, would move *Cirsium loncholepis* seeds eastward, which is further upriver. Any resulting seed from upriver *C. loncholepis* populations that are deposited in the waters of the Santa Ynez River would then flow downstream toward the estuary system at the mouth of the river. Seed from any occurrence in the Santa Ynez River population would likely be dispersing to other occurrences in the Santa Ynez River (e.g., seed from upriver plants dispersing to the estuary plants via water and seed from estuary plants dispersing to the upriver plants via wind).

Habitats That Are Representative of the Historical, Geographical, and Ecological Distributions of Cirsium loncholepis

Cirsium loncholepis has throughout time had a limited distribution in southwestern San Luis Obispo County and northwestern Santa Barbara County, California, within a unique geomorphic area known as the Santa Maria Basin (Hunt 1993, pp. 5–72). See Figure 2 for a map containing the locations of place and feature names in this region. The Santa Maria Basin stretches along a 39-mi (63-km) section of the coastal region of central California that is dominated by a system of dune complexes that are interspersed with several major drainages. The Santa Maria Basin is comprised of the Santa Maria Valley, in the north, and the Santa Ynez Valley, in the south. The Santa Maria Valley is located between the hills northeast of Pismo and the Casmalia and Solomon Hills that end at Point Sal in the west. The Santa Ynez Valley is located between the Casmalia and Solomon Hills and the Santa Ynez Mountains (on the south side of the Santa Ynez River). The Santa Maria Basin is dominated by moderate to strong winds from the northwest (categorized as greater than 7.47 miles per hour (mph) (12.02 kilometers per hour (kph))) most of the time and throughout the year (USDA NRCS 2008, unpaginated; National Oceanic and Atmospheric Administration Western Regional Climate Center (NOAA) 2007, unpaginated; Hendrickson 1990, pp. 1–25). These prevailing northwest winds are a major factor in shaping the terrain and creating the dunes such that the active dune and swale systems are aligned with these winds (Hunt 1993, pp. 5–72). Deflation areas (the swales between two parallel dunes and behind the foredunes) are often at or near the water table, creating the wetlands and back-dune lakes (Hunt 1993, pp. 5–72). This terrain, the parallel ridges and swales, and the physical features that created and maintain it are essential for the conservation of *C. loncholepis*.

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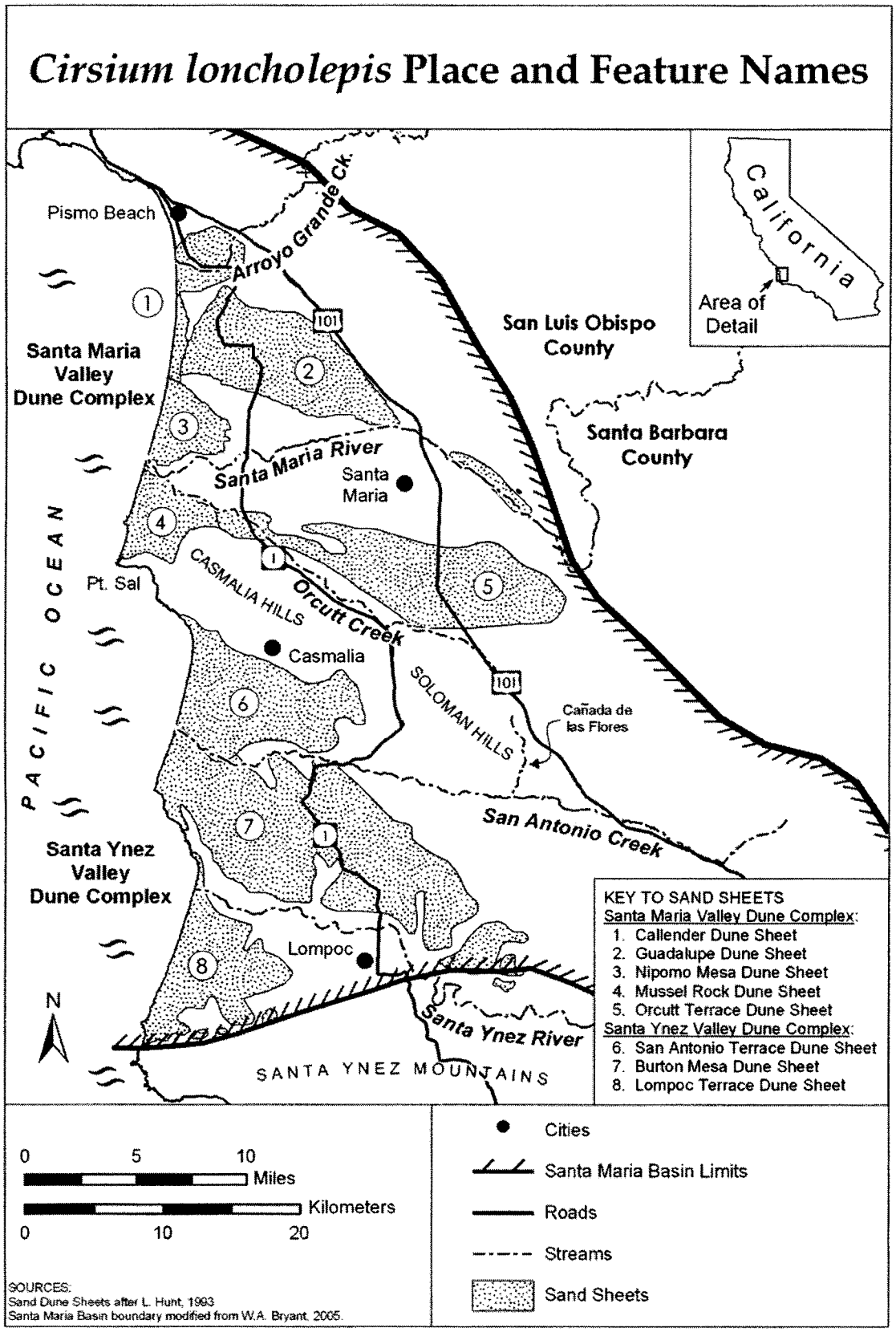

Cirsium loncholepis Place and Feature Names
Pismo Beach
Arroyo Grande Ck.
California
Area of Detail
San Luis Obispo County
Santa Barbara County
Santa Maria Valley Dune Complex
Santa Maria River
Santa Maria
Pt. Sal
PACIFIC OCEAN
CASMALIA HILLS
Orcutt Creek
Casmalia
SOLOMAN HILLS
Cañada de las Flores
San Antonio Creek
Santa Ynez Valley Dune Complex
Lompoc
Santa Ynez River
SANTA YNEZ MOUNTAINS
N
KEY TO SAND SHEETS
Santa Maria Valley Dune Complex:
1. Callender Dune Sheet
2. Guadalupe Dune Sheet
3. Nipomo Mesa Dune Sheet
4. Mussel Rock Dune Sheet
5. Orcutt Terrace Dune Sheet
Santa Ynez Valley Dune Complex:
6. San Antonio Terrace Dune Sheet
7. Burton Mesa Dune Sheet
8. Lompoc Terrace Dune Sheet
0 5 10 Miles
0 10 20 Kilometers
SOURCES:
Sand Dune Sheets after L. Hunt, 1993
Santa Maria Basin boundary modified from W.A. Bryant, 2005.
Cities
Santa Maria Basin Limits
Roads
Streams
Sand Sheets

Santa Maria Valley

The Santa Maria Valley contains one major dune complex (the Santa Maria Valley Dune Complex) and three major riparian systems (or drainages): Arroyo Grande Creek, the Santa Maria River, and Orcutt Creek. The Santa Maria Valley Dune Complex contains five Dune Sheets (or associated sand depositional episodes): Callender, Nipomo Mesa, Guadalupe, Mussel Rock, and Orcutt Terrace. Individual dune sheets represent sequential and spatially overlapped depositional episodes within contiguous areas of any particular dune complex. Arroyo Grande Creek and its floodplain are at the northern edge of the Callender Dune Sheet (specifically) and the Santa Maria Valley Dune Complex (in general) (Hunt 1993, pp. 5–72). The junction of Arroyo Grande Creek and the Callender Dune Sheet also marks the northern limit for *Cirsium loncholepis*, which occurred here in the low ''grassy'' areas among the sand hills at the junction of the dunes and Arroyo Grande Creek (University of California [Berkeley] Herbarium 2007, unpaginated). The Callender Dune Sheet reaches Oso Flaco Creek and Oso Flaco Lake at its southern extent. *Cirsium loncholepis* has occurred at numerous sites throughout the Callender Dunes (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). The Guadalupe Dune Sheet extends from Oso Flaco Lake to the Santa Maria River. *Cirsium loncholepis* has occurred at numerous sites throughout the Guadalupe Dunes (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). The Santa Maria Valley is a broad floodplain that is bounded by Orcutt Creek along its southern edge and by the Callender Dune Sheet and the Nipomo Dune Sheet (including Nipomo Mesa) along its northern edge. Between the city of Santa Maria and the coast 12 mi (19 km) to the west, the valley floor has historically been dotted with small settlements and a few oil fields, but the vast majority of the land has been converted to agriculture. A member of the Gaspar de Portola expedition to Monterey in 1769 noted that the expedition had difficulty getting through the Santa Maria Valley because of all the marshes (Companys 1983, pp. 105–344). As has been typical along the central coast of California, however, many of the valley's wetlands have been drained or filled to maximize agricultural production; old maps show lakes such as Lake Guadalupe that no longer exist. *Cirsium loncholepis* has occurred at numerous mesic sites throughout the Santa Maria River floodplain and the Guadalupe Dunes (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). Orcutt Creek and the Santa Maria River mark the northern edge of the Mussel Rock Dune Sheet, which has had multiple *C. loncholepis* occurrences (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated). *Cirsium loncholepis* most likely had a more widespread distribution within this area, but may have been eliminated from most of the locations in this area by the vast conversion of this area to agriculture before it could be documented. However, even with such conversion, current aerial photos and topographic maps show the persistence of numerous, small marshes, wetlands, and drainages in this area; some of these may still harbor small populations of *C. loncholepis.*

Santa Ynez Valley

The Santa Ynez Valley contains one major dune complex (the Santa Ynez Valley Dune Complex) and two major riparian systems (or drainages): San Antonio Creek and the Santa Ynez River. The Santa Ynez Valley Dune Complex contains three Dune Sheets: San Antonio, Burton Mesa, and Lompoc Terrace. The San Antonio Terrace Dune Sheet is at the northern edge of the Santa Ynez Valley Dune Complex. It supports numerous dune wetlands and swales and is very similar in habitat, physical, and geological features to the Callender and Guadalupe Dune Sheets (Hunt 1993, pp. 5–72; Google Earth 2008, unpaginated). San Antonio Creek is downwind on the southern edge of the San Antonio Terrace Dune Sheet. The mouth of San Antonio Creek is one of the two most likely sites for the type locality (La Graciosa) for *Cirsium loncholepis* (Keil and Holland 1998, pp. 83–84; Oyler *et al.* 1995, pp. 1–76; Hendrickson 1990, pp. 1–25; Smith 1976, p. 282, 1998, pp. 153–154) and still harbors numerous small marshes and wetlands that are apparent in aerial imagery (Google Earth 2008, unpaginated). Historical collections indicate that *C. loncholepis* used to occur along the Santa Ynez River, somewhere between the towns of Surf and Lompoc, at the current edge of Vandenberg Air Force Base (University of Minnesota Saint Paul Herbarium 2007, unpaginated; Rancho Santa Ana Botanic Garden Herbarium 2007, unpaginated; Santa Barbara Botanical Garden Herbarium 2007, unpaginated; University of California Riverside Herbarium 2007, unpaginated). Collections of the plant were made here in 1958; however, by 1988 when surveys were conducted to relocate this population, none could be found (Hendrickson 1990, pp. 1–25). Over the years, some, but not all, habitat for *C. loncholepis* in the floodplain for the river has been altered. According to Smith's notes, agricultural fields have been plowed to the banks of the drainage, willows have been bulldozed, and herbicides were sprayed to eradicate *C. vulgare* (bull thistle) (Smith 1976, p. 282, 1998, pp. 153–154). Because this area historically supported the southernmost, documented *C. loncholepis* populations and because some habitat still remains today, it is considered to be an important area for the conservation of *C. loncholepis* (Morey 1990, pp. 1–13; U.S. Fish and Wildlife Service 2008, unpaginated).

Historically, *Cirsium loncholepis* has been reported or documented from a total of 25 occurrences as parts of 11 populations ranging from the dunes near Pismo Beach inland to hillside seeps at Cañada de las Flores south to the floodplains of the Santa Ynez River (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated). At the time of the listing in 2000, there were 17 known occurrences of which 11 were extant. These 11 extant occurrences were distributed among 7 populations (65 FR 14888, March 20, 2000; CNDDB 1998, unpaginated). Since the time of listing in 2000, *C. loncholepis* has experienced considerable declines throughout its range in the number of both occurrences and populations and in the number of individuals within each of the remaining occurrences and populations. Currently, *C. loncholepis* is considered to be extant at seven occurrences that are distributed among four populations. The seven extant occurrences consist of five occurrences that were identified in the final listing rule in 2000 as well as two new occurrences that have been identified since that time (CNDDB 2007, unpaginated; Elvin 2006, unpaginated, 2007a, unpaginated). *Cirsium loncholepis* does not currently occur at the following populations: Oceano, northern Callender Dune Sheet Lakes, Guadalupe, La Graciosa, Cañada de las Flores, San Antonio Terrace Dune Sheet, and Santa Ynez River. Since the time of listing, the loss of known polygons, occurrences, and populations has outpaced the discovery of new polygons, occurrences, and populations.

In habitats that are fragmented and/or isolated, the trend for native plant species is one of decline (Soule *et al.* 1992, pp. 39–47). This supports the equilibrium theory of island biogeography (MacArthur and Wilson, 1963, pp. 373–387, 1967) that predicts that species with populations that are isolated and have more extirpation events than re-colonization events will

decline to zero (extinction). Recent research on species that are long-distance dispersers (such as *Cirsium loncholepis*) determined that when the distances between suitable habitat sites for a species become greater than its dispersal distance (such as due to habitat fragmentation); its long-term survival will be threatened unless the long-distance dispersal between the sites can be re-established (Trakhtenbrot *et al.* 2005, pp. 173–181). The study by Trakhtenbrot *et al.* (2005, pp. 173–181) regarding long-distance dispersal species supports the study by Soule *et al.* (1992, pp. 39–47) and the equilibrium theory of island biogeography (MacArthur and Wilson 1963, pp. 373–387, 1967). Based on these studies and our current understanding of this species and its decline, we believe that conserving solely the areas with the remaining known occurrences and populations of *C. loncholepis* is not sufficient to conserve or recover the species. The additional habitat that would provide connectivity between occurrences and populations is essential for the conservation and recovery of *C. loncholepis.* This is supported by Damschen *et al.* (2006, pp. 1284–1286), who showed that habitat patches that were connected by corridors benefitted wildlife and plants.

Primary Constituent Elements for Cirsium loncholepis

For areas within the geographical area occupied by *Cirsium loncholepis* at the time of listing, we must identify the PCEs that may require special management considerations or protection. Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined the PCEs for *C. loncholepis* are:

1. Mesic areas associated with: (a) Margins of dune swales, dune lakes, marshes, and estuaries that are associated with dynamic (changing) dune systems including the Santa Maria Valley Dune Complex and Santa Ynez Valley Dune Complex; (b) margins of dynamic riparian systems including the Santa Maria and Santa Ynez Rivers and Orcutt and San Antonio Creeks; and (c) freshwater seeps and intermittent streams found in other habitats, including grassland, meadow, coastal scrub, chaparral, and oak woodland. These areas provide space needed for individual and population growth including sites for germination, reproduction, seed dispersal, seed bank, and pollination.

2. Associated plant communities including: Central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, intermittent streams, and other wetland communities, generally in association with the following species: *Juncus* spp. (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), *Baccharis pilularis* (coyote brush), and *B. douglasii* (Douglas' baccharis).

3. Soils with a sandy component including but not limited to dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils.

4. Features that allow dispersal and connectivity between populations, particularly: (a) Natural riparian drainages in Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River that are not channelized or confined by barriers or dams, such that they have soft bottoms and sides and a natural flood plain (allowing uninterrupted water flows); and (b) natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages that is not confined by barriers or wind-blocks such as large man-made structures, tree rows, or wind-breaks (allowing uninterrupted winds across these areas).

We believe that *C. loncholepis* could be conserved and recovered if populations in habitat with essential features remain connected throughout the two dune complexes and four major watersheds where it once was known to occur. With this proposed revision of critical habitat, we intend to identify the physical and biological features that are essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. Each of the areas proposed in this rule have been determined to contain at least one PCE to provide for the life history functions of *C. loncholepis.* Units are proposed for designation based on one or more PCEs being present to support one or more of the species' life history functions.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the physical or biological features essential to the conservation of the species, and whether these features may require special management considerations or protection. It is recognized that numerous activities in and adjacent to the unit designated as critical habitat, as described in this proposed rule, may affect one or more of the PCEs found in that unit. These activities include, but are not limited to, those listed in the Application of the ''Adverse Modification'' Standard section as activities that may destroy or adversely modify critical habitat. We summarize here the primary threats to the physical and biological features essential to the conservation of the species.

Many of the known occurrences of *Cirsium loncholepis* are threatened by direct and indirect effects from energy-related operations (*i.e.*, maintenance activities, hazardous waste cleanup); development that results in additional habitat modification (*i.e.*, agricultural and urban development); facility accidents by oil companies or Vandenberg Air Force Base; groundwater extraction in the Guadalupe Dunes and vicinity; hydrological alterations; direct and indirect effects from off highway vehicle (OHV) activity; and small population size; and habitat fragmentation and loss through the invasion of aggressive nonnative weeds such as *Ammophila arenaria* (European beach grass), *Carpobrotus* spp. (iceplant), *Ehrharta calycina* (veldt grass), and *Mesembryanthemum crystallinum* (crystalline iceplant) (Davis *et al.* 1988, pp. 169–195; Zedler and Schied 1988, pp. 196–201; Morey 1989, pp. 1–16; Odion *et al.* 1992, pp. 1–2; CNDDB 1998, unpaginated, 2008, unpaginated; Chesnut 1998a, unpaginated, 1998b, pp. 1–40; Smith 1976, p. 282; Smith 1998, pp. 153–154; Hendrickson 1990, pp. 1–25; CDFG 1992, pp. 111–112; Keil 2006b, unpaginated). These threats may require special management to ensure the long-term conservation of *C. loncholepis.* Threats specific to individual units are described in the unit descriptions below.

Criteria Used To Identify Critical Habitat

We analyzed the biology, life history, ecology, and distribution (historical, at the time of listing, and current) of *Cirsium loncholepis.* Based on this information, we are proposing to designate critical habitat in areas within the geographical area occupied by *C. loncholepis* at the time of listing in 2000. We also propose some specific areas outside the geographical area occupied by *C. loncholepis* at the time of listing, which although are currently unoccupied, are within the historical range of the species, and because we have determined that such areas are

essential for the conservation of *C. loncholepis.*

To delineate proposed revised critical habitat, we first determined occupancy within the extant range of *Cirsium loncholepis.* Occupancy status was determined using occurrence data from research and survey observations included in reports and other manuscripts (i.e., theses, monitoring reports); data from research and survey observations published in peer-reviewed articles; data submitted to the CNDDB; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; written and oral communications from species and physical science experts; information from herbarium specimens; scientific information in our draft recovery outline for *C. loncholepis* (U.S. Fish and Wildlife Service 2008, unpaginated); and visits by Service biologists to *C. loncholepis* populations. Areas or sites containing data indicating occupancy from 1988 or later (within approximately the past 20 years) were considered currently occupied. We then determined which areas were occupied at the time of listing by comparing survey and collection information to descriptions of occupied areas in the final listing rule published in the **Federal Register** on March 20, 2000 (65 FR 14888).

Based on these studies, our current understanding of the status of *Cirsium loncholepis* since the time of listing is that it continues to decrease in the number of populations, in the number of occurrences within populations, and in the number of individuals within the remaining occurrences and populations. Therefore, we determined that the areas in which the extant populations are distributed are alone not sufficient to conserve or recover it. Based on its decline, its biology, and new scientific information on the biological conditions necessary for long-distance dispersal species (such as *C. loncholepis*), we have determined that habitat providing connectivity between the areas containing the extant populations is also essential for its conservation and recovery.

Once we determined the extant range of the species, we analyzed areas outside the geographical area occupied by *Cirsium loncholepis* at the time of listing, but within the historical range of the species, for areas that are essential. We first looked for large, continuous blocks of suitable habitat, such as the numerous mesic areas and seeps in and surrounding the lower reaches of the Santa Ynez River. We then looked for important corridors of suitable habitat that connect the large, continuous areas based on their abilities to disperse seed or pollen, such as the area along Orcutt Creek between the Guadalupe Dunes and Cañada de las Flores. We then analyzed the presence and characteristics of other features that are important to maintain the metapopulation dynamics for *C. loncholepis* in these areas (e.g., winds and their relationship to the formation of geographic features, movement patterns for various dispersal agents, watersheds, geology). Using all the information above, we were able to discern areas that are potentially important for the recovery of *C. loncholepis.* From this, we then selected the extent of those areas that we consider to be essential to the conservation and recovery of the species. All of the areas that we are proposing to designate as critical habitat that are currently not known to be occupied by the species are essential for its conservation.

To map the proposed revised critical habitat units (both those occupied at the time of listing and those outside the geographical area occupied by the species at the time of listing), we overlaid *Cirsium loncholepis* occurrences (current and historical) on soil series, vegetation types, and watershed/wetland data to determine appropriate polygons that would contain one or more PCEs in the quantity and spatial arrangement necessary to provide the features essential to the conservation of *C. loncholepis.* This taxon is closely associated with dynamic ecosystems such as dune and riparian watershed systems and with the presence of sandy soil types and mesic conditions, but it also occurs in adjacent upland habitats and areas. Units were delineated by first mapping the occurrences (current and historical) and continuous and intervening suitable habitat, then considering other geographical features such as developed, urban, and agriculture (e.g., row crops) areas that are continuously maintained or utilized and removing areas with these features that did not contain the appropriate quantity and spatial arrangement of the PCEs essential to the conservation of the species.

When determining the proposed revisions to critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas, such as buildings, paved areas, and other structures, as well as tilled fields and row crops that lack the PCEs for *Cirsium loncholepis.* The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such areas inadvertently left inside critical habitat boundaries shown on the maps of this proposed revision to critical habitat have been excluded by text in the proposed revision and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Using the above criteria, we identified six units that contain the necessary features essential to the conservation of *Cirsium loncholepis.* These six units are located near the Pacific Coast in southwestern San Luis Obispo and northwestern Santa Barbara Counties. The northern-most unit consists of the dune system from Pismo Beach to the Santa Maria River in San Luis Obispo County. The second unit consists of the lower reaches of the Santa Maria River in San Luis Obispo and Santa Barbara Counties and of Orcutt Creek in Santa Barbara County. The remaining units are all within Santa Barbara County: one at Cañada de las Flores, one along the lower reaches of San Antonio Creek, one that encompasses the San Antonio Dunes, and one along the lower reaches of the Santa Ynez River.

We are proposing to revise the critical habitat designation on lands that meet the first prong of the definition of critical habitat and, therefore, were determined to be occupied at the time of listing and contain the physical and biological features essential for the conservation of the species. We are also proposing to revise the critical habitat designation to include lands that meet the second prong of the definition of critical habitat and, therefore, consist of specific areas outside the geographical area occupied by the species at the time it is listed that are essential for the conservation of the species. The proposed revision to critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Cirsium loncholepis* throughout its range and provide the necessary features that are essential for the conservation of the species. The essential features include: (1) Space for individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal; (2) areas that allow gene flow and provide connectivity between occupied areas; and (3) areas that provide basic requirements for growth, such as appropriate soil type and openings within vegetation cover. All proposed revised critical habitat units were

delineated based on the appropriate quantity and spatial arrangement of PCEs being present to support *C. loncholepis* life processes essential to the conservation of the species.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed animal species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and incidental take permit under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are currently unaware of any areas within this critical habitat proposal that fall into this category.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision from the areas we designated as critical habitat for *Cirsium loncholepis* on March 17, 2004 (69 FR 12553). The main differences include the following:

1. The 2004 critical habitat rule consisted of two units comprising a total of 41,090 acres (16,629 ha). This proposed revision includes six units comprising a total of 38,447 ac (15,559 ha). Units 4, 5, and 6 are considered to be unoccupied currently and at the time of listing. In the 2004 final designation, Unit 2 Cañada de las Flores (Unit 3 in the current revised proposed designation) was considered to be occupied at the time of listing and occupied in the final designation of critical habitat in 2004. For this revised proposed designation, we are considering it to currently be unoccupied All six units are within the historical range of the species. The decrease in acreage is due primarily to the removal of large areas of agriculture fields under private ownership that do not contain the appropriate spatial arrangement, quantity, or quality of the features essential to the conservation of the species.

2. We revised the PCEs. The 2004 critical habitat rule listed three PCEs that we determined were important to maintaining populations of *Cirsium loncholepis* where they occur (soils, plant communities, low cover of non-native species, and physical processes that support natural dune dynamics). In our proposed revision of critical habitat, we list five PCEs in an effort to emphasize areas that are important for the long-distance dispersal of this species and for its metapopulation dynamics.

3. We included three areas in this proposal that were not included in the final designation. These areas include San Antonio Creek, San Antonio Terrace Dunes, and Santa Ynez River. They are outside of the geographical area occupied by the species at the time of listing, but are within the historical range of the species (See Figure 1 and Index Map), and are essential to the conservation and recovery of the species because the current areas where extant populations of *Cirsium loncholepis* are distributed are not sufficient to conserve or recover it. The resulting proposed critical habitat is more accurately mapped to include those areas that contain the PCEs and that are essential for the conservation and recovery of *C. loncholepis.*

Proposed Revisions to the Critical Habitat Designation

We are proposing six critical habitat units for *Cirsium loncholepis.* These units, if finalized, would entirely replace the current critical habitat designation for *C. loncholepis* in 50 CFR 17.95(a). The critical habitat units described below constitute our best assessment at this time of: (1) Specific areas within the geographical area determined to be occupied by *C. loncholepis* at the time of listing that contain the physical and biological features that may require special management, and (2) additional specific areas outside the geographical area occupied by *C. loncholepis* at the time of listing that are essential for its conservation. The six proposed critical habitat units are: Callender-Guadalupe Dunes Unit 1, Santa Maria River-Orcutt Creek Unit 2, Cañada de las Flores Unit 3, San Antonio Creek Unit 4, San Antonio Terrace Dunes Unit 5, and Santa Ynez River Unit 6.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1—CRITICAL HABITAT UNITS PROPOSED FOR CIRSIUM LONCHOLEPIS.

[Area estimates reflect all land within critical habitat unit boundaries] [1]

Unit name	State lands		Private lands		County and other local jurisdictions		Federal lands		Estimate of total acreages	
	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares
1. Callender-Guadalupe Dunes	2,414	977	5,138	2,079	349	141	2,428	983	10,329	4,180
2. Santa Maria River-Orcutt Creek	329	133	12,433	5,032	465	188	0	0	13,227	5,353
3. Cañada de las Flores	0	0	740	299	0	0	0	0	740	299
4. San Antonio Creek	0	0	186	75	0	0	4,149	1,679	4,335	1,754
5. San Antonio Terrace Dunes	0	0	52	21	0	0	7,282	2,947	7,334	2,968
6. Santa Ynez River	0	0	43	18	38	15	2,401	972	2,482	1,005
Approximate Total	2,743	1,110	18,592	7,524	852	344	16,260	6,581	38,447	15,559

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Totals are sums of units.

TABLE 2—OCCUPANCY OF CRITICAL HABITAT UNITS PROPOSED FOR CIRSIUM LONCHOLEPIS

Unit Name	Within areas occupied at the time of listing?	Occupied at the time critical habitat designated?	Known to be occupied currently?
1. Callender-Guadalupe Dunes	Yes	Yes	Yes
2. Santa Maria River-Orcutt Creek	Yes	Yes	Yes
3. Cañada de las Flores	Yes	Yes	No [1]
4. San Antonio Creek	No	No	No
5. San Antonio Terrace Dunes	No	No	No
6. Santa Ynez River	No	No	No

[1] We are not considering this unit to be occupied, but the population may still be extant. Plants have not been seen since 1989, but sufficient surveys have not been conducted since 1990.

We present descriptions of all units, and reasons why they meet the definition of critical habitat for *Cirsium loncholepis* below.

Unit 1: Callender-Guadalupe Dunes (10,329 ac (4,180 ha))

Unit 1 is located in the southwestern corner of San Luis Obispo County, California. It stretches along 8.5 mi (13.5 km) of coast from Arroyo Grande Creek south to the Santa Maria River. This unit is south of Pismo Beach, west of Nipomo and north of Guadalupe. Unit 1 was occupied at the time of listing, is currently occupied, and contains the physical and biological features essential to the conservation of the species (CNDDB 2007, unpaginated; Elvin 2006, unpaginated, 2007b, unpaginated; 65 FR 14888, March 20, 2000). Unit 1 is essential because it contains three of the four remaining *C. loncholepis* populations, the populations represent the northern-most occurrences of the species, and it includes the largest block of native habitat still occupied by *C. loncholepis*. While maintaining all of these three remaining populations (six occurrences) and the 10,329 ac (4,180 ha) of habitat in this unit is essential for this species to survive, it does not appear to be sufficient to maintain this species for the long term because four occurrences (of eight known at the time of listing) within the three populations in this unit have been lost since the listing of this plant in 2000.

Unit 1 is comprised of 2,428 ac (983 ha) of Federal lands; 2,414 ac (977 ha) of State lands; 349 ac (141 ha) of County and other local jurisdiction land; and 5,138 ac (2,079 ha) of private land (162 ac (65 ha) of which belongs to non-governmental organizations (NGOs)). Unit 1 includes a portion of the Guadalupe-Nipomo Dunes National Wildlife Refuge, Pismo Dunes State Preserve, Oceano Dunes State Vehicular Recreation Area, and privately owned lands. Unit 1 is located within the Santa Maria Valley Dune Complex (Hunt 1993, pp. 5–72). This dune complex contains numerous mesic areas on the margins of dune swales, dune lakes, marshes, and estuaries within the dynamic (changing) Callender and Guadalupe Dune Sheets (PCE 1). Unit 1 is dominated by moderate to strong winds from the northwest most of the time throughout the year. These winds are a major factor in creating the dunes and shaping the terrain, such as the parallel ridges and swales that are essential for the conservation of *Cirsium loncholepis* (PCE 4).

The geomorphological processes that shaped/developed the terrain features in the Santa Maria Valley Dune Complex are intact and continue to rejuvenate and maintain the dynamic dune and riparian features and processes of the constantly shifting mosaic of terrain, vegetation, and wetlands (PCE 4). The vegetation in the dunes includes central dune scrub, coastal dune, coastal scrub, coastal freshwater marsh and fen, riparian scrub, chaparral, and oak woodland (PCE 2) (Cooper 1967, pp. 75–90; Hunt 1993, pp. 5–72; CNDDB 2007, unpaginated; CNPS 2008, unpaginated; Holland 1986, pp. 1–156). The soils throughout the dunes are dominated by sand (PCE 3). The dunes support a wide diversity of flora and fauna including numerous insects, many of which are pollinators for *Cirsium loncholepis,* and hummingbirds (Keil 2008, unpaginated; Martin *et al.* 1951, pp. 92–277; Krombein *et al.* 1979, Vol. 2 pp. 1751–2209; Blecha *et al.* 2007, pp. 1–354). The dunes also support numerous small mammal and bird species (Blecha *et al.* 2007, pp. 1–354) that act as dispersal vectors for *C. loncholepis* seed (PCE 4). This unit contains large tracts of undeveloped land including dunes, wetlands, and upland areas occupied by the species and its pollinators (PCEs 1, 2, 3, and 4). The dynamic geomorphological processes, mosaic of habitats, and diversity of flora and fauna provide for and enhance the dispersal of genetic material of *C. loncholepis* between and among the various populations (and occurrences) within this dune complex and provide adjacent uplands for pollinators (PCEs 1, 3, and 4).

The prevailing, strong wind patterns blow southeast across the lower Santa Maria River Valley, up Orcutt Creek, past the town of Orcutt, and beyond Graciosa Ridge to Cañada de las Flores. These winds are an essential dispersal vector that help move plants/seeds from the *Cirsium loncholepis* populations in the Callender and Guadalupe Dunes to populations in the Santa Maria River, Orcutt Creek, and Cañada de las Flores and are essential in maintaining connectivity between populations in the Santa Maria River Valley and those in the San Antonio Creek and Santa Ynez River Valleys.

The essential features found in Unit 1 may require special management considerations or protection in Unit 1 resulting from: (1) Direct and indirect effects from energy-related operations (*i.e.*, maintenance activities, hazardous waste cleanup, facility accidents); (2) ground water extraction which lowers the water table and dries the wetlands; (3) stochastic (i.e., random) extirpation/extinction events that occur because the population size is small or isolated; (4) trampling and grazing from trespass of cattle; (5) competition from invasive, aggressive, nonnative weeds (e.g., *Ammophila arenaria, Carpobrotus* spp., *Ehrharta calycina, Mesembryanthemum crystallinum*); and (6) direct and indirect effects from OHV activity (Davis *et al.* 1988, pp. 169–195; Zedler and Schied 1988, pp. 196–201; Morey 1989, pp. 1–16; Odion *et al.* 1992, pp. 1–2; CNDDB 1998, unpaginated, 2008, unpaginated; Chesnut 1998a, unpaginated, 1998b, pp. 1–40; Smith 1976, p. 282, 1998, pp. 153–154; Hendrickson 1990, pp. 1–25; CDFG 1992 pp. 111–112; Elvin 2006, unpaginated; Keil 2006b, unpaginated).

Unit 2: Santa Maria River-Orcutt Creek (13,227 ac (5,353 ha))

Unit 2 is located along the lower 5 mi (8 km) of the Santa Maria River and along the length of Orcutt Creek (approximately 13 mi (21 km)) in San Luis Obispo and Santa Barbara Counties, California. Unit 2 was occupied at the time of listing, is currently occupied, and contains the physical and biological features essential to the conservation of the species (CNDDB 2007; 65 FR 14888, March 20, 2000). Unit 2 is essential because it contains the last *Cirsium loncholepis* population in riparian habitat. Unit 2 also contains what has historically been recognized as the largest *C. loncholepis* population with an estimated 54,000 individuals being reported in 1990 (CNDDB 2007, unpaginated; Hendrickson 1990, pp. 1–25). However, only about 25 plants were observed in the lower 0.9 mi (1.5 km) stretch of the Santa Maria River when visited in November 2006 (Elvin 2006, unpaginated). This unit contains large blocks of intact riparian habitat along the Santa Maria River and the southwest side of Orcutt Creek. Unit 2 is also essential as a dispersal corridor between the Santa Maria Valley and the Santa Ynez Valley.

Unit 2 is comprised of 329 ac (133 ha) of State land; 465 ac (188 ha) of County and other local jurisdiction land; and 12,433 ac (5,032 ha) of private lands. Unit 2 includes Rancho Guadalupe Dunes Park in Santa Barbara County. Unit 2 is located within the broad Santa Maria Valley, in the floodplains of the lower Santa Maria River and Orcutt Creek. Unit 2 is also within the Santa Maria Valley Dune Complex (Hunt 1993, pp. 5–72). It skirts the edges of the Guadalupe Dune Sheet to the north of the Santa Maria River, the Mussel Rock Dune Sheet to the southeast of Orcutt Creek and the Santa Maria River, and the Orcutt Terrace Dune Sheet to the northeast of the upper reaches of Orcutt Creek (Hunt 1993, pp. 5–72). These drainages and the adjacent dune sheets contain numerous mesic areas on the margins and floodplains of the river and creek and freshwater seeps and in grasslands, coastal scrub, and chaparral in the adjacent dune sheets (PCEs 1, 2, 3 and 4).

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the Santa Maria Valley Dune Complex are intact and continue to affect the dynamic dune and riparian features and processes and their associated habitats in this unit (PCEs 1, 2, 3, and 4). The more interior portions of this unit are primarily within the lower portion of the Santa Maria River Valley where conversion to agricultural production to the edges of the river and the northeastern edge of the creek has occurred. The lower 5 mi (8 km) of the Santa Maria River remain intact with riparian scrub vegetation, sandy alluvial soils (PCEs 2 and 3), and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted water flows (PCEs 1 and 4). Pockets of numerous small marshes, wetlands, and drainages are still interspersed within the agricultural fields along Orcutt Creek, and the dynamic processes that rejuvenate and maintain the ever-changing mosaic of coastal scrub and riparian habitats are still largely intact (PCEs 1, 2, and 3). Additionally, areas to the southwest of Orcutt Creek contain large blocks of intact habitat (PCEs 1, 2, and 3) including suitable upland habitat areas between the intermittent streams and freshwater seeps (PCE 1) that provide habitat for pollinators and other dispersal vectors (PCE 4) such as birds and small mammals that move *Cirsium* seed. The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, and intermittent streams (PCE 2) (CNDDB 2007, unpaginated; CNPS 2008, unpaginated; Holland 1986, pp. 1–156; Elvin 2006, unpaginated). The soils in this unit are predominantly sandy (U.S. Department of Agriculture, Natural Resources Conservation Service (USDA NRCS) 2000, unpaginated; 2005, unpaginated) (PCE 3).

Unit 2 is dominated by the prevailing, moderate to strong winds from the northwest that blow southeast along the length of Orcutt Creek, which would then function as a dispersal corridor for *Cirsium loncholepis* seed from the dunes to Cañada de las Flores. These winds help move seeds from the populations in the Callender and Guadalupe Dunes to pocket wetlands along Orcutt Creek, to seeps and intermittent drainages southwest of the creek (along the Mussel Rock Dune Sheet), and eventually to the *C. loncholepis* population at Cañada de las Flores (PCEs 1 and 4). Orcutt Creek also acts as a dispersal vector by carrying seed from upstream plants down to the Santa Maria River population (PCE 1 and 4). These intermittent wetland sites or ''pocket wetlands'' and the intervening habitat areas are essential to maintain connectivity between more distant populations (Trakhtenbrot *et al.* 2005, pp. 173–181; Higgins and Richardson 1999, pp. 464–475), particularly between those in the Santa Maria Valley and those in the San Antonio Creek and Santa Ynez Valleys. These pocket wetlands also act as important core areas for *C. loncholepis.*

The essential features found in Unit 2 may require special management considerations for or protection from: (1) Nutrient inputs in the water systems that are above concentrations known to adversely affect freshwater ecosystems and cause adverse ecological effects including altering the composition of the plant community and inducing biostimulation; (2) stochastic (i.e., random) extirpation/extinction events that occur because the population size of some occurrences is small or isolated; (3) trampling and grazing from cattle; or (4) competition from invasive, aggressive, nonnative weeds (e.g., *Ammophila arenaria, Carpobrotus* spp., *Ehrharta calycina, Mesembryanthemum crystallinum*) (California State Water Resources Control Board 2006, pp. 1–71; Central Coastal Ambient Monitoring Program 2002, pp. 1–60; Dodds *et al.* 1998, pp. 1455–1462; Davis *et al.* 1988, pp. 169–195; Zedler and Schied 1988, pp. 196–201; Morey 1989, pp. 1–16; Odion *et al.* 1992, pp. 1–2; CNDDB 1998, unpaginated, 2007, unpaginated; Chesnut1998a, unpaginated, 1998b, pp. 1–40; Smith 1976, p. 282, 1998, pp. 153–154; Hendrickson 1990, pp. 1–25; CDFG 1992, pp. 111–112; Elvin 2006, unpaginated; Keil 2006b, unpaginated).

Unit 3: Cañada de las Flores (740 ac (299 ha))

Unit 3 is located approximately 5 mi (8 km) northwest of the town of Los Alamos and southwest of the Solomon Hills in Santa Barbara County, California. Unit 3 was considered to be occupied at the time of the listing and at the time critical habitat was designated for this species in 2004. *Cirsium loncholepis* may still be extant at Cañada de las Flores. It was last observed at this site in 1989 (Hendrickson 1990, pp. 1–25). Since the time of listing and at the time critical habitat was designated, there have still been no observations of *C. loncholepis* here. While *C. loncholepis* may still be at Cañada de las Flores, we are considering Cañada de las Flores to be unoccupied for the purposes of this rule based on the continued lack of observation of *C. loncholepis* since 2000 (Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated; Elvin 2007a, unpaginated; 65 FR 14888, March 20, 2000). The population in Unit 3 represents the eastern-most and

farthest-inland location at which *Cirsium loncholepis* has been documented. Additionally, Unit 3 occurs at a pivotal location for the species as a whole; it is down-wind from populations in the Santa Maria Valley and upstream from populations in the San Antonio Valley (e.g., the mouth of San Antonio Creek (one of the potential type locality sites for *C. loncholepis*) and San Antonio Terrace Dunes). Therefore, the Cañada de las Flores location is essential to maintain connectivity between populations in the Santa Maria Valley and populations in the San Antonio Creek and Santa Ynez Valleys (PCE 4)

Unit 3 is comprised of 740 ac (299 ha) of private land at the head of La Cañada de las Flores in Santa Barbara County, California. Unit 3 contains mesic areas at the edge of freshwater seep, marsh, meadow, grassland, chaparral, and oak woodland habitats (PCEs 1 and 2). We consider the two *Cirsium loncholepis* occurrences that have been recorded (and may still occur) here to be part of one population that has expanded at times to represent one large polygon of plants (CNDDB 2007, unpaginated; Elvin 2007b, unpaginated). Cañada de las Flores has slightly different environmental conditions than the coastal areas; specifically, it is at a higher elevation (200 ft (61 m)) and has a warmer climate. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions would be important for the long-term survival and conservation of the species. Cañada de las Flores is mapped as Camarillo sandy loam with sand visible on the surface throughout the floor and lower portions of the surrounding hills/ridges in the canyon (PCE 3) (U.S. Soil Conservation Service 1972, unpaginated; Hendrickson 1990, pp. 1–25; CNDDB 2007, unpaginated; Elvin 2007b, unpaginated).

Unit 4: San Antonio Creek (4,335 ac (1,754 ha))

Unit 4 is located in the northwestern portion of Santa Barbara County, California. Unit 4 stretches along the lower 11 mi (17 km) of San Antonio Creek. Unit 4 was not considered to be occupied at the time of listing, and is currently considered to be unoccupied, although it is within the historical distribution of the species. The mouth of San Antonio Creek is one of the two most likely locations for the type locality for *Cirsium loncholepis* (Smith 1976, p. 282, 1998, pp. 153–154; Hendrickson 1990, pp. 1–25; Oyler *et al.* 1995, pp. 1–76; California Academy of Sciences Herbarium 2007, unpaginated).

Unit 4 is comprised of 4,149 ac (1,679 ha) of Federal lands and 186 ac (75 ha) of private lands. The majority of Unit 4 lands occur on Vandenberg Air Force Base. Most of the mission-critical projects and activities on Vandenberg Air Force Base are confined to areas outside of wetlands in general, and San Antonio Creek in particular. The few known land uses in and immediately adjacent to San Antonio Creek consist of agriculture leases and transportation and communications crossings (SRS Technologies 2007, pp. 1–35). There are many sensitive resources along San Antonio Creek including jurisdictional wetlands, cultural resources, and sensitive species (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35). Management activities for these resources may also benefit *Cirsium loncholepis.* Unit 4 is located within the Santa Ynez Valley Dune Complex, and San Antonio Creek is one of the two major drainages in it (Hunt 1993, pp. 5–72). San Antonio Creek is the geological feature that separates the San Antonio Dune Sheet and the Burton Mesa Dune Sheet. This drainage and the adjacent dune sheets contain numerous mesic areas on the margins of the creek and its floodplain; in freshwater marshes (e.g., Barka Slough); and in freshwater seeps in adjacent grasslands, coastal scrub, chaparral, and the adjacent dune sheets that allow for dispersal (PCEs 1, 3, and 4) (Dial 1980, pp. 1–100; Cooper 1967, pp. 75–90; Hunt 1993, pp. 5–72; CNDDB 2007, unpaginated).

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the San Antonio Valley are intact and continue to affect the dynamic riparian and adjacent dune features and processes in this unit (PCEs 1 and 4). The lower 10 mi (16 km) of San Antonio Creek remain intact with riparian scrub, woodland, and forest vegetations (PCE 2); sandy alluvial soils (PCE 3); and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted flows of water (PCEs 1 and 4). Numerous small marshes, wetlands, and intermittent tributary drainages still occur naturally along this stretch of San Antonio Creek and the dynamic processes that rejuvenate and maintain the riparian habitats are still largely intact here (PCEs 1 and 4) (Keil 1997, pp. 1–12; Dial 1980, pp. 1–100; SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007 pp. 1–35; Google Earth 2008, unpaginated). Additionally, areas adjacent to the creek on both sides still contain large blocks of intact habitat (PCEs 1, 2 and 4) including suitable upland habitat areas between the intermittent streams and freshwater seeps (PCEs 1 and 2) that provide habitat for pollinators and other dispersal vectors (PCE 4) such as birds and small mammals that move *Cirsium* seed (SRS Technologies 2007, pp. 1–35). The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, and intermittent streams (PCE 2) (SRS Technologies 2007, pp. 1–35; Keil 1997, pp. 1–12; CNDDB 2007, unpaginated; CNPS 2008, unpaginated; Holland 1986, pp. 1–156; Elvin 2007c, unpaginated). The soils in this unit are predominantly sandy (USDA NRCS 2005, unpaginated; SRS Technologies 2003, pp. 1–1 to 9–14) (PCE 3).

This unit is dominated by the prevailing, moderate to strong winds from the northwest that blow southeast across the San Antonio Dune Sheet and up San Antonio Creek (USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated). These winds are an essential dispersal vector that help disperse seeds from the San Antonio Dunes and the estuary at the mouth of San Antonio Creek to suitable habitat sites upstream along San Antonio Creek (PCE 4). The uninterrupted flow of water from the headwaters of San Antonio Creek and its tributaries down to its mouth is essential to facilitate the dispersal of *Cirsium loncholepis* seeds from and maintain connectivity between upstream populations such as Cañada de las Flores to other suitable mesic habitat sites downstream along San Antonio Creek and to mesic areas in the adjacent dune sheets (PCE 4).

While this unit was not occupied at the time of listing, Unit 4 is essential to the conservation of the species because it contains lands along San Antonio Creek that can function as a core area and dispersal corridor for *Cirsium loncholepis*. Unit 4 is essential as a core area for *C. loncholepis* and would decrease fragmentation for the species. It contains many intermittent wetlands along the length of the creek and in the estuary at the mouth of the San Antonio Creek and is capable of supporting populations for long periods of time. These intermittent wetland sites (PCE 1) and the intervening habitat areas are also essential to maintain connectivity between more distant *C. loncholepis* populations (Trakhtenbrot *et al.* 2005, pp. 173–181; Higgins and Richardson 1999, pp. 464–475), such as those in the upper watershed of San Antonio Creek and those in the lower reaches of the

creek and the adjacent San Antonio Terrace Dunes. Unit 4 is more easily managed for the species than many other areas in the historical distribution of the species because there are fewer pressures for commercial or agricultural development.

Unit 5: San Antonio Terrace Dunes (7,334 ac (2,968 ha))

Unit 5 is located in western Santa Barbara County, California. Unit 5 stretches along 4 mi (6.5 km) of the coast north from San Antonio Creek. This unit is southwest of the town of Casmalia. Unit 5 was not considered to be occupied at the time of listing and is currently considered to be unoccupied; it is within the historical distribution of the species. *Cirsium loncholepis* has been reported from wetlands in the San Antonio Terrace Dunes, but has not been officially documented with a herbarium specimen (CNDDB 2007, unpaginated; Consortium of California Herbaria 2008, unpaginated).

Unit 5 is comprised of 7,282 ac (2,947 ha) of Federal lands on Vandenberg Air Force Base and 52 ac (21 ha) of private lands. Most of the projects and activities on Vandenberg Air Force Base are confined to areas outside of wetlands. The few known land uses in the San Antonio Terrace consist of ''improved areas,'' launch facilities, transportation and communications facilities, recreational activities, and remediation and restoration programs (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35). There are numerous sensitive resources on San Antonio Terrace including jurisdictional wetlands, cultural resources, and sensitive species (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35). Management activities for some of the resources may also benefit *Cirsium loncholepis.* Unit 5 is located within the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5–72). The San Antonio Terrace Dune Sheet is the primary physiographic feature in Unit 5. San Antonio Creek is one of the two major drainages in the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5–72). This dune complex contains numerous mesic areas on the margins of dune swales, dune lakes, and marshes within the dynamic (changing) San Antonio Terrace Dune Sheet (PCEs 1 and 3). Unit 5 is dominated by strong winds from the northwest throughout the majority of the year that are a major factor in creating the dunes and shaping the terrain, such as the parallel ridges and the swales and other dune wetlands that are so important for *Cirsium loncholepis* (PCE 4) (USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated; Hendrickson 1990, pp. 1–25).

The geomorphological processes that shaped and developed the terrain features in the Santa Ynez Valley Dune Complex are intact and continue to rejuvenate and maintain the dynamic dune and riparian features and processes of the constantly shifting mosaic of terrain, vegetation, and wetlands (PCEs 1, 2, 3, and 4). The vegetation in the dunes includes central dune scrub, coastal dune, coastal strand, coastal scrub, coastal freshwater marsh and fen, riparian scrub, chaparral, and oak woodland (PCE 2) (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35; Cooper 1967, pp. 75–90; CNDDB 2007, unpaginated; CNPS 2008, unpaginated; Holland 1986, pp. 1–156). The soils throughout these dunes are dominated by sand (PCE 3) (Cooper 1967, pp. 75–90; Hunt 1993, pp. 5–72; USDA NRCS 2005, unpaginated). Dunes in the vicinity of Vandenberg Air Force Base support a wide diversity of flora and fauna including numerous insects and hummingbirds, many of which are pollinators for *Cirsium loncholepis* (SRS Technologies 2003, pp. 1–1 to 9–14; Keil 2008, unpaginated; Martin *et al.* 1951, pp. 92–277; Krombein *et al.* 1979, Vol. 2 pp. 1751–2209; Blecha *et al.* 2007, pp. 1–354). The dunes also support numerous small mammal and bird species (SRS Technologies 2003, pp. 1–1 to 9–14; Blecha *et al.* 2007, pp. 1–354) that act as dispersal vectors for *C. loncholepis* seed (PCE 4). This unit contains large tracts of undeveloped land including dunes, wetlands, and upland areas utilized by the species and its pollinators (PCEs 1, 2, 3, and 4). The dynamic geomorphological processes, mosaic of habitats, and diversity of flora and fauna provide for and enhance the dispersal of genetic material of *Cirsium loncholepis* between and among the various wetlands within this dune complex and provide adjacent uplands for pollinators (PCEs 1, 2, 3, and 4).

The prevailing, strong wind patterns from the northwest, greater than 7.47 mph (12.02 kph) most of the time throughout the year, blow southeast across the San Antonio Terrace Dunes to areas up San Antonio Creek, across the Burton Mesa Dune Sheet, and along the Santa Ynez River. These winds are an essential dispersal vector that would help disperse *Cirsium loncholepis* seeds from the San Antonio Dunes to suitable habitat sites upstream along San Antonio Creek, in the Burton Mesa Dunes, and along the Santa Ynez River (PCE 4). The uninterrupted flow of these winds is essential to facilitate this dispersal and to maintain connectivity between *C. loncholepis* populations that might occur in these areas (PCEs 1 and 3) (USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated; SRS Technologies 2003, pp. 1–1 to 9–14).

While this unit was not occupied at the time of listing, Unit 5 is essential as a core area for *C. loncholepis* in that the many mesic areas and intermittent wetlands within the dune system are capable of supporting *C. loncholepis* populations for long periods of time. The San Antonio Terrace Dune Sheet supports numerous dune wetlands and swales and is very similar in habitat, physical, and geological features to the Callender and Guadalupe Dune Sheets (Cooper 1967, pp. 75–90; Hunt 1993, pp. 5–72; Google Earth 2008, unpaginated). These wetland sites and the intervening upland habitat areas are essential to maintain connectivity within this dune system and between more distant *C. loncholepis* populations (Trakhtenbrot *et al.* 2005, pp. 173–181; Higgins and Richardson 1999, pp. 464–475), such as along San Antonio Creek and those in and along the Santa Ynez River or those between the Santa Maria Valley (specifically in the Santa Maria Valley Dune Complex and the Santa Maria River drainage system) and those downwind in the Santa Ynez Valley. Unit 5 is more easily managed for the species than many other areas in the historical distribution of the species because there are fewer pressures for commercial or agricultural development.

Unit 6: Santa Ynez River (2,482 ac (1,005 ha))

Unit 6 is located in the western portion of Santa Barbara County, California. This unit consists of the lower 4 mi (3.5 km) of the Santa Ynez River, most of which is on Vandenberg Air Force Base. Unit 6 is west of Lompoc and east of Surf. Unit 6 was not considered to be occupied at the time of listing, and is currently considered to be unoccupied. Unit 6 is within the historical distribution of the species.

Unit 6 is comprised of 2,401 ac (972 ha) of Federal lands, 38 ac (15 ha) of county and other local jurisdiction land, and 43 ac (18 ha) of private land. The majority of Unit 6 lands occur on Vandenberg Air Force Base. Most of the mission-critical projects and activities on Vandenberg Air Force Base are confined to areas outside of wetlands in general, and the Santa Ynez River in particular. The few known land uses in and immediately adjacent to the Santa Ynez River consist of grazing and agriculture programs, transportation and communications facilities, recreational programs, and several restoration

programs (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35). There are many sensitive resources along San Antonio Creek including jurisdictional wetlands, cultural resources, and sensitive species (SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35). Management activities for these resources may also benefit *Cirsium loncholepis.* The Santa Ynez River is one of the two major drainages in the Santa Ynez Valley Dune Complex (Hunt 1993, pp. 5–72). The Santa Ynez River is the geological feature that separates the Burton Mesa Dune Sheet and the Lompoc Terrace Dune Sheet. This drainage and the adjacent uplands contain numerous mesic areas on the margins of the river and its floodplain; in freshwater marshes; in intermittent streams that are tributaries; and in freshwater seeps in adjacent grasslands, coastal scrub, and chaparral (PCEs 1, 2, and 3) (Google Earth 2008, unpaginated; CNDDB 2007, unpaginated; Elvin 2008, unpaginated).

The geomorphological processes (fluvial and aeolian) that shaped and developed the terrain features in the Santa Ynez Valley are intact and continue to affect the dynamic dune and riparian features and processes and their associated habitats in this unit (PCEs 1 and 4). The lower 4 mi (6.4 km) of the Santa Ynez River remains mostly intact with some adjacent agriculture; adjacent riparian scrub vegetation and sandy alluvial soils (PCE 2); and dynamic fluvial geomorphological processes, which allow it to operate as a dynamic riparian system with uninterrupted water flows (PCEs 1 and 4). Additionally, areas to the north and south of the river contain large blocks of intact habitat (PCEs 1 and 4), including suitable upland habitat areas between the intermittent streams and freshwater seeps (PCE 1) that provide habitat for pollinators and other dispersal vectors (PCE 4) such as birds and small mammals that move *Cirsium* seed. The vegetation in this unit includes central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, and intermittent streams (PCEs 1, and 2) (Cooper 1967, pp. 75–90; Hunt 1993, pp. 5–72; CNDDB 2007, unpaginated; CNPS 2008, unpaginated; Holland 1986, pp. 1–156; SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35; Elvin 2007c, unpaginated; Elvin 2008, unpaginated). The soils in this unit are predominantly sandy (USDA NRCS 2008, unpaginated; SRS Technologies 2003, pp. 1–1 to 9–14; SRS Technologies 2007, pp. 1–35; Elvin 2007c, unpaginated; Elvin 2008, unpaginated) (PCE 3).

In Unit 6, as in Unit 5, the prevailing, strong wind patterns from the northwest, greater than 7.47 mph (12.02 kph) most of the time throughout the year, blow southeast across the San Antonio Terrace Dunes to areas up San Antonio Creek, across the Burton Mesa Dune Sheet, and along the Santa Ynez River. These winds are an essential dispersal vector that would help disperse *Cirsium loncholepis* seeds from the San Antonio Dunes to suitable habitat sites upstream along San Antonio Creek, in the Burton Mesa Dunes, and along the Santa Ynez River (PCE 4). The uninterrupted flow of these winds is essential to facilitate this dispersal and to maintain connectivity between *C. loncholepis* populations that might occur in these areas (PCEs 1 and 4) (USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated; SRS Technologies 2003, pp. 1–1 to 9–14). These strong winds also blow from the lower portion of the Santa Ynez River along the north base of the Santa Ynez Mountains, more or less upstream along the Santa Ynez River and to the numerous seeps along the north base of the Santa Ynez Mountains. These winds are an essential dispersal vector that would help move any *Cirsium loncholepis* seeds from San Antonio Terrace Dunes to the Santa Ynez River (and its ancillary, adjacent wetlands) and from the lower reaches of the Santa Ynez River to the pocket wetlands along the river and upstream. These uninterrupted winds are essential to maintain connectivity between population areas in the Santa Ynez Valley (PCEs 1 and 4) (USDA NRCS 2008, unpaginated; NOAA 2007, unpaginated; SRS Technologies 2003, pp. 1–1 to 9–14). The Santa Ynez River also acts as a dispersal vector by carrying seed from upstream plants down to the mouth (PCE 1 and 4). The uninterrupted flow of water from up-river along the Santa Ynez River to the wetlands at its mouth is essential to maintain the connectivity between occurrences in Unit 6 (PCE 4). The lower reaches of the Santa Ynez River contain numerous pocket wetlands, intermittent streams/tributaries, marshes, and estuaries. Several hillside seeps also occur in this stretch of the river (PCE 1).

While this unit was not occupied at the time of listing, Unit 6 is essential as a core area for *C. loncholepis* in that the many intermittent wetlands and freshwater seeps within the dynamic river system are capable of supporting *C. loncholepis* populations for long periods of time. The wetlands and the intervening upland habitat areas in Unit 6 are essential to maintain connectivity within and throughout this riparian system as a core area for *C. loncholepis*. Unit 6 is more easily managed for the species than many other areas in the historical distribution of the species because a large part of this unit has fewer pressures for commercial or agricultural development.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 443 (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If we list a species or designate critical habitat, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out, do not require section 7(a)(2) consultations. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify critical habitat, but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We then define ''Reasonable and Prudent Measures'' considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific ''Terms and Conditions'' that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features, or other conservation role and function of the affected designated area, to an extent that appreciably reduces the conservation value of critical habitat for *Cirsium loncholepis*. Generally, the conservation role of C. *loncholepis* critical habitat units is to support viable core populations and corridors, which support temporal populations that maintain connectivity between core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Cirsium loncholepis* include, but are not limited to:

(1) Actions that would degrade or destroy native maritime chaparral, dune, and oak woodland communities, including but not limited to, livestock grazing, clearing, disking, introducing or encouraging the spread of non-native plants, and heavy recreational use;

(2) Actions that would appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of non-native plants or animals, or fragmentation), such as livestock grazing; clearing vegetation; disking; introducing or encouraging the spread of non-native plants; heavy recreational use; fragmentation of habitat blocks, the creation of barriers or dams; channelizing rivers, creeks, or drainages; or the introduction or creation of barriers or wind-blocks such as large man-made structures, developments, tree rows, or windbreaks.

(3) Actions that would appreciably interrupt or alter water flows in the Santa Maria River, Orcutt Creek, San Antonio Creek, or Santa Ynez River (such as channelization or confinement of the water flows by barriers or dams or converting them from soft bottoms and sides to a lined, channelized drainage).

(4) Actions that would appreciably interrupt or alter winds across the Santa Maria Valley and Santa Ynez Dune Complexes and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River watershed areas such that the natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria

River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages would be blocked or altered by barriers or wind-blocks such as large man-made structures, developments, tree rows, or windbreaks.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Sikes Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

Lands at Vandenberg Air Force Base are not discussed in this section because Vandenberg Air Force Base only has a draft INRMP for 2003–2008 (SRS Technologies 2003, pp. 1–1 to 9–14). This draft does not currently include management guidelines for *Cirsium loncholepis.* We are currently working with Vandenberg Air Force Base on a programmatic consultation for base-wide activities.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute, as well as its legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We anticipate no impact to national security, Tribal lands, or HCPs from this proposed revision to the current critical habitat designation. Based on the best available information, we believe that all of the proposed revised units contain the features essential to *Cirsium loncholepis* or are otherwise essential for the conservation of this species. As such, we have considered but are not proposing to exclude any lands from this designation based on the potential impacts to these or other factors. However, during the development of a final designation, we will be considering economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Economic Analysis

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

We are preparing an analysis of the economic impacts of this proposed revision to critical habitat for *Cirsium loncholepis.* We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Ventura Fish and Wildlife Office directly (see **ADDRESSES** section). We may exclude areas from the final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are requesting the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the person named in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees,

loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

At this time, we lack the available economic information necessary to determine whether the rule would have an annual effect on the economy of $100 million or more or affect the economy in a material way.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating revised critical habitat for the *Cirsium loncholepis* in a takings implications assessment. The takings implications assessment concludes that this designation of revised critical habitat for the *C. loncholepis* does not pose significant takings implications for lands within or affected by the revised designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-

by-case section 7 consultations to occur).

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed revision to critical habitat uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium loncholepis.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

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 that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, and Secretarial Order 3206, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands occupied by *Cirsium loncholepis* at the time of listing or currently occupied that contain the features essential for the conservation of the species, and no Tribal lands that are in unoccupied areas that are essential for the conservation of the species. Therefore, in this proposed revised rule, critical habitat for *C. loncholepis* has not been proposed for designation on Tribal lands.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this proposed rule to designate critical habitat for *Cirsium loncholepis* to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the staff of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.96(a), revise the entry for ''Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

(1) Critical habitat units are depicted for San Luis Obispo and Santa Barbara counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium loncholepis* are:

(i) Mesic areas associated with:

(A) Margins of dune swales, dune lakes, marshes, and estuaries that are associated with dynamic (changing) dune systems including the Santa Maria Valley Dune Complex and Santa Ynez Valley Dune Complex;

(B) Margins of dynamic riparian systems including the Santa Maria and Santa Ynez Rivers and Orcutt and San Antonio Creeks; and

(C) Freshwater seeps and intermittent streams found in other habitats, including grassland, meadow, coastal scrub, chaparral, and oak woodland.

These areas provide space needed for individual and population growth including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(ii) associated plant communities including: Central dune scrub, coastal dune, coastal scrub, freshwater seep, coastal and valley freshwater marsh and fen, riparian scrub (e.g., mule fat scrub, willow scrub), chaparral, oak woodland, intermittent streams, and other wetland communities, generally in association with the following species: *Juncus* spp. (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), *Baccharis pilularis* (coyote brush), and *B. douglasii* (Douglas' baccharis);

(iii) soils with a sandy component including but not limited to dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils; and

(iv) features that allow dispersal and connectivity between populations, particularly:

(A) Natural riparian drainages in Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River that are not channelized or confined by barriers or dams, such that they have soft bottoms and sides and a natural flood plain (allowing uninterrupted water flows); and

(B) Natural aeolian geomorphology in the Santa Maria Dune Complex and Santa Ynez Dune Complex, and along the Santa Maria River, Orcutt Creek, San Antonio Creek, and Santa Ynez River drainages that is not confined by barriers or wind-blocks such as large man-made structures, tree rows, or wind-breaks (allowing uninterrupted winds across these areas).

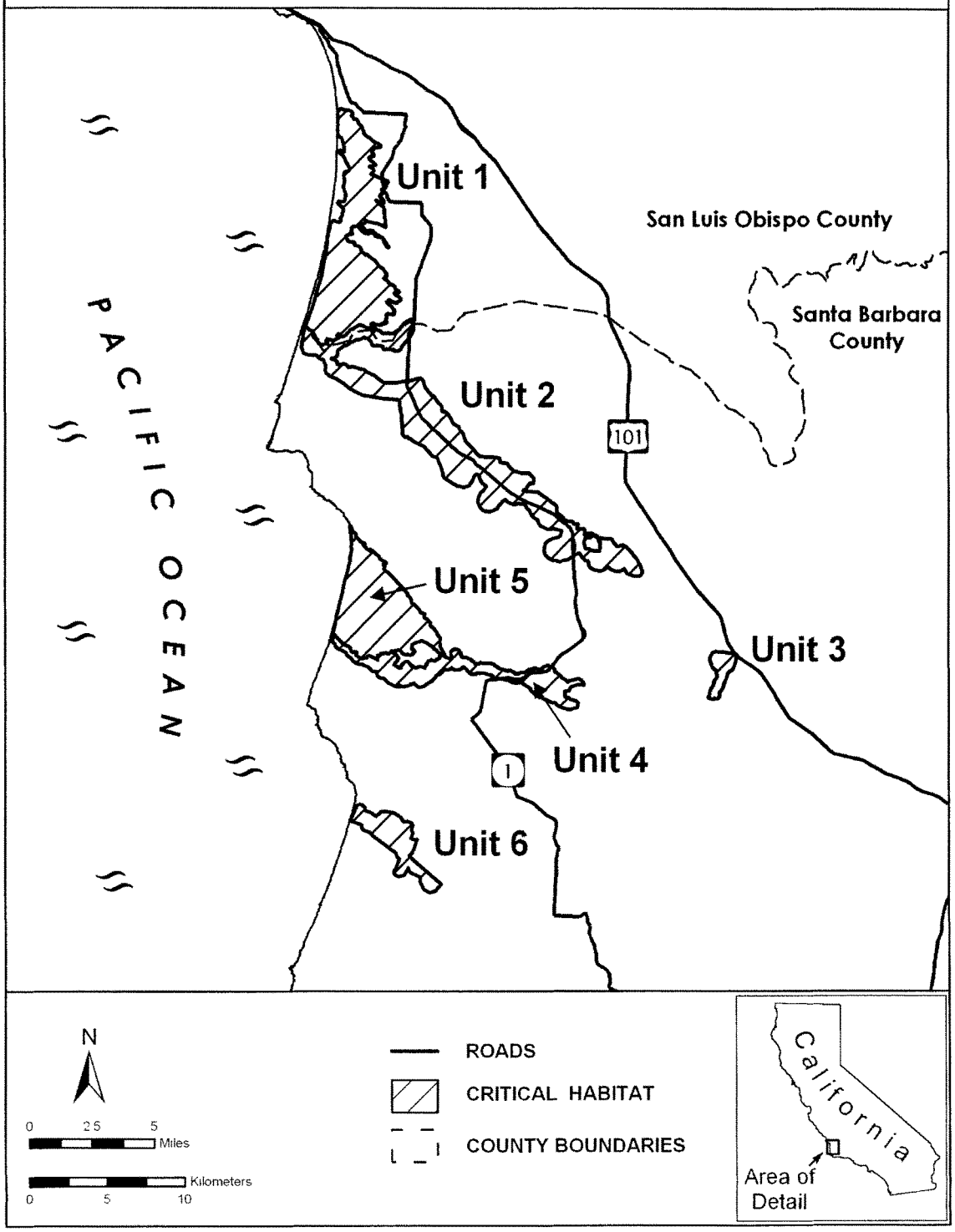
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program (aerial imagery captured June 2005). Data were projected to Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983.

(5) Note: Index map of *Cirsium loncholepis* critical habitat follows:

BILLING CODE 4310–55–P

Index to Maps of Critical Habitat for *Cirsium loncholepis* (La Graciosa Thistle)



(6) *Unit 1:* Callender-Guadalupe Dunes Unit, San Luis Obispo County, California.

(i) From USGS 1:24,000 scale quadrangle Oceano, Point Sal, and Guadalupe. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N) 715180, 3874101; 715375, 3875018; 715578, 3875772; 715692, 3876690; 715789, 3877362; 715834, 3878096; 715838, 3878233; 715830, 3878381; 715855, 3878453; 715865, 3878522; 715862, 3878600; 715870, 3878713; 715887, 3878818; 715904, 3878906; 715935, 3878974; 715954, 3879081; 715968, 3879368; 715989, 3879384; 716000, 3879418; 716079, 3879449; 716119, 3879497; 716172, 3879522; 716240, 3879505; 716347, 3879451; 716435, 3879446; 716542, 3879446; 716604, 3879485; 716627, 3879528; 716624, 3879570; 716602, 3879635; 716602, 3879703; 716616, 3879779; 716647, 3879827; 716715, 3879884; 716709, 3880002; 716689, 3880047; 716686, 3880092; 716751, 3880170; 716751, 3880235; 716731, 3880317; 716689, 3880391; 716610, 3880473; 716545, 3880526; 716398, 3880611; 716373, 3880673; 716373, 3880738; 716418, 3880780; 716466, 3880783; 716602, 3880754; 716669, 3880769; 716746, 3880769; 716792, 3880847; 716821, 3880916; 716822, 3881238; 716816, 3881323; 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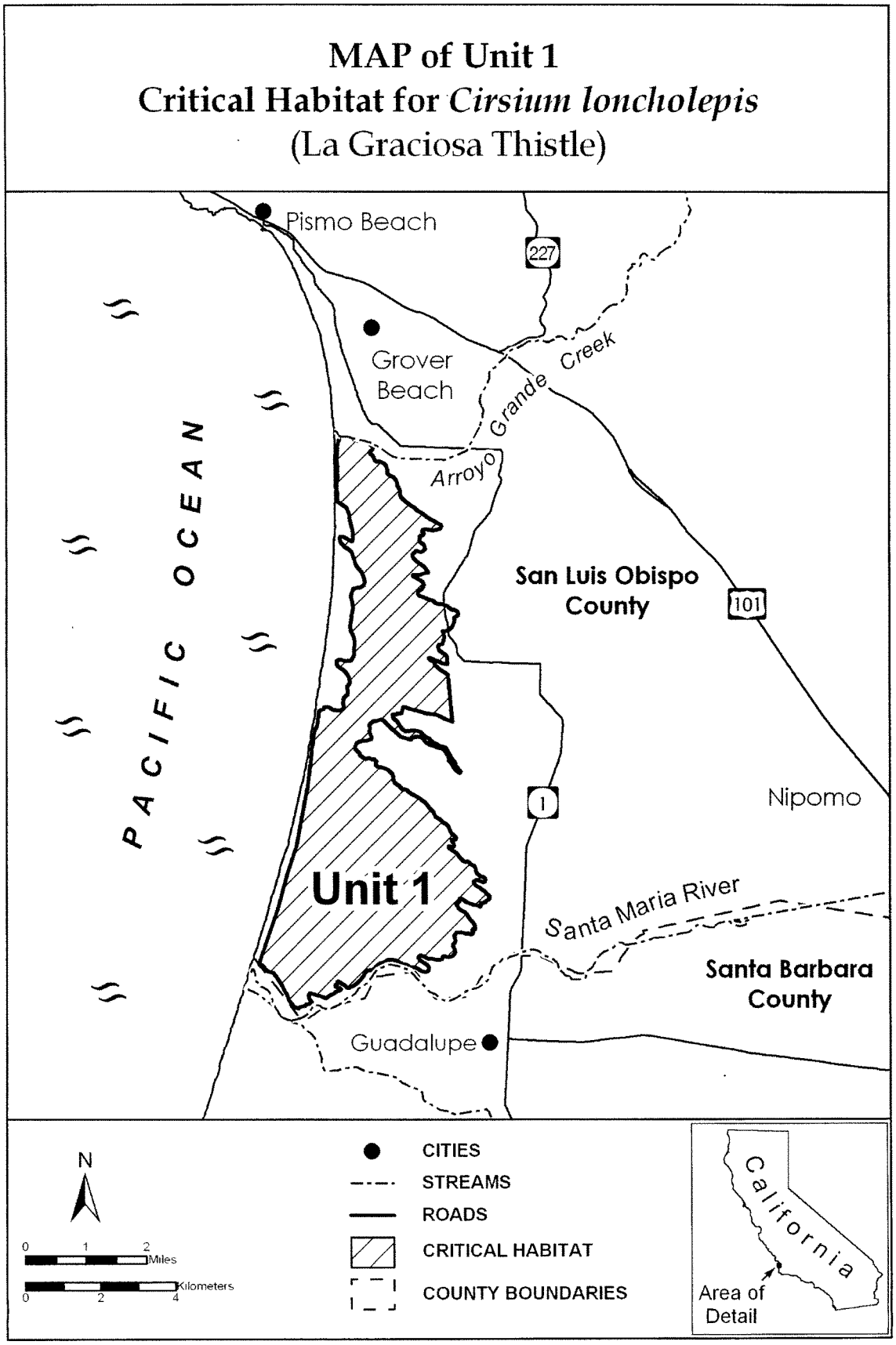
(ii) Note: Map of Unit 1 follows:

BILLING CODE 4310–55–P


MAP of Unit 1
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
Pismo Beach
227
Grover Beach
Arroyo Grande Creek
PACIFIC OCEAN
San Luis Obispo County
101
1
Nipomo
Unit 1
Santa Maria River
Santa Barbara County
Guadalupe
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
COUNTY BOUNDARIES
California
Area of Detail

(7) Unit 2: Santa Maria River-Orcutt Creek Unit, San Luis Obispo and Santa Barbara Counties, California.

(i) From USGS 1:24,000 scale quadrangles Orick and Rodgers Peak. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 725058, 3866813; 725142, 3866607; 725306, 3866481; 725393, 3866297; 725509, 3865959; 725635, 3865833; 725983, 3865562; 726263, 3865185; 726418, 3865118; 726524, 3865021; 727336, 3865021; 727820, 3865002; 727868, 3864731; 728342, 3864683; 728419, 3864518; 728787, 3864228; 729289, 3864131; 729773, 3864141; 730073, 3863841; 730059, 3863511; 729874, 3863511; 729764, 3863378; 729624, 3863143; 729462, 3863010; 729475, 3862983; 730408, 3862960; 731496, 3862251; 731690, 3862118; 731698, 3861732; 732125, 3861437; 732125, 3861321; 732481, 3861206; 732721, 3861209; 732829, 3861067; 733104, 3861067; 733067, 3860762; 733501, 3860781; 733547, 3860698; 733547, 3860412; 733731, 3860414; 733732, 3860492; 734031, 3860498; 734222, 3860421; 734619, 3860236; 735294, 3860264; 735326, 3860229; 735349, 3860199; 735404, 3860093; 735463, 3860011; 735484, 3859974; 735517, 3859952; 735545, 3859927; 735643, 3859813; 735671, 3859799; 735721, 3859794; 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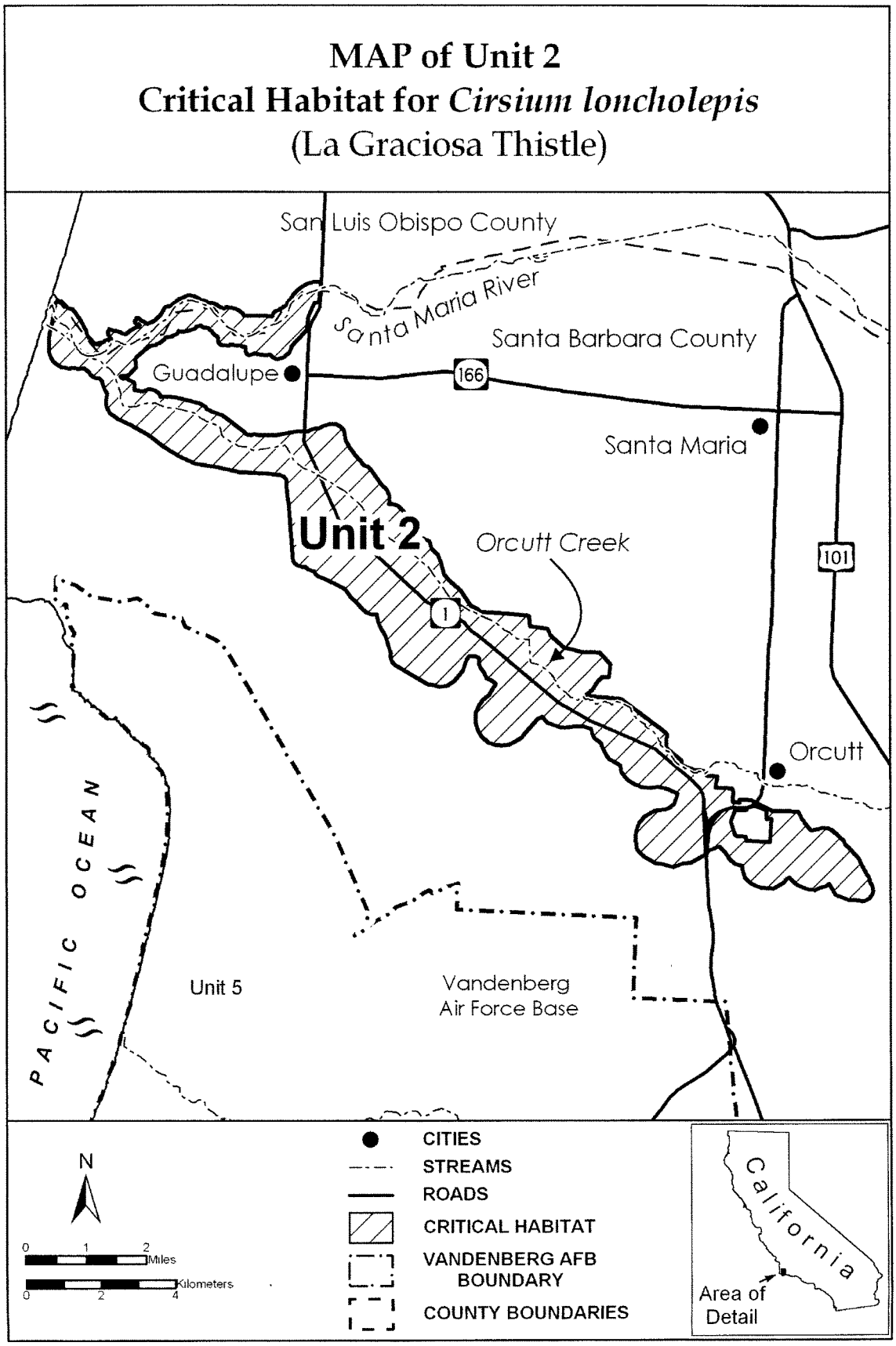
(ii) Note: Map of Unit 2 follows:

BILLING CODE 4310–55–P



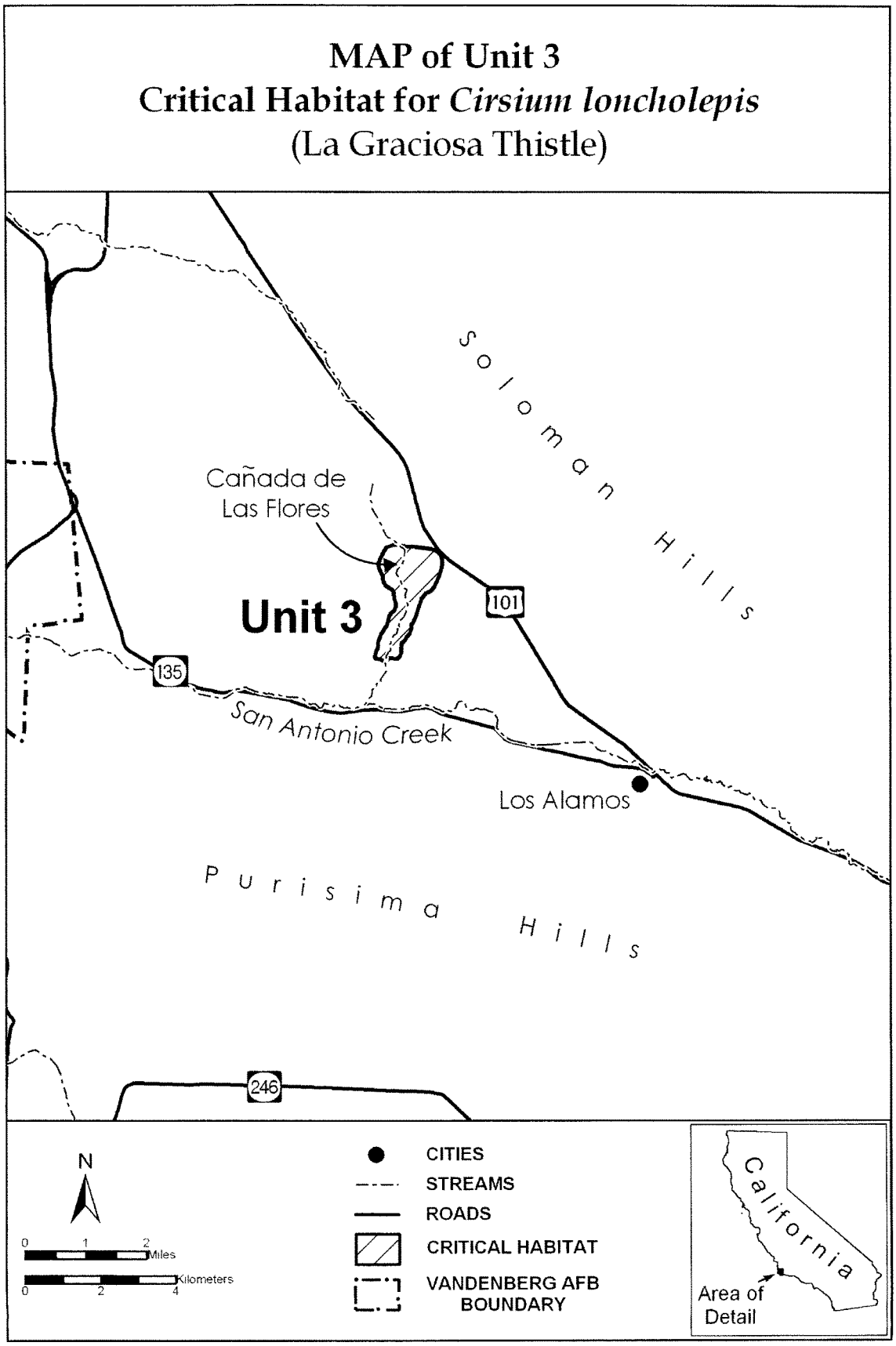
(8) Unit 3: Cañada de las Flores Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Sisquoc. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 742558, 3850507;

742481, 3850424; 742403, 3850419; 742326, 3850452; 742181, 3850480; 742176, 3850556; 742180, 3850605; 742197, 3850665; 742245, 3850766; 742232, 3850832; 742235, 3850902; 742246, 3850958; 742266, 3851007; 742271, 3851048; 742281, 3851084; 742301, 3851131; 742335, 3851182; 742363, 3851243; 742394, 3851292; 742429, 3851332; 742438, 3851375; 742456, 3851419; 742461, 3851457; 742471, 3851496; 742471, 3851532; 742476, 3851569; 742483, 3851600; 742497, 3851635; 742515, 3851669; 742541, 3851704; 742572, 3851735; 742608, 3851761; 742624, 3851815; 742650, 3851865; 742652, 3851886; 742641, 3851924; 742625, 3851999; 742612, 3852029; 742601, 3852065; 742583, 3852157; 742579, 3852210; 742552, 3852255; 742534, 3852302; 742527, 3852316; 742442, 3852346; 742392, 3852375; 742342, 3852419; 742306, 3852466; 742285, 3852506; 742270, 3852553; 742262, 3852604; 742263, 3852655; 742203, 3852734; 742141, 3852858; 742121, 3852916; 742111, 3852978; 742193, 3853224; 742288, 3853414; 742484, 3853503; 742816, 3853484; 742812, 3853488; 743060, 3853489; 743066, 3853483; 743067, 3853489; 743247, 3853474; 743454, 3853451; 743454, 3853446; 743490, 3853449; 743535, 3853447; 743585, 3853438; 743625, 3853424; 743659, 3853408; 743694, 3853384; 743727, 3853356; 743756, 3853321; 743780, 3853284; 743796, 3853249; 743808, 3853208; 743817, 3853159; 743819, 3853115; 743800, 3852934; 743754, 3852734; 743649, 3852472; 743561, 3852342; 743421, 3852276; 743316, 3852119; 743278, 3851942; 743218, 3851742; 743193, 3851646; 743172, 3851599; 743164, 3851565; 743151, 3851530; 743105, 3851444; 743086, 3851416; 743094, 3851372; 743096, 3851328; 743092, 3851290; 743082, 3851247; 743058, 3851187; 743037, 3851148; 743010, 3851113; 742982, 3851087; 742955, 3851028; 742931, 3850990; 742906, 3850962; 742866, 3850925; 742864, 3850869; 742852, 3850819; 742862, 3850709; 742860, 3850678; 742854, 3850640; 742840, 3850598; 742821, 3850559; 742795, 3850522; 742769, 3850495; returning to 742558, 3850507.

(ii) Note: Map of Unit 3 follows:

BILLING CODE 4310–55–P



(9) Unit 4: San Antonio Creek Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangles Casmalia and Orcutt. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 721762,

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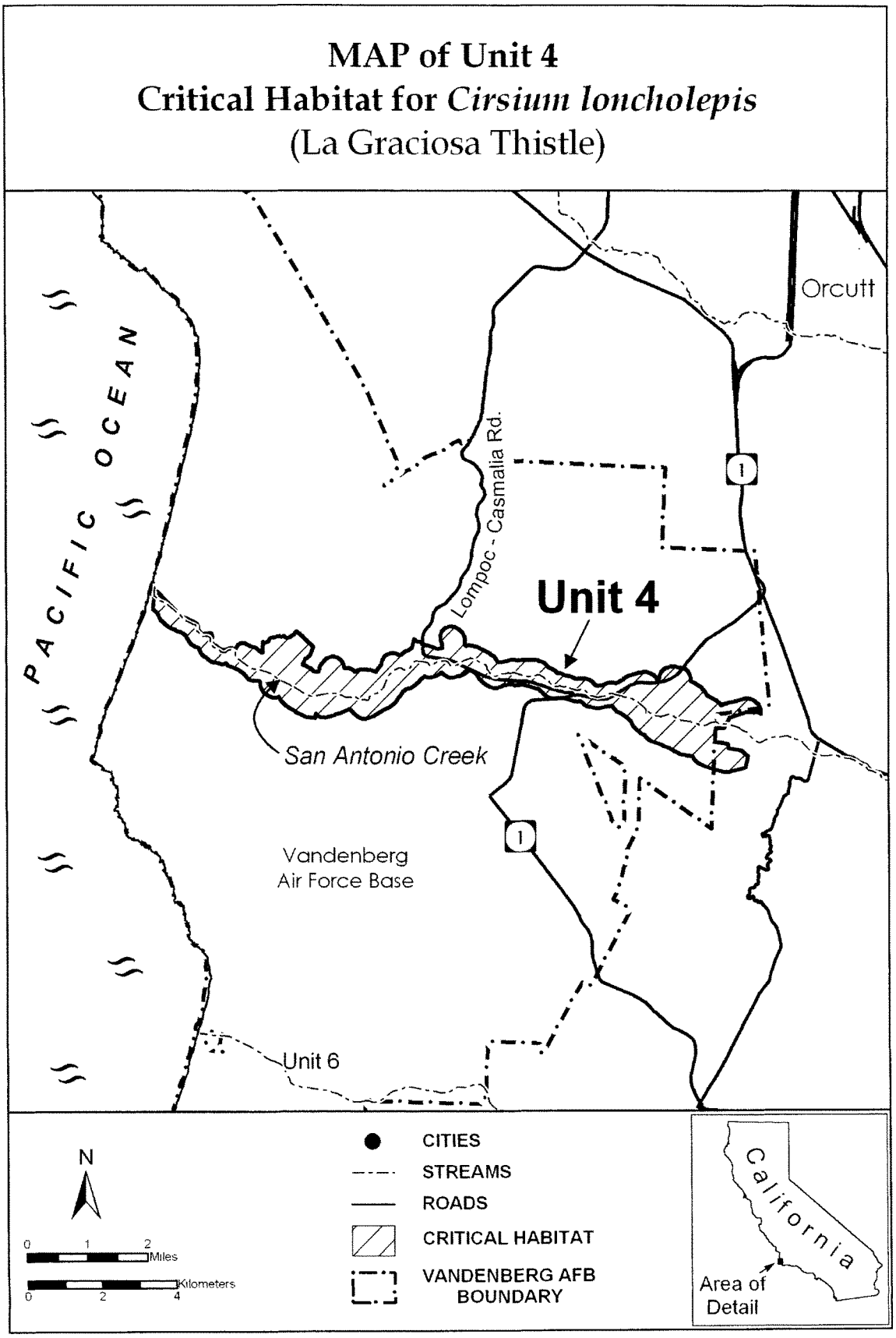
(ii) Note: Map of Unit 4 follows:

BILLING CODE 4310-55-P


MAP of Unit 4
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
PACIFIC OCEAN
Orcutt
Lompoc - Casmalia Rd.
1
Unit 4
San Antonio Creek
Vandenberg
Air Force Base
1
Unit 6
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
VANDENBERG AFB
BOUNDARY
California
Area of
Detail

(10) Unit 5: San Antonio Terrace Dunes Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangles Casmalia and Orcutt. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 718605, 3859659; 718632, 3859657; 718697, 3859669; 718778, 3859567; 718777, 3859481; 718786, 3859450; 718804, 3859422; 718947, 3859267; 719023, 3859199; 719113, 3859092; 719153, 3859066; 719188, 3859055; 719261, 3859047; 719299, 3859037; 719351, 3859008; 719388, 3858974; 719406, 3858946; 719403, 3858923; 719379, 3858912; 719331, 3858928; 719316, 3858929; 719306, 3858919; 719307, 3858893; 719320, 3858877; 719349, 3858862; 719382, 3858836; 719537, 3858692; 719596, 3858642; 719718, 3858573; 719756, 3858523; 719783, 3858510; 719808, 3858517; 719815, 3858530; 719808, 3858550; 719759, 3858603; 719749, 3858631; 719751, 3858639; 719756, 3858643; 719767, 3858640; 719874, 3858594; 719969, 3858523; 720074, 3858429; 720185, 3858366; 720238, 3858305; 720289, 3858264; 720330, 3858247; 720368, 3858204; 720373, 3858187; 720389, 3858168; 720387, 3858160; 720418, 3858106; 720442, 3858084; 720458, 3858063; 720561, 3858017; 720700, 3857948; 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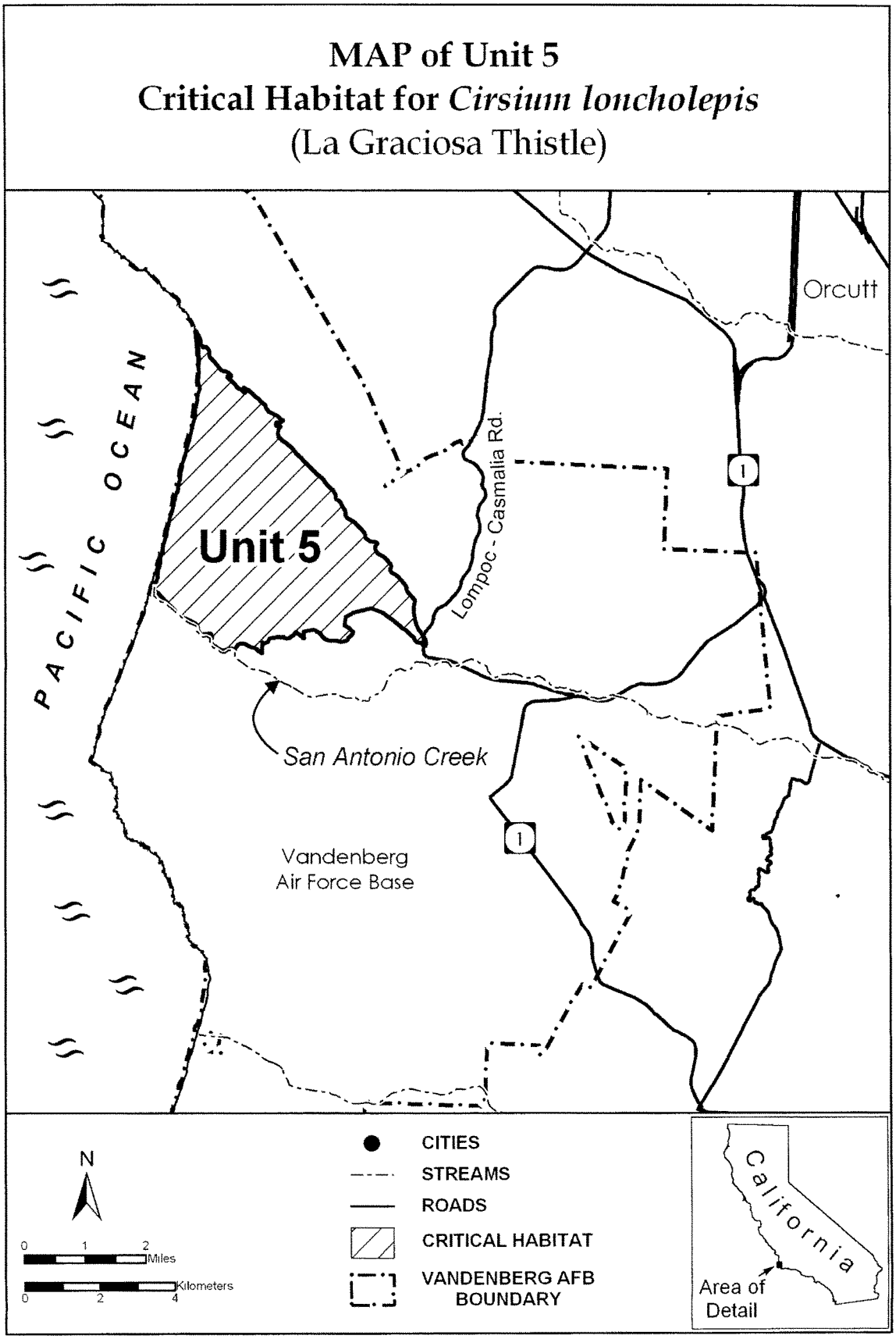
3858214; 718536, 3858363; 718542, 3858401; 718573, 3858507; 718575, 3858566; 718570, 3858602; 718523, 3858731; 718538, 3858964; 718531, 3859020; 718498, 3859180; 718487, 3859308; 718485, 3859439; 718454, 3859579; 718429, 3859754; 718386, 3859925; 718379, 3860005; 718370, 3860051; 718373, 3860072; 718392, 3860063; 718409, 3860046; 718449, 3859977; 718476, 3859945; 718503, 3859902; 718525, 3859841; 718520, 3859825; 718525, 3859757; 718554, 3859705; 718596, 3859665; returning to 718605, 3859659.

(ii) Note: Map of Unit 5 follows:

BILLING CODE 4310–55–P



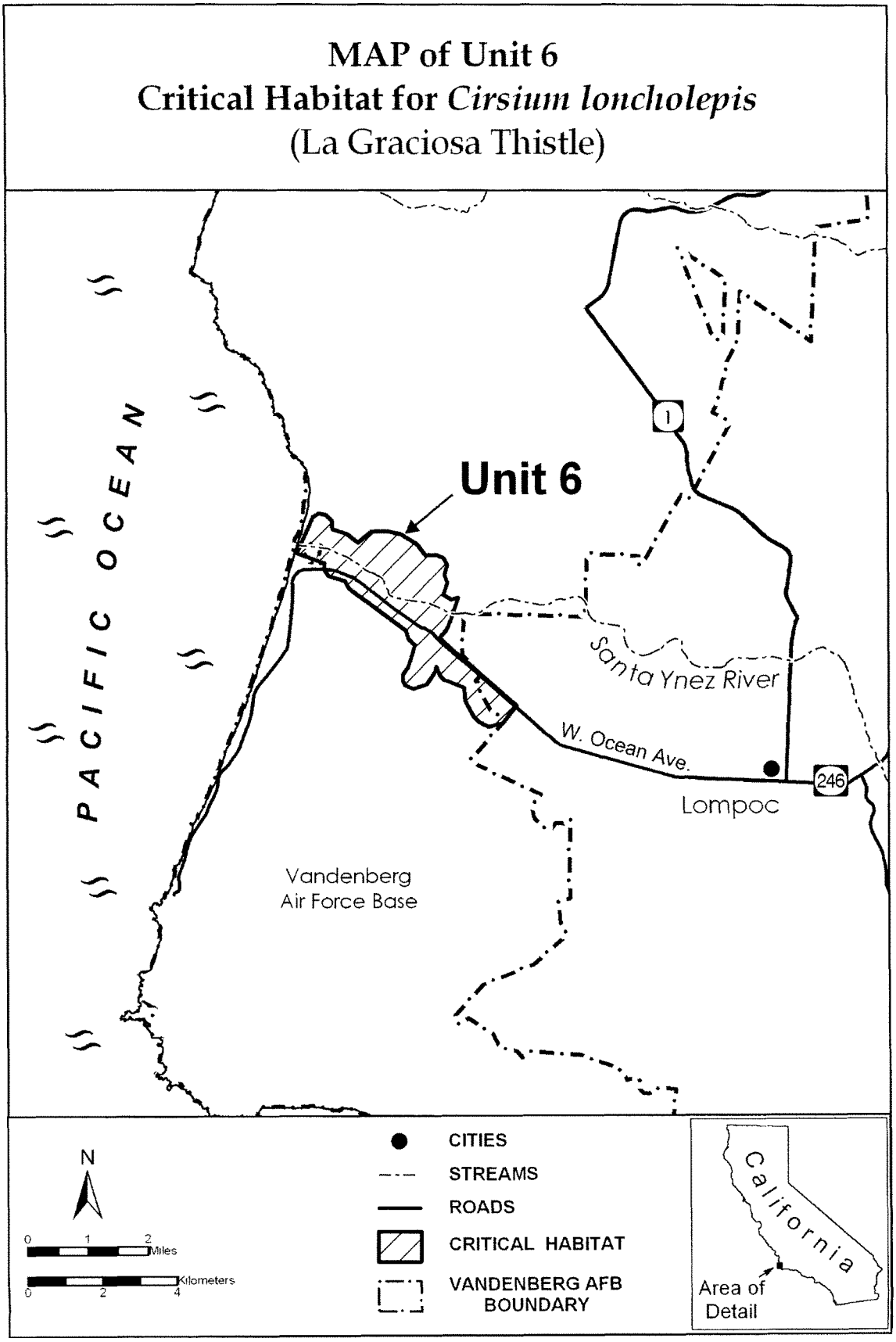
(11) Unit 6: Santa Ynez River Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Surf. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 723859, 3838896;

725620, 3837543; 725271, 3837051; 724901, 3836933; 724638, 3837069; 724497, 3837192; 724248, 3837597; 724203, 3837932; 723652, 3838108; 723524, 3838238; 723422, 3838457; 723388, 3838299; 723182, 3837963; 722841, 3837832; 722612, 3837911; 722535, 3838033; 722526, 3838178; 722660, 3838389; 722817, 3838984; 722632, 3839136; 722566, 3839348; 720953, 3840388; 720833, 3840568; 720377, 3840677; 720267, 3840828; 720267, 3841007; 719515, 3841235; 719882, 3842225; 720041, 3842323; 720232, 3842302; 720395, 3842134; 720431, 3841932; 720809, 3841827; 721128, 3841609; 721478, 3841925; 721870, 3841964; 722263, 3841900; 722718, 3841675; 722963, 3841384; 723238, 3841416; 723454, 3841333; 723560, 3841154; 723497, 3840885; 723592, 3840685; 723500, 3840365; 723716, 3840247; 723901, 3840313; 723743, 3839692; 723632, 3839434; 723459, 3839221; returning to 723859, 3838896.

(ii) Note: Map of Unit 6 follows:

BILLING CODE 4310–55–P


MAP of Unit 6
Critical Habitat for *Cirsium loncholepis*
(La Graciosa Thistle)
PACIFIC OCEAN
Unit 6
Santa Ynez River
W. Ocean Ave.
Lompoc
1
246
Vandenberg
Air Force Base
N
0 1 2 Miles
0 2 4 Kilometers
CITIES
STREAMS
ROADS
CRITICAL HABITAT
VANDENBERG AFB
BOUNDARY
California
Area of
Detail

* * * * *

Dated: July 28, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–17808 Filed 8–5–08; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
August 6, 2008

Part III

Postal Regulatory Commission

39 CFR Part 3020

Administrative Practice and Procedure; Postal Service; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. MC2008–4; Order No. 88]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is transferring Premium Forwarding Service from the market dominant list to the competitive product list. It is updating the market dominant product list to reflect the status of several agreements. It is also republishing the product lists. These actions are consistent with changes in a recent law.

DATES: Effective August 6, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 2008, the Postal Service filed a request to modify the Mail Classification Schedule transferring Premium Forwarding Service (PFS), which is currently classified as a market dominant product within the Special Services class, to the competitive product list.[1] The Request was made pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* and included two attachments.[2]

Rule 3020.30 allows the Postal Service to request the transfer of a product from the market dominant product list to the competitive product list. The Postal Service must provide detailed support and justification for such a request. 39 CFR 3020.31 and 3020.32. The Commission reviews the Request and the comments of interested parties under 3020.34.

PFS provides residential postal customers with a forwarding service for their mail when they are away from their primary residences. Most mail from a customer's permanent address is forwarded once a week via Priority Mail to the customer's temporary address.[3] The customer is charged a $10 enrollment fee and a weekly fee of $11.95.[4] PFS is used by postal customers with multiple residences, or those on extended travel for business, or personal reasons, and recreational vehicle owners.

The Postal Service supports its Request with a Statement of Supporting Justification from Maura Robinson, Pricing Systems and Analysis Manager, at the Postal Service. The Postal Service explains that no Governors' Decision is required in this case since no change in classification or price is proposed, but merely a transfer of a product from one product list to another. Request at 1. The Postal Service also asserts that PFS will ''meet the statutory cost coverage requirements'' applicable to competitive products under 39 U.S.C. 3633. Request, Attachment B at 1–2. The Postal Service further asserts that because private alternative options to PFS are available in the form of commercial mail forwarding services or informal agreements with friends that PFS properly belongs in the competitive product category. *Id.* at 3–4. The Postal Service contends with regard to PFS that it does not have the ''ability to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing a significant level of business.'' *Id.* at 3. The Postal Service position is that the ''[t]ransfer of PFS to the competitive product list will ensure that its revenues are appropriately classified, since * * * PFS is provided within a competitive market.'' *Id.* at 5.

The Commission issued its Notice and Order Concerning Postal Service's Request to Transfer Premium Forwarding Service to the Competitive Products Category and established Docket No. MC2008–4 on June 3, 2008.

II. Comments

The Commission in Order No. 80 provided interested persons an opportunity to offer comments on whether the proposed transfer of PFS from the market dominant to competitive product list is consistent with the policies of 39 U.S.C. 3633 and 3642. Comments were received from United Parcel Service (UPS), the National Association of Retail Shipping Centers, Inc. (NARSC), the Public Representative, and David B. Popkin (Popkin).[5] The Postal Service and Popkin also filed reply comments.[6]

In its comments, UPS asks that the Commission evaluate the impact the proposed transfer of PFS from the market dominant to the competitive product list would have on competitive products' required contribution to institutional costs. UPS Comments at 2. However, it also states that ''[i]t does not appear that PFS will substantially change the contribution of competitive products collectively to institutional costs.'' UPS does not oppose the proposed transfer of PFS to the competitive product list. *Id.*

NARSC also does not oppose the proposed transfer, but states emphatically that the weekly fee for PFS should not be reduced from the current price of $11.95. NARSC contends that ''[p]ricing below that level [would] substantially [affect] the PMB [Private Mail Box] industry as a predatory business practice.'' NARSC Comments at 1.

Popkin comments that there are no true alternatives to PFS. Popkin Comments at 2–3. He states that commercial alternatives to PFS are not substantially the same because they must be used on a permanent basis and are not available in all locations. *Id.* He also contends that informal arrangements with friends and family are not a realistic alternative to PFS. *Id.* at 3. Mr. Popkin also expresses his concern that the present PFS rules require ''that all interaction to establish, modify, or terminate the service be done in person at the post office servicing the customer's permanent mailing address'' and that no alternatives are available to the in-person option. *Id.* at 1.

The Public Representative recommends that the Commission should either reject the proposed transfer of PFS from the market dominant to the competitive product list or institute proceedings under rule 3020.34(b) to further scrutinize the

[1] Request of the United States Postal Service, May 30, 2008 (Request).

[2] Attachment A illustrates the proposed changes to the Mail Classification Schedule. Attachment B is a Statement of Supporting Justification by Maura Robinson, Manager, Pricing Systems and Analysis for the Postal Service.

[3] Mail that will be rerouted separately includes mail requiring a scan, signature, or additional postage at delivery. Express Mail articles are rerouted immediately. Priority Mail articles are rerouted separately unless shipping them in the PFS package would not delay their delivery. First-Class Mail packages that do not fit in the weekly PFS shipment will be rerouted separately. Standard Mail pieces will only be included in the PFS package if they can be accommodated in the PFS package after letters, flats or large envelopes, and magazines have been included. Otherwise, Standard Mail pieces will be shipped postage due. Parcel Post, Bound Printed Matter, Media Mail, and Library Mail pieces will not be included in the PFS package, but will be shipped postage due.

[4] PFS is available for a minimum of two weeks and maximum of 52 weeks. Payment for the entire period of service is due with the application.

[5] Comments of United Parcel Service in Response to Order Concerning Postal Service's Request to Transfer Premium Forwarding Service to the Competitive Products Category (UPS Comments); Comments of National Association of Retail Shipping Centers, Inc. (Order No. 80) (NARSC Comments); Public Representative Comments on Postal Service Request to Transfer Premium Forwarding Service to the Competitive Products Category (Public Representative Comments); and Initial Comments of David B. Popkin (Popkin Comments); all filed June 16, 2008.

[6] Reply Comments of the United States Postal Service, June 20, 2008 (Postal Service Reply Comments); Reply Comments of David B. Popkin, June 23, 2008 (Popkin Reply Comments).

proposed transfer. Public Representative Comments at 2. He asserts that the Postal Service has failed to demonstrate that it does not have sufficient market power over prices, quality of service and output with regard to PFS. *Id.* The Public Representative cautions that the Postal Service will exercise virtually unlimited market power with PFS in a significantly large segment of the market if PFS is moved to the competitive products list. *Id.* at 1–2. He also states that PFS should not be classified as a competitive product because there are no real alternatives for residential mailers. *Id.* at 4–6.

The Postal Service filed a motion to be allowed to offer a reply and offered reply comments to the Public Representative's comments.[7] The Commission grants the Postal Service's motion. The Postal Service argues in its reply that although the available commercial alternatives to PFS may not be exactly the same as PFS, for example, they may have some differing features; they are substantially similar enough to classify PFS appropriately as a competitive, and not a market dominant, product. Postal Service Reply Comments at 2–3. The Postal Service states that NARSC's comments make it clear that NARSC sees PFS as a competitor to its members' mail forwarding services offerings. *Id.* at 3. The Postal Service also references a recent Commission field hearing in Flagstaff, Arizona where Cameron Powell, Vice President of Earth Class Mail in Seattle, Washington, testified that Earth Class Mail provides a reasonable alternative to PFS for mailers that are within the target market. *Id.*

Popkin also filed a motion to be allowed to offer a reply and offered reply comments.[8] The Commission grants Popkin's motion. In his reply comments Popkin contends that services provided by NARSC members and Earth Class Mail are not substantially similar enough to truly be competitive with PFS services. Popkin Reply Comments at 2–3. He states that a search of NARSC's website reveals that in the Northeast region of the United States no NARSC member stores exist in Maine, Vermont, Rhode Island, New Jersey, Delaware, and the District of Columbia, and that only limited locations are available in New Hampshire, Massachusetts, Connecticut, New York, Pennsylvania, and Maryland. *Id.* at 2. Popkin also lists prices for various Earth Class Mail services related to mail forwarding apparently implying that Earth Class Mail services are more expensive than PFS. *Id.* at 3. He again concludes that PFS has no truly comparable competition.

III. Commission Analysis

39 U.S.C. 3642 addresses adding or removing products from the competitive and market dominant product lists and ''transferring products between the lists.'' The Postal Service, the Commission, and users of the mail can request such an addition, removal or transfer.

The statute lays out several criteria that must be considered by the Commission when deciding whether an addition, removal, or transfer of a product is appropriate. The threshold question the Commission must ask is whether:

> * * * the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If this is the case, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).[9] The Commission rules implementing section 3642 require the Postal Service to provide data and supporting justification when requesting the addition, removal or transfer of a product. 39 CFR 3020.30 *et seq.*

The question of whether the Postal Service has sufficient market power to effectively set prices for PFS without actual competition has been addressed by the Postal Service, the Public Representative, and Popkin.

The Public Representative argues that the Postal Service exercises ''virtually unlimited market power with PFS in a significantly large segment, if not virtually all, of the relevant market * * *'' and that it has failed to provide the necessary justification and supporting data to make a sufficient showing that PFS is not a market dominant product. Public Representative Comments at 2–4. Popkin also contends that there are no truly competitive alternatives to PFS because of significant pricing, logistic and geographic availability differences. Popkin Comments at 2–4; Popkin Reply Comments at 3.

The Postal Service, on the other hand, asserts that its bargaining position is constrained by the existence of other shippers who can provide services similar to PFS, and thus, the market precludes it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies in the mail forwarding business. Request, Attachment B at 2–4. The Postal Service claims that informal agreements with friends, private sector firms and commercial mail forwarding services offer substantially similar mail forwarding services under similar conditions. *Id.* The Postal Service has not provided specific data concerning those alternatives, but cites several alternative sources like Earth Class Mail, several mail forwarding services geared towards snowbirds, and commercial mail receiving agencies. *Id.*; Postal Service Reply Comments at 2. In addition, it appears that Mail Boxes Etc. (MBE) provides a mail forwarding service for its mailbox customers.[10] With the exception of mail forwarding services provided by friends, all other services require that customers change their address with the Postal Service on a temporary or permanent basis.[11]

Finally, the Postal Service states that PFS is but one alternative in the mail forwarding market and that ''[t]here is likely to be a minimal impact, if any, on small business concerns.'' Request, Attachment B at 4. In addition, because the competitive product rules set a cost floor, the Postal Service asserts that it will not be able to under price PFS in order to eliminate competitors. *Id.* at 5.

This is the first time the Commission has been called upon to decide whether it is appropriate to transfer a service from the market dominant product list to the competitive product list. The record supports the finding that there is a sufficient pool of alternative services

[7] Motion of the United States Postal Service for Acceptance of Reply Comments, June 20, 2008 (Postal Service Reply Comments).

[8] Motion of David B. Popkin for Acceptance of Reply Comments, June 23, 2008; David B. Popkin Reply Comments, June 23, 2008 (Popkin Reply Comments).

[9] In addition, products that are covered by the postal monopoly may not be transferred from the market dominant to the competitive product list. 39 U.S.C. 3642(b)(2).

[10] *http://www.mbe.com/ps/index.html.*

[11] The Commission is not convinced by the Postal Service's argument that informal mail forwarding by friends and neighbors is substantially similar to the services provided by PFS or commercial alternative mail forwarding options. PFS customers enter into a formal business-like relationship with the Postal Service with the benefit of clearly established parameters for the forwarding of their mail. Friends are not ''firms offering similar products.'' 39 U.S.C. 3642(b)(1). Nonetheless, such an arrangement may be a satisfactory alternative for some mail recipients.

that are sufficiently similar to PFS to limit the Postal Service's ability to effectively set the price (in the technical economic sense) of PFS.[12]

The Commission notes that a transfer of a product between product lists is not necessarily permanent. If circumstances should warrant in the future, for example, if the Postal Service appeared to be price gouging users of this service, the Commission under section 3642 and its own rules can initiate a transfer of PFS from the competitive product list back to the market dominant product list. Moreover, users of the mail also can request such a transfer. *See* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*

As part of its responsibility, the Commission will review competitive products for their compliance with 39 U.S.C. 3633. The Commission has previously reviewed the cost coverage of PFS and determined that PFS covers its costs[13] (39 U.S.C. 3633(a)(2)); the transfer should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)); and should have a positive effect on competitive products' collective ability to provide their appropriate share of institutional costs (39 U.S.C. 3633(a)(3)).[14] Thus, a preliminary review of the transfer of PFS to the competitive product list indicates that it comports with the provisions applicable to rates for competitive products.[15]

Therefore, having considered the statutory requirements, the argument put forth by the Postal Service, and the public comments, the Commission finds that PFS may be appropriately categorized as a competitive product, and therefore, may be transferred to the competitive product list.

IV. Other Changes to the Mail Classification Schedule

Other revisions are also being made to the Mail Classification Schedule. In the Negotiated Service Agreements section, the Discover Financial Services Negotiated Service Agreement[16] and the Bank One Negotiated Service Agreement[17] have expired, and will be deleted, and the Bank of America Corporation[18] and The Bradford Group agreements[19] previously approved will be added.

The revisions to the market dominant and competitive product lists are shown below the signature of this Order, and shall become effective upon publication in the **Federal Register**.

It is Ordered:

1. The Postal Service request to modify the Mail Classification Schedule by transferring Premium Forwarding Service to the competitive product list filed May 30, 2008, is granted.
2. The Motion of the United States Postal Service for Acceptance of Reply Comments filed June 20, 2008, is granted.
3. The Motion of David B. Popkin for Acceptance of Reply Comments filed June 23, 2008, is granted.
4. The Discover Financial Services Negotiated Service Agreement is deleted from the Mail Classification Schedule.
5. The Bank One Negotiated Service Agreement is deleted from the Mail Classification Schedule.
6. The Bank of America Corporation Negotiated Service Agreement is added to the Mail Classification Schedule.
7. The Bradford Group Negotiated Service Agreement is added to the Mail Classification Schedule.
8. The Secretary shall arrange for publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Issued July 16, 2008.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Parts A and B of Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

* * * * *

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
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- International Reply Coupon Service
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Negotiated Service Agreements
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- Bookspan Negotiated Service Agreement
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- 1001 Market Dominant Product Descriptions

* * * * *

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- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post

Parcel Select
Parcel Return Service
International
- International Priority Airlift (IPA)

[12] The absence of quantitative support for this conclusion is inescapable as PFS is a new, low volume special service providing a product that is ancillary to the core functions of the Postal Service's business.

[13] *See* Request at 1–2. ''The record also makes clear that PFS covers costs and, with overall cost coverage exceeding 140 percent, makes a reasonable contribution to overhead costs.'' PRC Op. MC2007–3 at 3, January 7, 2008.

[14] *Id.*

[15] PFS will be reviewed again as part of the Annual Compliance Determination in early 2009 and any changes, if necessary, will be recommended at that time.

[16] Docket No. MC2004–4. The agreement expired on January 1, 2008.

[17] Docket No. MC2004–3. The agreement expired on April 1, 2008.

[18] Docket No. MC2007–1. The agreement became effective on April 1, 2008.

[19] Docket No. MC2007–4. The agreement became effective on June 1, 2008.

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* * * * *

[FR Doc. E8–17984 Filed 8–5–08; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4841/P.L. 110–297

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S. 3298/P.L. 110–299

To clarify the circumstances during which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels, and to require the Administrator to conduct a study of discharges incidental to the normal operation of vessels. (July 31, 2008; 122 Stat. 2995)

S. 3352/P.L. 110–300

To temporarily extend the programs under the Higher Education Act of 1965. (July 31, 2008; 122 Stat. 2998)

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